



REPORT TO PARLIAMENT

OPERATION PELICAN

August 2001

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ISBN 1 74003 118 0

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The Hon Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker

In accordance with section 96(2) of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a Report regarding Operation Pelican, being a Report in relation to a matter as to which the Commission has conducted a public hearing.

I draw your attention to section 103(2) of the Act, pursuant to which I recommend that this Report be made public forthwith.

Yours faithfully

A handwritten signature in black ink, appearing to read "Paul Urquhart", written in a cursive style.

Judge P D Urquhart QC
Commissioner

August 2001

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1. EXECUTIVE SUMMARY

BACKGROUND TO OPERATION PELICAN

In 2000 the Police Integrity Commission ('the Commission') commenced an investigation codenamed Operation Pelican into allegations of serious police misconduct in the police investigation of three violent incidents. The Commission's investigation was conducted jointly with the NSW Crime Commission ('the Crime Commission') and the NSW Police Service Special Crime and Internal Affairs Command ('Internal Affairs'). Public hearings were held in November 2000 and June 2001, the scope and purpose of which was to investigate:

1. Whether there was any police misconduct in the investigation into the death on 15 December 1986 of Phillip Dilworth at Petersham.
2. Whether there was any police misconduct in the investigation into the shooting-wounding on 18 August 1988 of Gary Mitchell at Concord.
3. Whether there was any police misconduct in the investigation of the death on 24 March 1996 of Gary Mitchell at Armidale.

The Commission heard evidence of a close association between Malcolm Tanswell, the licensee of the Oxford Tavern, and NSW police officers. There were allegations that Tanswell was involved in each of the above incidents and that his association with police officers may have adversely impacted on the police investigation of these matters. The Commission acknowledges that the internal police investigation, under the direction of Detective Inspector Geoff Leonard of Crime Agencies and with the assistance of the Crime Commission, had addressed many of the failures in the police investigations of the above matters. It also provided the basis for much of the evidence led before this Commission.

THE DEATH OF PHILLIP GEORGE DILWORTH

Phillip Dilworth died on 15 December 1986 as a result of a fractured skull. On the evening before his death he had been drinking at the Oxford Tavern in Petersham ('the Hotel'). He arrived home on 14 December 1986 in a very intoxicated state suffering from some injuries, and stated that he had been in a fight. He went to sleep and was found deceased the following day.

His death was investigated by police officers from Petersham Police Station under the supervision of Sergeant Brian Hanrahan, a uniformed officer. Two days after Dilworth's death, detectives from Petersham Police Station joined the investigation under the supervision of Detective Senior Sergeant First Class Allan Doyle. All of the witnesses interviewed from the Oxford Tavern, including Malcolm Tanswell, the licensee, Gary

Mitchell, a bar manager, Joseph Semenak, a doorman and Kim Wiggins, a bar attendant, denied that Dilworth had suffered any injuries at the Hotel the night before his death.

An Inquest was conducted in 1987 following which the Coroner recorded an open finding, concluding that there was nothing in the evidence to indicate that the injuries suffered by Dilworth were sustained at the Hotel. Police made no further inquiries in relation to Dilworth's death following the Inquest.

The Commission is concerned about the manner in which the police investigation of Dilworth's death, first by Hanrahan and then by Doyle, was conducted and the leads that were not followed. In particular, the Commission is concerned about the degree of association between Tanswell and police from Petersham Police Station, including the provision of free alcohol and food to police officers. The Commission is also concerned about the development of the friendship between Tanswell and Doyle from the commencement of the investigation and throughout the period when the Inquest had not concluded, and thereafter.

THE SEARCH OF GARY MITCHELL'S PREMISES

Gary Mitchell, a bar manager at the Oxford Tavern, gave evidence at the Inquest. He remained employed at the Oxford Tavern after the Inquest. His relationship with Tanswell, however, deteriorated and Tanswell became suspicious that Mitchell was stealing from the till. Tanswell engaged private investigators who confirmed some grounds for Tanswell's suspicions. Mitchell was then visited on 12 February 1988 at 6:00 am by three police officers from the Breaking Squad, Detective Sergeant John Davidson, Detective Constable Alan Conwell and Detective Senior Constable Tony Crowley. During a search of Mitchell's premises the officers found a Telecom paper towel dispenser, which they suspected was stolen, and Mitchell was charged with 'Goods in Custody'.

The Commission is concerned about the circumstances surrounding the search of Mitchell's premises. The Commission is of the opinion that the police searched Mitchell's premises at the instigation of Tanswell or someone associated with him. The reason for the search remains unclear. However, it is clear that the incident is a further example of the association between Tanswell and NSW police officers. The Commission is of the view that the incident also reflected a deterioration in the relationship between Tanswell and Mitchell after the conclusion of the Inquest.

THE SHOOTING OF GARY MITCHELL

On 18 August 1988 Mitchell was returning home from work at the Oxford Tavern when he was shot and wounded in the groin. He told police investigators at the time that he did not know the identity of the shooter. However on 24 November 1989 he attended Burwood Police Station and advised Detective Sergeant Roger Harborne that Tanswell was responsible for the shooting. He further told Harborne that Tanswell was responsible for Dilworth's death and that his, Mitchell's, evidence at the Inquest

was false. This information led to an investigation by Detective Sergeants Geoffrey Hollis and Stephen McLennan.

There were a number of issues of concern that arose in relation to the initial investigation of the shooting. Two of the involved officers, Detective Sergeant Harborne and Constable Keith McLachlan, were friends of Tanswell. In addition, evidence revealed that Harborne and Detective Constable David Joachim adopted a very friendly attitude towards Tanswell during the investigation, including drinking beer with him while making inquiries. Furthermore Mitchell claimed that he told Joachim on 17 October 1988 that Tanswell was responsible for the shooting, and Burwood Police failed to take any action until Mitchell attended Burwood Police Station on 24 November 1989.

In December 1989 Detectives Hollis and McLennan interviewed Mitchell. Mitchell advised them that Tanswell had inflicted Dilworth's injuries resulting in his death, and that Tanswell had encouraged the witnesses to give false statements to police and to lie at the Inquest.

Hollis and McLennan failed to take any active steps to investigate the matter for nearly two years, and then the first active step taken was to speak to Tanswell about Mitchell's allegations. Following their interview with Tanswell, McLennan and Hollis then inappropriately spoke with Doyle who at that stage was stationed in Broken Hill. The Commission heard evidence that Hollis and McLennan attended two lunches with Tanswell under inappropriate circumstances and that one of the officers provided documents to Tanswell in relation to their investigation. Mitchell's address in Armidale was included in one of the documents inappropriately provided to Tanswell during the investigation of Mitchell's allegations against Tanswell.

THE DEATH OF GARY MITCHELL

On 24 March 1996 Mitchell was found dead on the front lawn of his home in Armidale. He died as a result of trauma to the head caused by a blunt instrument. Following preliminary inquiries by Armidale Police, Detective Sergeant Michael Lenon and Detective Senior Constable Garry James of the Homicide Unit, Major Crime Squad, North West Region, were directed to investigate. They reviewed documents in relation to the investigation of the death of Dilworth and the shooting of Mitchell. They commenced to reinvestigate the earlier matters as well as the circumstances of Mitchell's death. Two further witnesses admitted that they had given false evidence at the Dilworth Inquest. As a result of the information gathered by Lenon and James, Detective Inspector Leonard of Crime Agencies was directed to investigate the integrity of the investigations into the Dilworth death and the Mitchell shooting.

Lenon and James pursued their investigation with the initiative and vigour that had been lacking in the previous police investigations. They used their best endeavours to gather evidence to enable prosecution proceedings to be instituted. However, one witness complained of the manner in which she had been interviewed and withdrew her statement. Both officers also admitted during evidence to allowing Joachim to make a misleading statement. During their investigation Lenon and James interviewed Joachim who advised

them that he had a further meeting with Mitchell that was not going to include in his statement. They did not submit a report to the Office of the Director of Public Prosecutions ('the DPP') in relation to the additional information provided by Joachim.

RELATIONSHIP BETWEEN TANSWELL AND POLICE OFFICERS

The Oxford Tavern is located on Crystal Street, Petersham, directly opposite the Petersham Police Station. Malcolm Tanswell, the proprietor of the Oxford Tavern between 1979 and 1990, encouraged police officers to drink in the Hotel in order to establish a police presence in the Hotel. The Commission heard evidence that police were provided with free alcohol and that free cartons of beer were delivered to the Police Station. Besides his relationship with police officers through the Hotel, Tanswell also entertained police officers at his home and on his yacht.

Detective Inspector Doyle developed a close friendship with Tanswell from around the time of Dilworth's death. Doyle played tennis at Tanswell's house, enjoyed outings on Tanswell's yacht and, later, holidayed with Tanswell in Thailand. Doyle told the Commission that he had no concern about his association with Tanswell following the inconclusive investigation into Dilworth's death.

There is a thread linking Tanswell to the death of Dilworth on 15 December 1986, the shooting of Gary Mitchell at Concord on 18 August 1988 and the murder of Gary Mitchell at Armidale on 24 March 1996. Tanswell was a common denominator throughout the three incidents in that:

Dilworth was last seen being ejected by Tanswell from the Oxford Tavern;

- Tanswell made allegations that Mitchell had stolen from the Hotel, which were the basis alleged for a search of Mitchell's premises on 12 February 1988;
- At the time of the shooting of Mitchell, the limited information he gave of the details of the shooting and the shooter included words connecting the shooting to the Oxford Tavern;
- The existence of extortion letters which threatened to expose Tanswell's role in Dilworth's death, which Tanswell attributed to Mitchell; and
- Mitchell's death occurred two weeks after the service of a subpoena in workers compensation proceedings brought against Tanswell, requiring the production of documents relating to the investigation into the shooting.

These links become even more apparent when consideration is given to later evidence from Kim Wiggins and Lisa Selby, bar attendants at the Oxford Tavern, of violence by Tanswell towards Dilworth before his death, and Mitchell's allegations that Tanswell shot him on 18 August 1988.

The evidence shows that in one form or another Tanswell maintained a sphere of influence within the NSW Police Service. The extraordinary extent of his personal associations with police officers cannot be attributed solely to the business he conducted as the licensee of the Oxford Tavern.

The situation must be understood against the background that from 15 December 1986, according to the evidence later given by Mitchell, Wiggins, Peterson and Selby, Tanswell had cause to be very concerned about the prospect of a vigorous police investigation into the circumstances of Dilworth's ejection from the Hotel. It would be naive to believe that the growth of his friendship with Doyle and other police from that point was a natural occurrence.

Nevertheless, there is insufficient evidence for the Commission to conclude that any officer engaged in a conspiracy to pervert the course of justice or otherwise conceal Tanswell's involvement in any of the offences as a result of their friendship. The Commission considers that Doyle's conduct in developing a friendship with Tanswell while the Inquest was pending constitutes misconduct but does not consider that consideration should be given to the prosecution of Doyle for a specified criminal offence.

The extremely poor standard of the initial investigations is a salutary lesson on the need for investigating police to be circumspect in their social dealings and relationships with persons connected with the subject matter of their enquiries. Even if there was not an actual subversion of the investigation process, there is certainly the distinct appearance of the possibility of such corruption having occurred. That in itself is unacceptable in terms of maintaining public confidence in the NSW Police Service and the criminal justice system.

The final investigation by Lenon and James represents the opposite end of the spectrum in that it was thorough and vigorous, although over-zealous at times. It is a lesson on the need for investigators to maintain tact and integrity, even where the investigation is being pursued with initiative and vigour. Excessive enthusiasm may result in pressure being brought to bear on witnesses and ultimately can be counter-productive to the pursuit of justice. Similarly, acquiescence in the provision of misleading statements as an indulgence to colleagues can negate the benefits of an otherwise effective investigation.

RECOMMENDATIONS FOR CONSIDERATION OF DISCIPLINARY ACTION

Most of the police officers investigated in the course of the Commission's investigation have left the NSW Police Service and so are beyond the reach of disciplinary action. This Report recommends that the Commissioner of Police give consideration to taking reviewable action against the following serving officers within the meaning of section 173 of the *Police Service Act 1990*:

- Detective Constable Garry John James;
- Detective Sergeant Michael Robert Lenon; and
- Detective Sergeant Stephen Francis McLennan.

Generally, persons are referred to in the Report by surname only. This is done in the interests of economy and consistency and no discourtesy is intended.

1. INTRODUCTION

- 1.1 In 2000 the Police Integrity Commission ('the Commission') commenced an investigation, codenamed Operation Pelican, into allegations of serious police misconduct in the police investigation of three incidents. These incidents were:
- the death from head injuries of Phillip Dilworth at Petersham on 15 December 1986,
 - the shooting of Gary Mitchell at Concord on 18 August 1988, and
 - the death from head injuries of Gary Mitchell at Armidale on 24 March 1996.
- 1.2 The Commission's investigation was conducted jointly with the NSW Crime Commission ('the Crime Commission') and the NSW Police Service Special Crime and Internal Affairs Command ('Internal Affairs').
- 1.3 Public hearings were held in November 2000 and June 2001. The scope and purpose of the hearings was to investigate:
1. Whether there was any police misconduct in the investigation into the death on 15 December 1986 of Phillip Dilworth at Petersham.
 2. Whether there was any police misconduct in the investigation into the shooting-wounding on 18 August 1988 of Gary Mitchell at Concord.
 3. Whether there was any police misconduct in the investigation of the death on 24 March 1996 of Gary Mitchell at Armidale.

DEATH OF PHILLIP GEORGE DILWORTH

- 1.4 On the evening of 14 December 1986 Phillip George Dilworth arrived at his home at Morgan Street, Petersham. He was observed by his girlfriend, Julie Cree, to be in a dishevelled state, soaking wet and suffering from some injuries. His damp condition was noted to be unusual, as it was not raining at the time he arrived home. His legs were bleeding and he had a bump on the back of his head which was also bleeding. Dilworth was uncommunicative, but did convey to Cree that he had been in a fight and would explain the situation in greater detail to her in the morning. Cree placed him in the shower to clean him. He fell over on the bathroom floor, and Cree placed a pillow under his head as she was unable to move him. Cree left for work the following morning and noted that Dilworth was still asleep in the same position that she had left him on the bathroom

floor. She deduced that he was sleeping because she could hear him snoring. At approximately 7:00pm that day, 15 December 1986, Cree returned home and found that Dilworth had not moved and did not appear to be breathing. She called an ambulance and he was taken to hospital where he was declared deceased. A post mortem revealed that he died as a result of a fractured skull.

1.5 An investigation into his death was commenced by uniformed police from Petersham Police Station under the supervision of Sergeant Brian Hanrahan. On 17 December 1986 detectives from Petersham Police Station joined the investigation under the supervision of Detective Sergeant First Class Allan Doyle, the officer in charge of detectives at Petersham. Enquiries revealed that prior to returning home on 14 December 1986, Dilworth had last been seen drinking at the Oxford Tavern, a hotel on New Canterbury Road, Petersham ('the Hotel'), opposite Petersham Police Station. Various statements were obtained by the investigators to the effect that at about 6:00pm on 14 December 1986 Dilworth had been removed from the hotel after being abusive to bar staff. Witnesses who provided statements included:

- Malcolm Carlisle Tanswell, the licensee of the Oxford Tavern;
- Gary Keith Mitchell, a bar manager at the Oxford Tavern;
- Joseph Semenak, a doorman at the Oxford Tavern; and
- Kim Wiggins, a member of the bar staff at the Oxford Tavern.

1.6 All of the witnesses denied that Dilworth had suffered any injuries while at the Hotel.

1.7 A brief was prepared for the Coroner and an Inquest conducted on 16 April 1987 and 21 August 1987 ('the Inquest'). The Coroner recorded an open finding, concluding that there was nothing in the evidence to indicate whether Dilworth's injuries were sustained either in the Hotel or after he left, or even before he went to the Hotel. After the Inquest no further enquiries were made by Petersham Police in relation to the circumstances of Dilworth's death.

SHOOTING OF GARY KEITH MITCHELL

1.8 On the evening of 18 August 1988 Gary Keith Mitchell, who was still employed at the Oxford Tavern as a bar manager, was shot as he returned home. Four shots were fired. He was struck once, in the groin area, while walking towards the front door of his residence at David Street, Concord. He was taken by ambulance to Concord Hospital.

- 1.9 Officers from Burwood Police Station investigated the matter, led by Detective Sergeant Roger Harborne and Detective Senior Constable David Joachim. When questioned, Mitchell stated that his assailant said ‘Oxford Tavern, mate’ before firing, however he was unable to identify or describe the offender in any detail. Police spoke to staff at the Oxford Tavern including the licensee, Malcolm Tanswell, but no evidence was obtained to enable the offender to be identified or charges to be laid.
- 1.10 On 24 November 1989, Mitchell attended Burwood Police Station and spoke to Harborne, informing him that Tanswell was the person who shot him. He also advised Harborne that he had told lies during the Inquest into the death of Phillip Dilworth, in relation to the circumstances in which Dilworth suffered his injuries.
- 1.11 The investigation was then taken over by Detective Senior Sergeant Geoffrey Hollis and Detective Sergeant Stephen McLennan of the Homicide Unit, Major Crime Squad, South West Region, who were based at Flemington. On 5 December 1989 Hollis and McLennan conducted records of interview and obtained statements from Mitchell at Armidale where he then resided. Mitchell confirmed the information he had earlier given to Detective Sergeant Harborne, however no charges were laid against any person.

DEATH OF GARY KEITH MITCHELL

- 1.12 On 24 March 1996, Gary Keith Mitchell was found deceased on the front lawn of his home in Armidale. A post mortem revealed that he had died as a result of trauma to the head caused by a blunt instrument. After some preliminary enquiries by Armidale Police, Detective Sergeant Michael Lenon and Detective Senior Constable Garry James of the Homicide Unit, Major Crime Squad, North West Region, were directed to investigate. They were provided with documents relating to the investigations into the earlier death of Dilworth and the shooting of Mitchell. They then commenced to re-investigate the earlier matters, as well as the circumstances of the death of Mitchell.
- 1.13 Prior to his death, Mitchell had made a successful application to the Victims’ Compensation Tribunal for an award in relation to the injuries sustained from the shooting on 18 August 1988, which he alleged to have been perpetrated by Tanswell. He had also commenced proceedings in the Worker’s Compensation Court, naming Tanswell as the Respondent employer in respect of those injuries. Mitchell’s solicitors had caused a subpoena to be issued on or about 12 March 1996 to the Commissioner of Police calling for the production of all records relating to the investigation of the shooting.

1. INTRODUCTION

- 1.14 In the course of the investigation by Detectives Lenon and James, Kim Wiggins and Gary Peterson, who were two witnesses at the Inquest, changed their versions of events. Their new versions were consistent with the account given by Mitchell prior to his death.
- 1.15 After a lengthy investigation by Lenon and James, Tanswell and Joseph Semanak, a doorman at the Oxford Tavern, were charged on 12 September 1997 with the murder of Dilworth. As a result of evidence provided by a convicted criminal, Allan Quinn, Tanswell was also charged on 24 May 1999 with soliciting to murder Mitchell, although the charge was later withdrawn. On 15 June 1999, committal proceedings against Tanswell and Semanak relating to the murder of Dilworth commenced. On 17 January 2000 the Magistrate dismissed the charges and ordered the Director of Public Prosecutions ('the DPP') to pay costs. An ex officio indictment was subsequently presented against Tanswell by the DPP in the Supreme Court on 2 June 2000 but was later withdrawn. On 11 June 2000, Joseph Semanak died.
- 1.16 As a result of the information gathered by Lenon and James concerning the conduct of the earlier investigations, Internal Affairs identified a number of matters for investigation. In 1998 Detective Inspector Geoff Leonard of Crime Agencies was directed to investigate the integrity of the investigations into the death of Dilworth and the shooting of Mitchell, in conjunction with the investigation carried out by Detectives Lenon and James.

THE COMMISSION'S INVESTIGATION

- 1.17 As a result of the matters of concern raised by Leonard's investigation, the Commission commenced its investigation. It is appropriate to bear in mind that the scope and purpose of the Commission's hearing, as set out in paragraph 1.3, was to investigate whether there was any police misconduct in the investigations into the death of Dilworth, the shooting of Mitchell and the subsequent death of Mitchell. The Commission's inquiry has not been directed to a collection or examination of evidence in relation to any offenders involved in unlawful acts relating to those deaths or injuries, particularly where these matters have already been the subject of proceedings.

THE COMMISSION'S REPORT

- 1.18 This Report is prepared and furnished to Parliament pursuant to sections 96 and 97 of the *Police Integrity Commission Act 1996* ('the Act'). In this Report the Commission summarises the evidence heard during the public hearings.
- 1.19 In this Report the Commission makes assessments and forms opinions in relation to that evidence. The Commission also makes statements in Chapter 9 regarding a number of persons who are found to be 'affected persons' within the meaning of the Act (sub-section 97(3)).

2. THE COMMISSION'S APPROACH

ROLE AND FUNCTIONS OF THE COMMISSION

2.1 The Commission was established under the *Police Integrity Commission Act 1996* on the recommendation of the Royal Commission into the New South Wales Police Service ('the Royal Commission'). The principal functions of the Commission, set out in section 13 of the Act, are:

- (a) to prevent serious police misconduct and other police misconduct;
- (b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct;
- (c) to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit;
- (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

2.2 As far as practicable, the Commission is required to turn its attention principally to serious police misconduct (sub-section 13(2)).

POLICE MISCONDUCT

2.3 The expressions 'police misconduct' and 'serious police misconduct' are not specifically defined by the Act. They nevertheless include the following types of conduct (see sub-section 5(2)):

- (a) police corruption,
- (b) the commission of a criminal offence by a police officer,
- (b1) misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Service Act 1990*,
- (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
- (d) any other matters about which a complaint can be made under the *Police Service Act 1990*.

- 2.4 It follows that 'police misconduct' may encompass not only serious criminal activity such as perverting the course of justice but also minor disciplinary breaches by police, the sanction for which may, for example, be nothing more than additional training and development.

INVESTIGATIONS

- 2.5 In matters where the Commission determines to carry out an investigation (whether or not in the nature of a preliminary investigation), it has a wide range of powers at its disposal in order to acquire information. For example, the Commission may:

- require public officials and public authorities to produce statements of information (section 25);
- require any person (whether or not a public official or public authority) to produce documents or other things (section 26);
- enter public premises (section 29);
- obtain search warrants (section 45);
- obtain warrants under the *Telecommunications (Interception) Act 1979*;
- obtain warrants under the *Listening Devices Act 1984* (section 50 of the Act); and
- require persons to attend and give evidence before a hearing of the Commission, either in public or in private (section 38).

REPORTS TO PARLIAMENT

WHEN MAY THE COMMISSION SUBMIT A REPORT TO PARLIAMENT REGARDING AN INVESTIGATION?

- 2.6 The Commission must prepare a Report to Parliament where it has conducted a public hearing for the purpose of an investigation (sub-section 96(2)). The Report must be in respect of the matter to which the public hearing related, but not necessarily other matters forming part of the investigation. The Commission may also prepare a Report to Parliament in relation to any other matter that has been, or is, the subject of an investigation (sub-section 96(1)). A Report to Parliament must be furnished to the Presiding Officer of each House of Parliament as soon as possible after the Commission has concluded its involvement in the matter, unless it is considered desirable, in the public interest, for the making of the Report to be deferred (sub-sections 96(4) and (5)).

COMPONENTS OF A REPORT TO PARLIAMENT ON AN INVESTIGATION

- 2.7 A Report to Parliament in relation to an investigation will generally contain a number of components. First, it will assess the relevant evidence (sub-section 16(1)(a)). Based upon this assessment, the Commission may form opinions as to whether police misconduct or other misconduct has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur (sub-section 16(1)(a)). These opinions in turn help to inform whether any recommendations should be made or opinions expressed as to whether consideration should or should not be given to the prosecution of persons (including police officers) for criminal or disciplinary offences and, in the case of police officers, certain other forms of disciplinary action (sub-section 16(1)(b), sub-section 97(2)).

THE COMMISSION'S APPROACH TO THE ASSESSMENT OF INFORMATION AND EVIDENCE

- 2.8 In relation to the power and obligations of the Commission to express an opinion as to whether a person has engaged in police misconduct or other misconduct, it is important to bear in mind that the Commission is an investigative agency. It is not a court or tribunal in the sense that it may determine whether a person has committed a criminal or disciplinary offence. Accordingly, the Commission may not make a finding or form an opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal or disciplinary offence (sub-section 16(2)(a)). The Act deems permissible opinions concerning police misconduct or other misconduct not to be findings or opinions that the person is guilty of or has committed, or is committing or is about to commit a criminal offence (sub-section 16(3)). That said, the Commission recognises, bearing in mind that the definition of police misconduct may include conduct that amounts to criminal and disciplinary offences, such an opinion may in some circumstances take on the appearance of a finding of a court or tribunal. The Commission's approach is, as far as possible, to avoid the expression of opinions that may be characterised as findings by a court.
- 2.9 The standard of proof applied by the Commission to the formation of an opinion as to whether a person has engaged in police misconduct or other misconduct is the balance of probabilities. Such an opinion will be reached having regard to the principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336, that is, the more serious the matters under consideration, the more stringent will be the requisite degree of satisfaction.

RECOMMENDATIONS AND OPINIONS THAT CONSIDERATION BE GIVEN TO THE PROSECUTION OF A PERSON FOR A CRIMINAL OR DISCIPLINARY OFFENCE

- 2.10 If, in the Commission's opinion, the available evidence is sufficient to establish a prima facie case in respect of a criminal or disciplinary offence then, except in one very limited circumstance discussed below, it is the Commission's approach to recommend or opine that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence.¹ Such a recommendation will be made to the relevant prosecutorial authority, for example, the NSW Director of Public Prosecutions. The Commission will not have regard to discretionary considerations, such as whether there is a reasonable prospect of conviction or public policy considerations, when deciding whether to make such a recommendation. This and other discretionary considerations are appropriately matters for the relevant prosecutorial authority. That said, the Commission may make findings or express opinions as to the veracity of evidence received from individual witnesses.
- 2.11 The only circumstance in which the Commission may, in the exercise of its discretion, decline to recommend that consideration be given to the prosecution of a person, despite the existence of a prima facie case, is in the rare case where it is considered that to do so is likely to be counterproductive to the Commission's pursuit of its principal statutory functions.

STATEMENTS REGARDING 'AFFECTED' PERSONS

- 2.12 Where substantial allegations are made against a person in the course of or in connection with an investigation in respect of which the Commission intends to report to Parliament, the Report to Parliament must include a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to prosecution of the person for a specified criminal or disciplinary offence and, if the person is a police officer, whether consideration should be given to:
- the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against the police officer with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer (sub-section 97(2)(c));

¹ The power of the Commissioner of Police to refer a departmental charge against a police officer for hearing by the Police Tribunal was repealed on 8 March 1999. Since that date, the powers and obligations of the Commissioner to recommend or state whether consideration should be given to the prosecution of a person for a specified 'disciplinary offence' (sections 16(1)(b), 97(2)(b)) has no effective application to police officers. This is so even for police misconduct that occurred before this date.

- the taking of 'reviewable action' within the meaning of section 173 of the *Police Service Act 1990* against the police officer (sub-section 97(2)(d)).

RECOMMENDATIONS AND OPINIONS REGARDING DISCIPLINARY ACTION AGAINST POLICE

2.13 'Reviewable action' within the meaning of section 173 of the *Police Service Act 1990* refers to forms of disciplinary action that would ordinarily apply to more serious breaches of discipline. The available forms of reviewable action are:

- a reduction in a police officer's rank or grade;
- a reduction in the police officer's seniority;
- a deferral of the police officer's salary increment; and
- any other action (other than dismissal or the imposition of a fine) that the Commissioner of Police considers appropriate.

Owing to the seriousness of these forms of disciplinary action, a police officer may appeal the imposition of any of these penalties to the Industrial Relations Commission of New South Wales.

2.14 In addition to the requirement to include in a Report to Parliament a statement of the Commission's opinions regarding those against whom substantial allegations have been made, the Commission has a discretion to recommend that consideration be given to other disciplinary action. This includes 'non-reviewable action' within the meaning of section 173 of the *Police Service Act 1990*. Non-reviewable action is disciplinary action available against police officers for less serious breaches of discipline. There is no avenue of appeal to the Industrial Relations Commission against the imposition of a form of non-reviewable action. The available forms of non-reviewable action are:

- coaching;
- mentoring;
- training and development;
- increased professional, administrative or educational supervision;
- counselling;

- reprimand;
- warning;
- retraining;
- personal development;
- performance enhancement agreements;
- non-disciplinary transfer;
- change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review);
- restricted duties; and
- recording of adverse findings.

OTHER TYPES OF RECOMMENDATIONS AND OPINIONS

2.12 If the Commission considers it appropriate in the circumstances, a Report to Parliament may also include recommendations for the taking of other action. Such recommendations may, for example, relate to the need for law reform or for changes to policies and procedures affecting the way in which police or other persons carry out their respective duties and responsibilities.

3. THE INVESTIGATION BY PETERSHAM POLICE INTO THE DEATH OF PHILLIP DILWORTH

NATURE OF THE BUSINESS CONDUCTED AT THE OXFORD TAVERN BETWEEN 1986 AND 1990

3.1 At the time of Dilworth's death, the Oxford Tavern was one of few hotels in Sydney with a license to remain open until 3:00 am.² Some of the female bar staff worked topless³ or wore see-through tops, and on occasions risqué entertainment in the form of erotic dancers and movies was provided.⁴ The hotel attracted an element of unsavoury and undesirable customers and violence at the hotel was not uncommon.⁵ The proprietor of the Hotel, Malcolm Tanswell, agreed that he provided entertainment in the form of exotic dancers and R-rated movies but stated that he abided by the licensing requirements for the provision of that class of entertainment.⁶ He also conceded that fights were a regular occurrence, particularly in the beginning of his ownership of the Hotel, but that he tried not to become involved if he could avoid it. For that purpose, doormen or security people were deployed between 9:00 pm and 3:00 am.⁷

THE RELATIONSHIP BETWEEN POLICE AND THE PROPRIETOR OF THE OXFORD TAVERN

3.2 Due to the close proximity of the Oxford Tavern to Petersham Police Station, police regularly attended the Hotel on a social basis. Further, the late opening hours, the atmosphere of the Hotel created by the entertainment provided, and the clientele all contributed to a requirement for police to attend the establishment regularly in the course of their duties. Tanswell made no secret of the fact that he encouraged police patronage of the Hotel. He purchased the Oxford Tavern in 1979. He continued the practice of his predecessor in cashing salary cheques of police officers and generally cultivated their business, partly for the profits to be made, and partly to establish a police presence in the Hotel to deter undesirables who may feel uncomfortable mixing with police.⁸ Tanswell denied supplying police with free alcohol other than on rare occasions such as Christmas. He said that cartons of beer were delivered to the Police Station but generally he was paid for the cartons of beer. He admitted that occasionally he provided

² PIC Transcript, B L Hanrahan, 23 November 2000, p. 370.

³ PIC Transcript, K D Wiggins, 20 November 2000, p. 63.

⁴ PIC Transcript, P J Dilworth, 20 November 2000, p. 49.

⁵ PIC Transcript, B L Hanrahan, 23 November 2000, pp. 369-70; G J Nicholas, 23 November 2000, p. 401.

⁶ PIC Transcript, M C Tanswell, 30 November 2000, pp. 826-827.

⁷ PIC Transcript, M C Tanswell, 30 November 2000, p. 830.

⁸ PIC Transcript, M C Tanswell, 30 November 2000, pp. 826-828.

police with free beers and six packs of beer that he delivered to the Police Station. He said he did this to maintain goodwill with the police in the event that he required urgent assistance in the Hotel.⁹

- 3.3 Kim Wiggins commenced employment at the Oxford Tavern in 1985 as a barmaid and continued to work there until Tanswell sold the Hotel in July 1990. For much of that time Ms Wiggins was involved in a personal relationship with Tanswell.¹⁰ She gave evidence that Tanswell instructed staff that police did not have to pay for drinks in the Hotel. She also said that there were occasions when police did not pay for food eaten at the Hotel and that “every night” beer was sent across to the Police Station for which no payment was made.¹¹
- 3.4 Former Constable Keith McLachlan also gave evidence that there were regular deliveries of free cartons of beer from the Hotel to the Police Station, usually for the benefit of the night shift. He said that the principal benefit for police at the Hotel was the availability of discounted beer enabling beer to be consumed in the lounge at bar prices.¹² The practice of the delivery of free beer to the Police Station was also acknowledged by former Sergeant Hanrahan, who conceded that there were occasions when police would go over to the Hotel to pick up a carton of beer, or would ring the Hotel and beer would be brought across to the Police Station without payment.¹³
- 3.5 Ray Cochran, who was a manager at the Oxford Tavern from about 1980 until 1989, gave evidence that police, particularly uniformed police, regularly attended the Hotel after their shift for a beer. He was able to name a number of police with whom he was well acquainted. He said that there were occasions when Tanswell would serve police with beer and put money in the till himself, although there were other occasions when the police would pay.¹⁴
- 3.6 Apart from the facilities at the Hotel, Tanswell had other facilities available to him through which he cultivated his relationship with police. He had a tennis court at his home and he owned an ocean-going yacht that was normally moored in Sydney, but on occasions was used as far away as the Whitsundays. The Commission heard evidence that police officers regularly played tennis at Tanswell’s home and enjoyed outings on his yacht.

⁹ PIC Transcript, M C Tanswell, 30 November 2000, pp. 825-826.

¹⁰ PIC Transcript, K D Wiggins, 20 November 2000, pp. 61,63.

¹¹ PIC Transcript, K D Wiggins, 20 November 2000, p. 62.

¹² PIC Transcript, K McLachlan, 13 June 2000, pp. 991-992.

¹³ PIC Transcript, B L Hanrahan, 23 November 2000, p. 357.

¹⁴ PIC Transcript, R P Cochran, 23 November 2000, p. 306.

3.7 Kim Wiggins gave evidence of a police officer (now deceased) who was “a very good friend of Malcolm’s” and who was entertained on Tanswell’s yacht including on a trip to Hamilton Island when Ms Wiggins was present.¹⁵ The association between Tanswell and former Detective Inspector Doyle is of significance, but the more general picture of Tanswell’s relationship with police given by Sergeant Graeme Nicholas is informative:¹⁶

... But I might like just to add that in terms of the association between Allan Doyle and the licensee of the Oxford Tavern, there was also a relationship between a great number of police at Petersham and the licensee of the Oxford Tavern. It wasn’t merely the one person.

RELATIONSHIP BETWEEN TANSWELL AND FORMER DETECTIVE INSPECTOR DOYLE

3.8 The relationship between Tanswell and former Detective Inspector Doyle is of particular significance because of Doyle’s role in the investigation into the death of Dilworth and his participation in subsequent investigations involving Tanswell. During the Commission’s hearing neither Tanswell nor Doyle made any attempt to disguise their personal friendship. In his evidence, Tanswell said:¹⁷

I can’t really recall the exact date that I met Doyle it would have been about the time or just shortly after the time he joined Petersham Police Station.

3.9 Tanswell also gave the following evidence:¹⁸

Q. Was it a genuine friendship on your part or a process of cultivation of a police officer who you had in mind may assist you at some point?

A. No, it was a genuine friendship. I quite liked Doyle. I had a home with a tennis court in it and I’d found out in conversation that Doyle was a tennis player - in fact, quite a good one - and he, with a number of other people, came home on a semi-regular basis for a game of tennis. I point out that there were, I think, other patrons of the Hotel that came as well. I had some Fire-ies there.

3.10 Tanswell also said that he and Doyle had been out for lunch and dinner, and that Doyle had been on his yacht, including an occasion when Doyle and his wife flew up to Hamilton Island to spend some time on the yacht there. Doyle and his wife also travelled to Thailand for a holiday at the

¹⁵ PIC Transcript, KD Wiggins, 20 November 2000, p. 77.

¹⁶ PIC Transcript, G J Nicholas, 23 November 2000, p. 398.

¹⁷ PIC Transcript, M C Tanswell, 30 November 2000, p. 832.

¹⁸ PIC Transcript, M C Tanswell, 30 November 2000, p. 832.

same time as Tanswell and his wife and three children between 21 March 1989 and 7 April 1989. Tanswell claimed that they had not spent the entire holiday together as Doyle and his wife stayed in a different wing of the hotel and because Tanswell was with his family. Their main contact was at meal times.¹⁹

3.11 Doyle gave a similar description of his friendship with Tanswell. He said that he could not recall precisely when their friendship commenced and thought that it was more likely in the early months of 1987, because although he was transferred to Petersham in February 1986, for various reasons for five or six months of the balance of the year, he spent little time at Petersham Police Station. He said that the friendship began as a result of being invited to play tennis at Tanswell's home. The tennis became a weekly occurrence for "a couple of years".²⁰ Doyle stated that his wife became involved after she picked him up from Tanswell's home after tennis, and as a result the families became friends. He said that he had been out on the yacht, including the occasion when it was moored at the Great Barrier Reef. Doyle said that he and Tanswell also attended the gym at City Tattersalls Club together on a weekly basis. They went to dinner and the theatre with their wives and there was an occasion when they stayed with Tanswell after he moved to the Gold Coast, although once Tanswell moved away from Sydney their friendship waned.²¹ Doyle also agreed that he had travelled to Thailand for a holiday at the same time as Tanswell and his family. He produced bank records to disclose the source of funds used to purchase the tickets for himself and his wife.²² He also said that whilst they stayed at the same hotel their activities differed, as Tanswell was accompanied by his family, and they met mainly in the evening.²³

3.12 Doyle said that he had no concern about his association with Tanswell following the inconclusive investigation into Dilworth's death, or in view of the fact that Pamela Dilworth, Phillip Dilworth's sister, told him that she had received an anonymous phone call to the effect that Tanswell was responsible for Dilworth's death. On that issue, Doyle gave the following evidence:²⁴

- Q. To the extent that it was an open finding, did that leave any suspicion at all in your mind about the circumstances which had taken place in the Hotel?
- A. No, it just left me in the situation where I couldn't take it any further; we had gone as far as we could. The witnesses had indicated what had happened. They had been closely examined.

¹⁹ PIC Transcript, M C Tanswell, 30 November 2000, p. 836.

²⁰ PIC Transcript, A R Doyle, 12 June 2001, p. 898.

²¹ PIC Transcript, A R Doyle, 12 June 2001, pp. 896-902.

²² PIC Exhibits 38C; 39C.

²³ PIC Transcript, A R Doyle, 12 June 2001, p. 952.

²⁴ PIC Transcript, A R Doyle, 12 June 2001, p. 950.

Q. Did it cause you to —

A. I couldn't take it any further.

Q. — assess whether it was appropriate for you to continue to associate with Tanswell?

A. I don't think it had anything to do with my association with Tanswell.

Q. Well, to the extent that there was an open finding and the possibility of something happening in the Hotel, did it cause you to reflect on whether it was appropriate to continue to have a personal relationship with him?

A. No.

3.13 Kim Wiggins also gave evidence of the friendship between Doyle and Tanswell. She said that at the time of Dilworth's death she did not know Doyle, but later Doyle and Tanswell seemed to become good friends.²⁵

ASSESSMENT OF RELATIONSHIP BETWEEN TANSWELL AND DOYLE

3.14 The evidence before the Commission revealed that Doyle and Tanswell became friends and engaged in regular social activities, often involving their wives, from about the time of the investigation into Dilworth's death until Tanswell sold the Hotel in 1990 and for some period thereafter. There is no evidence of the friendship existing before the investigation into Dilworth's death. The Commission accepts the evidence of Kim Wiggins, that Doyle and Tanswell seemed to become good friends after Dilworth's death. That evidence is not inconsistent with the evidence of Doyle that the association commenced with games of tennis in the early months of 1987.

3.15 The Commission is concerned that Doyle allowed the friendship with Tanswell to develop while the inquest in relation to Dilworth's death was pending and while there had been no conclusive proof of the cause of Dilworth's death. As described more fully in Chapter 5 of this Report, Pamela Dilworth had complained about the investigation almost from the outset and had raised the possibility of activity in the Oxford Tavern being associated with her brother's death. The Commission considers that Doyle's failure to pursue those leads and the development of his friendship with Tanswell, not only the proprietor of the Hotel but also a person who admitted involvement in the ejection of Dilworth from the Hotel at the relevant time, was unacceptable conduct for an experienced officer.

²⁵ PIC Transcript, K D Wiggins, 20 November 2000, pp. 73-74.

- 3.16 The Commission considers Doyle's conduct in developing a friendship with Tanswell while the Coronial Inquest was pending constituted misconduct.

POLICE CONDUCT PRIOR TO THE CORONIAL INQUEST INTO THE DEATH OF PHILLIP DILWORTH

- 3.17 After Julie Cree called for assistance on 15 December 1986, upon discovering Phillip Dilworth still unconscious on the floor, former Sergeant Brian Lawrence Hanrahan attended the premises and commenced an investigation into the circumstances of Dilworth's injuries and subsequent death. On the same day he took a formal statement of identification from Dilworth's brother. On the following day took a statement from Alexander Edward Davidson, a drinking companion of Dilworth. In his statement Davidson said that after Dilworth became "boisterous and abusive towards the bar staff" he was asked to leave the premises which he did by the side door onto Crystal Street. Davidson said that Dilworth was not forcibly removed from the premises.²⁶
- 3.18 At 9:00 am on 17 December 1986 Dr Christopher Lawrence carried out a post mortem on Dilworth's body revealing that Dilworth had suffered a fractured skull. Dr Lawrence identified the condition directly leading to death as "right subdural haematoma, fractured skull, haemorrhage into mid-brain".²⁷ Later the same day Julie Cree provided a statement to Hanrahan in which she said that when Dilworth came home on the evening of 14 December 1986 he told her that he had been in a fight.²⁸ On the same day Davidson returned to the Police Station and told Hanrahan that he wanted to change his story. He then provided Hanrahan with a further statement that differed significantly from his statement of the previous day. In his second statement he said that after Dilworth became boisterous and abusive. The manager then placed Dilworth in a headlock before the doorman grabbed him and escorted him from the premises. Davidson said that the manager stayed with him and assured him that Dilworth was not going to get hurt. He also said that at no stage did he see Dilworth being hit or pushed over onto the floor.²⁹
- 3.19 On 18 December 1986 Hanrahan consulted Doyle, as a result of which Doyle became involved in the investigation. On 19 December 1986 Doyle took a statement from Tanswell. In his statement Tanswell said that Dilworth had been abusive to "the barman" as a result of which he escorted Dilworth to the door with the assistance of the doorman "Joe Varrak".³⁰

²⁶ PIC Transcript, B L Hanrahan, 23 November 2000, p. 359.

²⁷ PIC Exhibit 1.

²⁸ PIC Exhibit 1.

²⁹ PIC Exhibit 1.

³⁰ PIC Exhibit 1.

His statement asserted that Dilworth was then escorted through the door by the manager (unnamed) and the doorman. He denied that Dilworth was involved in any fight or scuffle in the Hotel. On the same day, Doyle took a statement from Gary Keith Mitchell, the bar manager, in which Mitchell gave an account similar to that provided in Tanswell's statement.

- 3.20 On 20 December 1986 Detective Staples took a statement from Gary William Peterson, a patron of the Oxford Tavern. Peterson stated that he was sitting on a seat outside the Hotel on Crystal Street and saw Dilworth, in an intoxicated state, being escorted from the Hotel. On 22 December 1986 the doorman, Joseph Semanak, provided a statement to Detective Nicholas that was similar to those provided by Tanswell and Mitchell.
- 3.21 Doyle ascertained from Dr Lawrence that a piece of gravel had been found embedded in the head wound sustained by Dilworth.³¹ As a result of that finding Hanrahan endeavoured to identify an area containing gravel, consistent with that found in the head wound, on the route likely to have been taken by Dilworth on his way home. Hanrahan located an area in the car park at the rear of the Livingstone Hotel as a possible source of the gravel. In relation to that area he said:³²
- I never saw any of the gravel that came out of the wound, but on that walk there was a footpath all the way, it's bitumen road, concrete footpath and to that car park there's potholes and a little retaining wall and I said, yes, there's blue metal dust, I think I called it, small bits of blue metal.
- 3.22 Neither Hanrahan nor Doyle nor any other officer made a search of the Oxford Tavern for any area with gravel.
- 3.23 A third statement was taken from Davidson on 3 February 1987 to the effect that Dilworth often walked home via the car park at the back of the Livingstone Hotel. On the same date Doyle made a statement purporting to summarise the effect of the statements obtained from the witnesses. In this statement he advanced the hypothesis that Dilworth had sustained his injuries possibly in the car park of the Livingstone Hotel on returning home after being removed from the Oxford Tavern.
- 3.24 Doyle stated that he could find no evidence that Dilworth was involved in any fights on 14 December 1986, nor any evidence of suspicious circumstances surrounding his death.

³¹ PIC Transcript, A R Doyle, 12 June 2001, p. 903.

³² PIC Transcript, B L Hanrahan, 23 November 2000, p. 366.

- 3.25 Hanrahan also made a statement on 3 February 1987 referring to his search for an area containing gravel and the identification of the car park of the Livingstone Hotel. In the statement he expressed his opinion that Dilworth, having been escorted from the Oxford Tavern in an intoxicated state, fell over before reaching home “possibly in the car park of the Livingstone Hotel causing the injuries sustained”.³³ His statement also contained the assertion that on the night of 14 December 1986 it rained in the Petersham area.
- 3.26 The Inquest was set down for hearing on 16 April 1987. On 19 March 1987 Doyle took a statement from Kim Wiggins which was consistent with those of Tanswell, Mitchell, Semenak and Peterson.

THE CORONIAL INQUEST INTO THE DEATH OF PHILLIP DILWORTH

- 3.27 The Inquest into Dilworth’s death commenced on 16 April 1987. The Dilworth family and Julie Cree were separately represented. Dr Lawrence, Doyle, Hanrahan and Tanswell gave evidence consistent with the statements they had provided. The hearing did not conclude on 16 April 1987 and was resumed on 21 August 1987. Tanswell concluded his evidence on that date and Mitchell, Peterson, Semenak, Davidson, Wiggins and Cree also gave evidence. At the conclusion of the hearing the Coroner found that on 15 December 1986 Dilworth died from the effects of a right subdural haematoma, fractured skull and haemorrhage into the mid-brain sustained on 14 December 1986, but the evidence did not enable the Coroner reach a conclusion as to where and the manner in which those injuries were sustained.³⁴
- 3.28 Counsel for the Dilworth family joined issue at the Inquest with the explanation offered by Doyle and Hanrahan to the effect that Dilworth had suffered his injuries whilst walking home from the Oxford Tavern. In cross-examination Counsel for the Dilworth family explored the possibility with the witnesses that Dilworth had suffered his injuries at the Oxford Tavern. Some significant variations emerged in the cross-examination of Davidson, Dilworth’s drinking companion. Davidson said that the abuse by Dilworth in the Oxford Tavern was in the form of remarks “regarding a crash that Malcolm Tanswell and Kim were involved in and it just started off from there and it evolved into a slagging match”.³⁵ He also said that it was not correct that Dilworth was taken by the side door into Crystal Street. He said that Dilworth had been put in a headlock and taken out the backdoor of the bar which led into Rita’s Restaurant, an outdoor eating area. Davidson further stated that Tanswell held Dilworth by the head, so that

³³ PIC Exhibit 1.

³⁴ PIC Exhibit 1.

³⁵ PIC Exhibit 1.

he was bent over, while Semenak held him around the waist. Davidson confirmed that Tanswell returned saying that Dilworth would be all right and that nobody would hurt him, and that Semenak came back into the bar after “a length of time”.³⁶ He also said that whilst Dilworth was intoxicated he was not as far as he was concerned “in a fall down condition, he wasn’t that inebriated”.³⁷ He also said Dilworth was very rational at the time.

3.29 Julie Cree also gave evidence at the Inquest. She said that Dilworth, on entering their home that night, “... was angry and had been in a fight but he had made his point”.³⁸ She understood the reference to a fight to be to a verbal altercation, because she had never known Dilworth to be involved in any physical fight. She said that he was “sopping wet” although it did not start raining until after he reached home. She stated that the police had never asked to see the clothing Dilworth was wearing at the time.

3.30 In delivering his finding, the Coroner adverted to the possibility of Dilworth having sustained the fatal injuries in the Oxford Tavern:³⁹

So there is simply nothing in the evidence to indicate that the injuries that the man died from were sustained either in the Hotel or when he left the Hotel and all the evidence would suggest that it not the case (sic) ... Certainly if the Sergeant says the medical evidence is consistent perhaps with this man tripping and falling over if he was well affected by liquor that could have easily happened but as I said we don’t know, he may have been pushed anything could have happened to him. I agree with Mr. Ralston we must not dismiss as a possibility that he may have sustained these injuries before he went to the Hotel. So it is all a matter of guesswork and speculation.

POLICE CONDUCT AFTER THE CORONIAL INQUEST INTO THE DEATH OF PHILLIP DILWORTH

3.31 Following the Inquest, no further investigation was carried out by police at Petersham. According to Doyle nothing which emerged from the evidence given at the Inquest caused him to change his opinion as to the circumstances in which Dilworth sustained his injuries, or otherwise to be suspicious about the circumstances of Dilworth’s ejection from the Oxford Tavern. In evidence before the Commission Doyle said:⁴⁰

No, I heard all of these people cross-examined at length by what I thought to be fairly competent people - the sergeant assisting the coroner, the coroner himself, the two solicitors or barristers. I heard all of these people cross-examine these witnesses. They all seemed to me to come

³⁶ PIC Exhibit 1.

³⁷ PIC Exhibit 1.

³⁸ PIC Exhibit 1.

³⁹ PIC Exhibit 1.

⁴⁰ PIC Transcript, A R Doyle, 12 June 2001, pp. 948-949.

across fairly well, and that was borne out by what the coroner said. The coroner said exactly the same thing. He could find very little to differentiate between each of the witnesses.

REVELATIONS AFTER THE CORONIAL INQUEST

- 3.32 Before the Inquest and during the investigation, concerns were raised regarding the approach being adopted by the police. Pamela Dilworth, Phillip Dilworth's sister, gave evidence that on 16 December 1986 Sergeant Hanrahan spoke to her about the circumstances of her brother's death and said that he thought something was amiss, particularly in the light of Davidson's statement.⁴¹ Pamela Dilworth stated that she also spoke to Hanrahan on 18 December 1986 and discussed at length the results of the autopsy. She was in the company of her business partner, Robert Cason, and they discussed the unsavoury reputation of the Hotel, about which she said Hanrahan was "very defensive".⁴² She also raised with Hanrahan information she had been given concerning incidents of violence at the Hotel and Hanrahan made mention of police receiving "the odd carton of beer" from the Hotel. She stated that the meeting concluded on the basis that the investigation was then in the hands of the detectives and that the gravel specimen would be sent to a laboratory at Lidcombe for analysis.⁴³
- 3.33 Pamela Dilworth gave evidence before the Commission that on 19 December 1986 she again attended the Police Station with Robert Cason and met a policeman who has subsequently been identified as Detective Sergeant Ulrich Bramann. Pamela Dilworth and Bramann's accounts of the meeting differ. Pamela Dilworth gave evidence that Robert Cason received a call to meet with the detectives, and she accompanied him out of curiosity. She said that the policeman referred to matters that had been discussed with Sergeant Hanrahan including the violence at the Hotel. Pamela Dilworth stated that she became distressed and left because of the abusive attitude of the officer.⁴⁴
- 3.34 Bramann gave evidence before the Commission that on 19 December 1986 Pamela Dilworth and Robert Cason came to the Police Station where he was on the afternoon shift. Bramann said that Cason became offensive and "virtually suggested that the police investigation into Dilworth's death was not done properly".⁴⁵ Bramann said he asked Cason if he had any direct evidence or any witnesses, or if he would like to make a statement. Cason replied in the negative, following which Bramann said that he virtually asked him to leave. Bramann stated that he then spoke to Pamela

⁴¹ PIC Transcript, P J Dilworth, 20 November 2000, p. 47.

⁴² PIC Transcript, P J Dilworth, 20 November 2000, p. 48.

⁴³ PIC Transcript, P J Dilworth, 20 November 2000, p. 49.

⁴⁴ PIC Transcript, P J Dilworth, 20 November 2000, p. 50.

⁴⁵ PIC Transcript, U Bramann, 12 June 2001, p. 981.

Dilworth and offered her the same opportunity. Pamela Dilworth said that she would think about the matter. Bramann stated that he said that if she had a complaint of any nature she could see Detective Sergeant Doyle or Internal Affairs. Bramann said that he had not been involved in the investigation and took no further action as a result of the meeting, other than to inform his supervisor, Doyle, about the allegations.⁴⁶

- 3.35 Pamela Dilworth gave evidence that following that meeting and a discussion with Robert Cason, they decided to contact the Police Internal Security Unit and eventually met with former Detective Chief Inspector Dunn on Monday 22 December 1986. She said that she told Dunn of her concerns, particularly that her complaints were not being taken seriously and that she was being patronised. She said that Dunn appeared more concerned about criminal activity and criminals in the Hotel and that he explained that while the investigation was pending it was difficult to determine what was happening.⁴⁷ Pamela Dilworth gave evidence that she was further interviewed by Inspector Lynch from Internal Affairs on 3 January 1987, as a result of her complaint to Dunn. She repeated to him the matters that she had complained of to Dunn and was subsequently advised that the matter had been referred to the Ombudsman.
- 3.36 Pamela Dilworth also gave evidence that before the Inquest she and her brother Warwick met with Doyle at the Police Station after he had telephoned with an invitation to come and discuss the investigation. Pamela Dilworth said that Doyle told them he had discovered that Phillip Dilworth had fallen at the Livingstone Hotel. Pamela Dilworth said that she told Doyle that it was not the logical route for Phillip to follow home and that his injuries were not consistent with the fall described by Doyle. She also told the Commission that she was struck by the fact that Doyle "... didn't know anything about Kim [Wiggins] either, he didn't know who she was at all."⁴⁸ This suggests the meeting occurred prior to Doyle taking the statement from Kim Wiggins on 19 March 1987 which was consistent with the statements of Tanswell, Mitchell, Semenak and Peterson. Doyle could offer no explanation as to why Wiggins' statement was taken so long after the others.⁴⁹
- 3.37 Pamela Dilworth states that she attended the first day of the Inquest on 16 April 1987 and, as a result of her concerns about the conduct of the police, she went to the Oxford Tavern and took some samples of gravel by reaching under the gate at the rear of the Hotel in Crystal Street. She retained the samples for some years thereafter. The samples are of limited probative

⁴⁶ PIC Transcript, U Bramann, 12 June 2001, pp. 981-983.

⁴⁷ PIC Transcript, P J Dilworth, 20 November 2000, p. 51.

⁴⁸ PIC Transcript, P J Dilworth, 20 November 2000, p. 53.

⁴⁹ PIC Transcript, A R Doyle, 12 June 2001, p. 942.

value as they were taken from an area different to the courtyard in which the alleged violence towards Dilworth took place. It would seem that there may have been construction work taking place as she describes “piles of sand” in the area where she took the samples from under the gate.⁵⁰

- 3.38 Following the conclusion of the Inquest, on 8 September 1987 Pamela Dilworth recovered a message on the answering machine at her place of business to the effect that Tanswell had killed her brother. She said that she contacted Doyle who came to her shop and she gave him a copy of the tape. She said that Doyle said that cranks often act in that manner after publicity.⁵¹ Doyle gave evidence that he can remember vaguely being told of the anonymous phone call after the Inquest. He stated that:⁵²

... I would have just heard all of the evidence given to the effect that a fight didn't take place involving Tanswell and that the doctor had said that no fight had taken place. So I don't think I would have treated it with a lot of kudos, but I can't actually remember a lot about what I thought at that time.

- 3.39 He went on to say that as far as he was concerned the witnesses he heard at the Inquest “were all telling the truth”.⁵³ Doyle took no further action as a result of the anonymous phone call.
- 3.40 In circumstances to be canvassed more fully in Chapter 5, Gary Keith Mitchell, the bar manager on duty at the time of Dilworth's removal from the Oxford Tavern, was shot on 18 August 1988. He told investigators at the time that he could not identify the person who shot him. However, on 24 November 1989 he attended Burwood Police Station and spoke to Detective Sergeant Harborne, one of the investigators into his shooting, and named Tanswell as being responsible for his shooting. He also named Tanswell as being responsible for Dilworth's death. The provision of that information led to the investigation by Detective Sergeants Hollis and McLennan.
- 3.41 Hollis and McLennan took a statement from Mitchell in Armidale on 5 December 1989 in which Mitchell said that he had perjured himself whilst giving evidence at the Inquest. Mitchell stated that the true circumstances were that Tanswell had dragged Dilworth out into the courtyard adjacent to Rita's Restaurant and thrown him down the steps onto the concrete floor where he proceeded to kick Dilworth in the head. He said that Dilworth was rendered unconscious and that Tanswell proceeded to hose Dilworth with water before putting him in the Hotel courtesy bus to remove

⁵⁰ PIC Transcript, P J Dilworth, 20 November 2000, p. 54.

⁵¹ PIC Transcript, P J Dilworth, 20 November 2000, p. 56.

⁵² PIC Transcript, A R Doyle, 12 June 2001, p. 953.

⁵³ PIC Transcript, A R Doyle, 12 June 2001, p. 953.

him from the premises. He said that approximately half an hour later Tanswell returned and washed blood from the bus and from the area in the courtyard where Dilworth had fallen. Mitchell said that the courtyard area was rough at the time because workmen were digging it up. He said that after it was known that Dilworth had died, Tanswell told him to see Doyle at the Police Station in order to make a statement, and Tanswell told him what to say. He also stated that Gary Peterson, a patron of the Oxford Tavern, told him before the Inquest that he had been nowhere near the Hotel but was going to give evidence on behalf of his friend, Tanswell. In the statement of 5 December 1989, Mitchell said that ever since the death of Dilworth he had been disgusted with himself but didn't know who to turn to as Tanswell had a lot of contacts and he did not know who he could trust.⁵⁴ Mitchell repeated the substance of these allegations in his evidence before the Victims' Compensation Tribunal on 2 September 1992,⁵⁵ and to his solicitor, Michael John Commins, who acted for Mitchell in workers compensation proceedings brought by him against Tanswell in relation to the shooting on 18 August 1988.⁵⁶

- 3.42 Mitchell also provided Detectives Hollis and McLennan with a statement on 6 December 1989 in relation to his shooting on 18 August 1988. In that statement he said that he recognised the voice of the person who shot him as being Tanswell and was then able to identify him as he walked away. When interviewed about that matter on 6 December 1989, he said that bad feeling had developed between himself and Tanswell over the six months preceding the shooting, concerning the need to comply with licensing laws and allegations of petty cash shortages, for which Tanswell blamed Mitchell.⁵⁷
- 3.43 In circumstances to be canvassed more fully in Chapter 6, Mitchell died on 24 March 1996. Mitchell's death was reported in the newspaper, and as a result Kim Wiggins, who had previously stated that Tanswell had nothing to do with Dilworth's death, made a telephone call to police alleging that Tanswell was in fact responsible for Dilworth's death. Wiggins repeated the substance of her allegations in evidence before the Commission. She said that in October 1986 she was involved in a motor vehicle accident when she was driving and Tanswell was a passenger in the vehicle. Following the accident, she was breathalysed and returned an alcohol reading of 0.18. She said that the incident became the subject of remarks by Dilworth in the Hotel with the result that Mitchell telephoned Tanswell who came to the Hotel. She said that Dilworth then said that he would tell Tanswell's wife about the relationship between Tanswell and

⁵⁴ PIC Exhibit 17.

⁵⁵ PIC Exhibit 20.

⁵⁶ PIC Exhibit 82.

⁵⁷ PIC Exhibit 3.

Wiggins, whereupon Tanswell lost his temper and ran Dilworth into a cigarette machine before taking him out into the courtyard and hitting Dilworth around the head. She said that Tanswell later returned into the Hotel and his shirt was wet.⁵⁸ She gave evidence that subsequently Tanswell organised statements to be given in order to conceal the truth about what had taken place. Wiggins said that she was told by the Manager, Ray Cochran, that she should go to the Police Station to make her statement and that she then made a statement to Doyle on 19 March 1997. She said that the evidence she gave to the Coroner was false.⁵⁹

- 3.44 On 17 December 1991 Peterson was interviewed by Detective Sergeants Hollis and McLennan, who were belatedly pursuing the allegations made by Mitchell on 5 December 1989. Peterson repeated the account given in his statement of 19 December 1986.⁶⁰ He was also interviewed by Detectives Lenon and James in the course of their investigation on 2 July 1996 and repeated that account. Approximately two weeks after that interview he was contacted by Tanswell and, upon informing Tanswell of his most recent interview, Tanswell said that he would come to Sydney to meet him. He was subsequently taken by Tanswell to meet a solicitor, Trevor Nyman, to whom he complained about the behaviour of the police. He said in evidence before the Commission that he no longer had a complaint about the manner of the interview. He said that the complaint had been made with the intention to “stop the police or get the police off the case”.⁶¹
- 3.45 Peterson was arrested on 12 September 1997 and charged with conspiracy to pervert the course of justice in relation to his evidence regarding Dilworth’s death. When interviewed on that day he admitted that his previous evidence was false and that on the day in question he was not at the Hotel. On 16 September 1997 Peterson made a statement confirming the account given during the interview after his arrest. In the statement, Peterson also referred to the fact that the courtyard surface at the Oxford Tavern was broken concrete at the time and that afterwards the area was filled.⁶²
- 3.46 Peterson gave evidence before the Commission that the statement made by him to Petersham Police in 1986 was false in that he had not been anywhere near the Hotel at the time of the incident. He said that he had been approached by Tanswell to make a statement to the effect that he had seen Dilworth leave the Hotel in a certain direction, so he went to the police and gave a statement to that effect. He said that he lied when giving

⁵⁸ PIC Transcript, K D Wiggins, 20 November 2000, p. 66.

⁵⁹ PIC Transcript, K D Wiggins, 20 November 2000, p. 69.

⁶⁰ PIC Transcript, G W Peterson, 21 November 2000, p. 116; PIC Exhibit 5.

⁶¹ PIC Transcript, G W Peterson, 21 November 2000, p. 118.

⁶² PIC Transcript, G W Peterson, 21 November 2000, p. 119; PIC Exhibit 5.

evidence at the Inquest.⁶³ He said that later, when he was on Tanswell's yacht at Port Stephens, Kim Wiggins told him that Dilworth had been bashed and run into a cigarette machine and thrown off some steps into the courtyard. He said that previously he had not been aware of what had happened to Dilworth and thought it was a "harmless statement and I was doing a mate a favour".⁶⁴

3.47 As mentioned previously, Alexander Edward Davidson made three statements to Petersham Police in relation to the events in the Oxford Tavern on 14 December 1986, and also gave evidence at the Inquest. By the time of the investigation by Detectives Lenon and James, Davidson was residing in Scotland and arrangements were made for him to make a statement to Grampian Police. In a statement dated 27 November 1996, Davidson repeated his earlier account of Semenak and Tanswell dragging Dilworth out of the bar into the lounge/restaurant area. He said that he started to walk towards the restaurant when Tanswell re-entered the bar and assured him that Dilworth would get home safely. He also said that a couple of minutes later he again went to the restaurant and saw nobody apart from "an old man who was sitting on his own at a table".⁶⁵ Detectives Lenon and James later interviewed Davidson in Scotland on 27 November 1996 and questioned him at length. The version given by Davidson was substantially the same. He said that his first statement was "a complete pack of lies" but he could offer no excuse for making that statement. He said that the second statement was substantially the truth. He also said that when at the Inquest he heard the evidence of other witnesses from the Hotel to the effect that Dilworth had been escorted out into Crystal Street. He knew that evidence was false, but simply answered the questions that were put to him.⁶⁶ He also said that the surface of the courtyard was an off-white gravel.⁶⁷

3.48 Lisa Gai Selby (now Mrs Lisa Van Woudenberg) was a bar attendant working in the Oxford Tavern on 14 December 1996. On 7 February 1997 Detectives Lenon and James established her whereabouts and she attended Parramatta Police Station and made a statement the same day. In that statement she said that she could recall that on the night in question Tanswell came into the bar, approached Dilworth and started arguing with him about something to do with Tanswell's wife. In the statement she said that she saw Tanswell start punching Dilworth and they then moved out of her sight through the doors towards Rita's Restaurant where she could hear noises as if the fight was continuing. She stated that some minutes later Tanswell came back into the bar area and she noticed that he had a

⁶³ PIC Transcript, G W Peterson, 21 November 2000, pp. 111-114.

⁶⁴ PIC Transcript, G W Peterson, 21 November 2000, p. 116.

⁶⁵ PIC Exhibit 23.

⁶⁶ PIC Exhibit 24.

⁶⁷ PIC Exhibit 24.

small amount of blood on his shirt. She said that she went home and told her mother what had happened. She said also that she had never been spoken to by police in relation to the incident and later left the Hotel and obtained a job elsewhere. Three days after making the statement on 7 February 1997, Selby contacted the detectives and said she wanted to withdraw it. There followed a number of allegations about the conduct of the police to the effect that words had been put in her mouth and that she had been pressured into making the statement.

3.49 Prior to the committal proceedings against Tanswell and Semenak, Lisa Selby conferred with Ms Janis Watson-Woods of the Office of the DPP and said that she wished to retract her statement. As a result she was not called at the committal proceedings. She gave evidence that she wanted to retract her statement because she had been “very pressured, over a long period of time” in order to make the statement.⁶⁸ She was summonsed before the Crime Commission in 1999 and eventually produced a further statement with the assistance of her solicitor in which she said that her recollection of the events was that during the shift on 14 December 1986, the following events occurred:⁶⁹

- b. During my shift I saw a person who I believed to be Mal Tanswell (the Licensee) hit another person who I believed to be Phil Dilworth more than once.
- c. The person was dragged to another room.
- d. I did not pay any special attention to this fight as there were so many fights in the Tavern that I had witnessed during my employment there.
- e. Some time later I saw Tanswell return to the Bar area of the Tavern where I was working and I recollect seeing him in the area. He did not say anything to me and I continued my work.

3.50 When giving evidence to this Commission, Lisa Selby adhered to the substance of that statement.⁷⁰

ASSESSMENT OF EVIDENCE OBTAINED AFTER CORONER'S INQUEST

3.51 During the committal proceedings against Tanswell and Semenak, Wiggins and Peterson were called as witnesses for the prosecution and the statement of Mitchell of 5 December 1989 was tendered. Davidson also gave

⁶⁸ PIC Transcript, L Van Woudenberg, 22 November 2000, p. 220.

⁶⁹ PIC Exhibit 26.

⁷⁰ PIC Transcript, L Van Woudenberg, 22 November 2000, p. 228.

evidence on behalf of the prosecution. The Magistrate found that the credit of Wiggins had been undermined and her central evidence as to the events in Rita's Restaurant and the courtyard was either not supported or contradicted. The Magistrate came to a similar view in relation to the evidence of Peterson. It was also noted that Mitchell's version had changed and that he was not available for cross-examination. The Magistrate therefore ruled that she could not form the opinion that there was a reasonable prospect that a jury would convict Tanswell and Semanak and they were discharged pursuant to section 41(6) of the *Justices Act 1902*.

- 3.52 Given that the scope and purpose of the Commission's inquiry was to investigate whether there was any police misconduct in the investigation into Dilworth's death, it is not appropriate to embark upon an independent assessment of the evidence given on behalf of the prosecution at the committal proceedings, or of the Magistrate's opinion of it. It is sufficient, for the purposes of understanding the basis upon which the Magistrate ruled, to note that it was nearly 10 years after the event in the case of Wiggins, and nearly 11 years for Peterson, before the key prosecution witnesses made statements incriminating Tanswell and Semanak, having previously given statements and evidence to the contrary. Davidson had never been a good witness and did little to assist the prosecution case. None of the versions were consistent in their detail, although their general effect was similar. Mitchell was, of course, deceased. In addition, the Magistrate noted that a number of witnesses were not called including Lisa Selby, Ray Cochran and Detective Inspector Doyle. In the circumstances, there was clearly a reasonable basis for the decision by the Magistrate.
- 3.53 However, had Lisa Selby's statement of 29 October 1999 been available to the prosecution, the outcome of the proceedings may have been different. She would have been an independent witness, confirming the fact of a fight in the Hotel prior to Dilworth's death, without a prior inconsistent statement close in time to the events. Even allowing for the fact that she wished to withdraw the statement she made to Detective Lenon, evidence to the effect of the contents of her later statement may well have been enough to transform the prosecution case, at least for the purpose of the defendants being committed for trial. In any event, what is significant for the purpose of the Commission's inquiry is that subsequent investigations were able to gather a substantial body of evidence to explain Dilworth's injuries and to enable proceedings to be commenced, which the original investigation by Petersham Police had failed to do.
- 3.54 It is not a matter for the Commission to form an opinion concerning the circumstances in which Dilworth suffered his fatal injuries.

INADEQUACIES AND IMPROPER CONDUCT IN THE INVESTIGATION BY PETERSHAM POLICE

- 3.55 It is important to consider why the original investigation by Petersham Police failed to obtain evidence of the type that was later gathered. It is implicit in the accounts later given by Mitchell, Wiggins and Peterson that shortly after Dilworth's death, Tanswell orchestrated false accounts of the circumstances surrounding Dilworth's exit from the Hotel on 14 December 1986 to be given by those involved. None of the versions subsequently given specifically alleged that any police officer was a party to that arrangement. In his statement of 5 December 1989, Mitchell alleged that Tanswell told him that Doyle wanted them to give a statement. Mitchell alleged that Tanswell told him what to say in the statement. He said that Tanswell was present when he made his statement but just sat there while he told the story that Tanswell had previously given him.⁷¹ Similarly both Wiggins and Peterson have alleged that Tanswell told them what to say before they provided statements to Doyle. In their evidence, neither Wiggins nor Peterson stated that Doyle was a party to any arrangement to make false statements to be provided to the Coroner. Consistent with that situation is the evidence indicating that the friendship between Doyle and Tanswell did not seem to develop until after Dilworth's death. Wiggins said as much in her first statement of 2 May 1996 and in her evidence.⁷²
- 3.56 Both Tanswell and Doyle have given evidence to the same effect. No other officer is the subject of any adverse reference in the statements or evidence of Mitchell, Wiggins or Peterson.
- 3.57 Notwithstanding the absence of evidence of any corrupt relationship involving Doyle or any other police, there are matters which generate serious concerns about the police investigation. Responsibility for any shortcomings in the investigation must rest with Doyle. Despite his denial of supervisory responsibility, it is clear that he became involved because of his own concerns over the ability of Hanrahan to adequately prepare the matter for the Coroner:⁷³

Q. Was there some reason why Sergeant Hanrahan could not have completed that task.

A. Well, Sergeant Hanrahan didn't display much confidence in himself in relation to putting this matter before the Coroner's Court. He didn't have a lot of experience, he told me, in taking statements from people. I said "Oh well, I'll help him, I'll get some help for him".

⁷¹ PIC Exhibit 16.

⁷² PIC Exhibit 62; PIC Transcript, K D Wiggins, 20 November 2000, p. 73.

⁷³ PIC Transcript, A R Doyle, 12 June 2001, p. 904.

3.58 Later Doyle also said:⁷⁴

Q. But you took over the investigation, didn't you?

A. No I didn't.

Q. You took statements?

A. I took a couple of statements to help out because there was nobody else there at the time probably.

Q. You prepared a statement to go the coroner providing overview —

A. A summary of the other statements - an overview, that's right.

3.59 Notwithstanding his denial of being the officer in charge of the investigation Doyle made the following concession:⁷⁵

Q. Didn't that place the responsibility on you to ensure that the investigation was fully and thoroughly conducted —

A. It would have been my - that was my job. I had to do that sort of thing in normal investigations, not just that one - all of them.

3.60 From the time that Hanrahan approached Doyle for assistance, it is clear that all statements were taken by Doyle or detectives working under his supervision. Doyle was also the first witness at the Inquest and assumed the position of spokesperson for the investigation. Doyle said in evidence before the Commission that before the Inquest he had attended the Oxford Tavern and spoken to witnesses including Tanswell, Mitchell, Wiggins and Cochran, the night manager of the Hotel. He said that he explained to them the procedures of the Coroner's Court, but did not discuss the evidence they would give. Although he could not remember clearly, he conceded that he may have driven some of them to the court and back again at the end of the day.

ASSESSMENT OF RESPONSIBILITY FOR THE INITIAL INVESTIGATION INTO DILWORTH'S DEATH

3.61 Based upon the evidence referred to above, the Commission is of the opinion that Doyle was responsible for the initial investigation into Dilworth's death.

⁷⁴ PIC Transcript, A R Doyle, 12 June 2001, p. 911.

⁷⁵ PIC Transcript, A R Doyle, 12 June 2001, p. 912.

3.62 At the Inquest Doyle actively advanced the hypothesis that Dilworth suffered his injuries in the car park of the Livingstone Hotel. In particular, during cross-examination he gave the following evidence:⁷⁶

Q. Now it is your hypothesis is it not that he's fallen over a low fence and then flipped backwards and hit his head?

A. Not, no he's fallen over a small retaining, concrete type retaining wall and the injuries seem to look, according to the doctors, similar to him sliding over that retaining wall and perhaps hitting his head, but he could've fallen a number of times too, from his staggering and all that sort of thing.

3.63 Doyle never considered Tanswell or anyone from the Oxford Tavern as a suspect, notwithstanding that:

- Julie Cree said that, upon his arrival at their home, Dilworth said that he had been in a fight;
- the second statement of Davidson of 17 December 1986 referred to Dilworth being removed from the Hotel after being placed in a headlock;
- the hypothesis of the fall in the car park was not consistent with the injuries suffered by Dilworth, which included injuries to the front of his legs and a fracture to the top rear of his skull; and
- in Tanswell's statement taken by Doyle on 19 December 1986 Tanswell stated that Dilworth had abrasions to his legs in the vicinity of his shins and knees when he was in the Oxford Tavern prior to his removal and that Dilworth was wet when he left the hotel.

3.64 Then, at the Inquest, the following factors emerged which should have caused further objective appraisal of the car park fall hypothesis:

- Davidson gave evidence that the subject of the abuse between Mitchell and Wiggins was a motor vehicle accident in which Wiggins and Tanswell were both involved;
- Davidson gave evidence that Dilworth was in fact removed from the rear door of the bar, not the door onto Crystal Street;
- Julie Cree said that the clothing of Dilworth was wet when he arrived home although it did not rain until sometime afterwards;

⁷⁶ PIC Exhibit 1.

- the statements taken by Doyle from the witnesses were of poor quality in that they failed to name the participants in the activity described;⁷⁷ and
- Doyle's failed to identify and interview any other witnesses to the events in the Oxford Tavern apart from those arranged by Tanswell, and Davidson who had already been interviewed by Hanrahan.

3.65 Despite the absence of direct evidence that Doyle was involved in any arrangement to conceal the circumstances in which Dilworth was injured, it is conceivable that the witnesses may have been unaware of his role. There are also general circumstances surrounding Doyle's involvement in the investigation that warrant close scrutiny of his conduct. Those circumstances are:

- the general background of a close relationship between Petersham Police and the Oxford Tavern, particularly with Tanswell and including the regular supply of free liquor;
- Doyle's endorsement of an explanation for Dilworth's injuries which was of little merit;
- Doyle's failure to explore any alternative explanation despite the leads referred to in the evidence described above;
- the fact that Doyle recorded the statements of each of the witnesses who later claimed to be parties to the arrangement to conceal the facts of the circumstances in which Dilworth was removed from the Hotel, whereas statements from other witnesses were taken by other detectives;
- the development of a friendship between Doyle and Tanswell, particularly during the period when the Inquest had not concluded, and
- Doyle's later involvement in providing an alibi with respect to the shooting of Mitchell and in relation to Wiggins' complaint concerning the receipt of the ransom letters, as described more fully in Chapter 6.

3.66 On the other hand, there are other circumstances that diminish the adverse inferences to be drawn from those matters. At the Inquest Dr Lawrence expressed his opinion that none of the injuries he had seen on Dilworth's body looked consistent with being hit with a fist,⁷⁸ which was generally

⁷⁷ PIC Exhibit 1.

⁷⁸ PIC Exhibit 1.

consistent with Doyle's evidence. The facts were ventilated before the Coroner who made an open finding, but which included the observation that:⁷⁹

The Hotelier and his staff and other people in the Hotel have been examined closely and certainly there is a conflict on a number of points for example by which door he left and whether he was in a headlock or not. Really all that doesn't assist the Court as to the manner of the death certainly the relatives would be concerned and the Court will be concerned about the manner in which he was made to leave the Hotel. The evidence is overwhelming that he was simply escorted from the premises.

3.67 The Coroner made no request for any further enquiries to be made.

ASSESSMENT OF THE CONDUCT OF DOYLE IN THE INVESTIGATION OF DILWORTH'S DEATH

3.68 In the circumstances, the Commission is of the view that the conduct of Doyle in relation to the investigation of Dilworth's death was not misconduct. As an investigation by an experienced detective, it was deficient in terms of vigour and skill, but not so deficient as to constitute misconduct.

ASSESSMENT OF THE CONDUCT OF HANRAHAN IN THE INVESTIGATION OF DILWORTH'S DEATH

3.69 On the basis that Doyle assumed responsibility for the investigation from about 18 December 1986, and in the absence of any evidence of a personal relationship with Tanswell, the involvement of Hanrahan in the investigation does not attract the same suspicion. While he also endorsed the same flawed case theory of the car park fall in his statement and at the Inquest, there is insufficient evidence upon which his conduct can be assessed as misconduct.

⁷⁹ PIC Exhibit 1.

4. THE SEARCH OF THE PREMISES OF GARY MITCHELL ON 10 FEBRUARY 1988 AND HIS CONSEQUENT ARREST

- 4.1 At approximately 6:40 am on 12 February 1988, three police officers attended Garry Mitchell's flat at Concord. According to the evidence given to the Commission by two of the police officers, they were invited to search the premises by Mitchell. The officers located a paper towel dispenser which they suspected was stolen. Mitchell was arrested and taken to Petersham Police Station where he was charged with an offence of having property in his possession that might reasonably be suspected of being stolen, or otherwise unlawfully obtained, pursuant to section 527C of the *Crimes Act 1900*.

THE REASON FOR THE ATTENDANCE AT MITCHELL'S PREMISES

- 4.2 The officers who attended Mitchell's premises were former Detective Sergeant John Davidson, former Detective Constable Alan Conwell and former Detective Senior Constable Tony Crowley. Davidson was the most senior of the officers who attended and Conwell the most junior. The officers at that time were attached to the Breaking Squad, which was part of the Investigative Group South. The Breaking Squad principally investigated organised large scale thefts.⁸⁰
- 4.3 Mitchell provided the following information in relation to the search when interviewed at Armidale on 6 December 1989 in connection with the circumstances of his shooting on 18 August 1988:⁸¹

Q.33 Did you have any further arguments with Malcolm TANSWELL?

A. He kept blaming me for shortages in money in the petty cash. It had never happened in the previous 2½ years. Also he changed my hours of work and I was to work and [sic] extra five hours on a Sunday for no extra pay. Also a Detective Sergeant Davidson from the Breaking Squad arrived at my house at 6.00am one morning looking for [TC]. They claimed she was in possession of drugs. I said there's no way she lives here. They searched my house and charged me with possession of a hand towel the property of Telecom to the value of \$10 and I believe Malcolm TANSWELL was behind this.

⁸⁰ PIC Transcript, J S Davidson, 23 November 2000, pp. 385-386.

⁸¹ PIC Exhibit 15.

Q.34 Can you tell me why you have come forward with this information at this time?

A. Initially I was frightened of Malcolm TANSWELL because I know he has a lot of contacts. I spoke with Detective JOACHIM and he was no help and then I tried to contact Detective HARBOURNE [sic] on numerous occasions by telephone and personally and I spoke with HARBOURNE [sic] the day I spoke with you fellows.

4.4 According to former Detective Davidson, the reason for attending Mitchell's premises was as follows:⁸²

I'd been asked, or told information by another officer from Penrith that the man there, who is Mr. Mitchell had been stealing alcohol from his place of work, which was the Oxford Tavern at Petersham, and I think there was also a suggestion that they had - or used drugs or sold drugs and that he had an illegal immigrant there living with him.

4.5 Former Detective Davidson gave evidence that the officer who provided the information to him was former Sergeant Bill Tunstall,⁸³ and that he had also been told that there had been thefts of money from the Hotel and that Mitchell was a suspect.⁸⁴ According to Davidson, Tunstall had indicated that a friend of his owned the Oxford Tavern.⁸⁵

4.6 Former Detective Constable Conwell's recollection as to the reason why police attended Mitchell's premises on this occasion was similar to that of Davidson. Conwell's recollection was that Davidson had received information that Mitchell was possibly harbouring a woman who was wanted by the Federal Police for drug offences, and as an aside, that Mitchell may have had quantities of liquor at the premises which had been stolen from the Oxford Tavern.⁸⁶ Conwell's recollection was that Davidson had not at that time been in contact with anyone from the Federal Police in relation to the investigation, and had only been in contact with Tunstall.⁸⁷ At the time that the police attended Mitchell's premises they had no search warrant and, unless invited to do so, had no power to conduct a search.⁸⁸ According to Conwell, the search took place after Mitchell had invited the police into the premises.⁸⁹

4.7 Former Detective Tunstall gave evidence before the Commission. He stated that at the beginning of 1988 he was performing general duties at Parramatta

⁸² PIC Transcript, J S Davidson, 23 November 2000, pp. 385-386.

⁸³ PIC Transcript, J S Davidson, 23 November 2000, p. 385.

⁸⁴ PIC Transcript, J S Davidson, 23 November 2000, p. 393.

⁸⁵ PIC Transcript, J S Davidson, 23 November 2000, pp 386, 389.

⁸⁶ PIC Transcript, A R Conwell, 28 November 2000, p. 591.

⁸⁷ PIC Transcript, A R Conwell, 28 November 2000, pp. 592-593.

⁸⁸ PIC Transcript, A R Conwell, 28 November 2000, p. 592.

⁸⁹ PIC Transcript, A R Conwell, 28 November 2000, pp. 592; 596.

Police Station and held the rank of Sergeant.⁹⁰ He came to be engaged by a private inquiry agent called Jack Petford to undertake some surveillance at the Oxford Tavern and his recollection was that he performed the work for Petford in either 1987 or 1988.⁹¹ Tunstall gave evidence that he had been engaged by Petford to conduct surveillance of the bar area as the publican had suspicions in relation to money shortages in that area of the Hotel.⁹² He had a meeting with the publican on the first day that he attended the Hotel and was specifically told by Tanswell “I’d like you to keep your eye on the barman or bar manager”. Tunstall believed he may have been given the bar manager’s name but had no recollection of the name.⁹³

- 4.8 Tunstall gave evidence that during his surveillance of the bar area he noticed that when the male barman served, he would frequently do so with an open till and would not ring up beer sales.⁹⁴ He heard customers call this person Gary.⁹⁵ He believed he had obtained evidence that a person was stealing money from the Hotel.⁹⁶
- 4.9 Significantly, Tunstall gave evidence that at no time had he discussed his surveillance observations with other police officers and he specifically denied discussing his observations with Davidson or Conwell.⁹⁷ He also gave evidence that Tanswell was not a friend of his at the time and that he had only met him once on the occasion he went to the Oxford Tavern to conduct surveillance.⁹⁸ Tunstall reported his observations of the Oxford Tavern to Petford.⁹⁹ It is also significant that Tunstall specifically recalled that he was only asked to investigate the possible loss of money from the bar area. He was not briefed to investigate any allegation that liquor was being stolen from the Hotel, nor did he observe any evidence that liquor was being stolen.¹⁰⁰
- 4.10 Petford also gave evidence before the Commission. He stated that in 1988 he was a licensed private investigator and that he had been engaged from time to time by Tanswell since 1975, which pre-dated Tanswell’s involvement in the Oxford Tavern.¹⁰¹ He recalled that over a number of years he was engaged to investigate possible thefts at the Oxford Tavern. He was asked to conduct surveillance of the bottle shop area from time to

⁹⁰ PIC Transcript, W Tunstall, 28 November 2000, p. 579.

⁹¹ PIC Transcript, W Tunstall, 28 November 2000, p. 580.

⁹² PIC Transcript, W Tunstall, 28 November 2000, p. 580.

⁹³ PIC Transcript, W Tunstall, 28 November 2000, p. 581.

⁹⁴ PIC Transcript, M C Tanswell, 28 November 2000, p. 581.

⁹⁵ PIC Transcript, W Tunstall, 28 November 2000, p. 583.

⁹⁶ PIC Transcript, W Tunstall, 28 November 2000, pp. 583-584.

⁹⁷ PIC Transcript, W Tunstall, 28 November 2000, pp. 584-586.

⁹⁸ PIC Transcript, W Tunstall, 28 November 2000, pp. 584, 588.

⁹⁹ PIC Transcript, W Tunstall, 28 November 2000, p. 583.

¹⁰⁰ PIC Transcript, W Tunstall, 28 November 2000, pp. 580, 584-585.

¹⁰¹ PIC Transcript, J L Petford, 28 November 2000, p. 568.

time and also on an occasion to conduct surveillance of the bar area.¹⁰² The surveillance of the bottle shop area was in relation to suggestions of liquor theft. The surveillance of the bottle shop was not in connection with any suggestion that money was being stolen.¹⁰³ He was also asked by Tanswell to have someone conduct surveillance of the main bar area due to suspected losses from the till. He engaged Tunstall to conduct that surveillance. His recollection was that he engaged only Tunstall to carry out the surveillance of the main bar area. Tunstall reported back to him and he reported to Tanswell.¹⁰⁴ He could not recall the detail of Tunstall's reports but recalled that Tunstall had reported that "the bar staff were a bit loose in the way they gave change and served particular clientele."¹⁰⁵

- 4.11 Tanswell gave evidence that he recalled engaging Petford at some point to investigate "shortcomings" in cash and stock at the Hotel.¹⁰⁶ He could not recall the year he engaged Petford and could not recall having met Tunstall. Tanswell at one point in his evidence indicated that he "knew categorically that [Mitchell] had stolen money,"¹⁰⁷ but later in his evidence expressed the view that "I was narrowing my suspicions down to Mitchell."¹⁰⁸ While the timing of these beliefs and suspicions concerning Mitchell is a little uncertain, it seems clear that they existed in the months prior to Mitchell's shooting and coincided with the surveillance activities of Tunstall.
- 4.12 Tanswell gave evidence that he had no recollection of meeting Davidson and had no recollection of requesting him or other police to search Mitchell's premises.¹⁰⁹ He claimed that he had been visited by the "Commonwealth Police" who badly wanted the address for Mitchell or another person, identified for the purpose of this report as TC.¹¹⁰ It is unclear from his evidence whether or not he claims to have given the Federal Police Mitchell's address. He did not believe he gave Mitchell's address to any other police.¹¹¹ His recollection was that he possibly told police that TC was living with Mitchell.¹¹² If Tanswell had given Mitchell's address to the Australian Federal Police and if they had a genuine interest in TC, it is to be expected that the Australian Federal Police would have pursued the inquiries, not members of a Breaking Squad of the NSW Police.

¹⁰² PIC Transcript, J L Petford, 28 November 2000, p. 569.

¹⁰³ PIC Transcript, J L Petford, 28 November 2000, p. 570.

¹⁰⁴ PIC Transcript, J L Petford, 28 November 2000, pp. 570-571.

¹⁰⁵ PIC Transcript, J L Petford, 28 November 2000, p. 572.

¹⁰⁶ PIC Transcript, M C Tanswell, 30 November 2000, p. 853.

¹⁰⁷ PIC Transcript, M C Tanswell, 30 November 2000, p. 853.

¹⁰⁸ PIC Transcript, M C Tanswell, 30 November 2000, p. 855.

¹⁰⁹ PIC Transcript, M C Tanswell, 30 November 2000, pp. 856-857.

¹¹⁰ PIC Transcript, M C Tanswell, 30 November 2000, pp. 857-858; The name of the person TC is subject to a non-publication order.

¹¹¹ PIC Transcript, M C Tanswell, 30 November 2000, p. 858.

¹¹² PIC Transcript, M C Tanswell, 30 November 2000, p. 857.

ASSESSMENT OF TANSWELL'S EVIDENCE

- 4.13 The Commission does not accept the evidence of Tanswell in relation to the background of the search of Mitchell's premises. The Commission prefers the evidence of Petford and Tunstall in that their evidence justifies the opinion that Mitchell was suspected of removing cash from the Hotel. That opinion is of some practical significance in the context of the justification for the search of Mitchell's premises, as it would be illogical for police to search the premises to locate money, when there was no means of identifying any particular cash as having been removed or withheld from the cash registers at the Hotel. That makes it more likely that there was an ulterior purpose to the search of Mitchell's residence.

WHAT OCCURRED DURING AND AFTER THE SEARCH

- 4.14 Davidson had little recollection of what occurred while at Mitchell's premises. He could not recall if the police had a search warrant that was executed, or whether or not Mitchell invited them into the premises.¹¹³ His recollection, such as it was, appeared to be based upon Conwell's notes of the incident.¹¹⁴ He recalled that Mitchell was living in "pretty destitute circumstances" and that the only liquor found was half a bottle of Midori melon wine and some flagons of cheap wine. No female was present at the premises. He recalled that he had initially been told that the female was a Fijian, but "it turned out she was a Tongan".¹¹⁵ Davidson recalled that a paper towel dispenser was found, and that Mitchell was arrested in relation to his possession of it. Mitchell was taken to Petersham Police Station where he was charged with 'Goods in Custody' and granted bail to subsequently appear in court in relation to the matter.¹¹⁶ Davidson had no recollection of reporting back to Tunstall in relation to the search or of carrying out any further investigation in relation to the matter.
- 4.15 Conwell's evidence about what occurred at the premises was principally based upon notes contained in his police notebook, which according to his evidence, he wrote at 8:00 am while at Petersham Police Station.¹¹⁷ Although the notes purport to record conversations with Mitchell about the paper towel dispenser, the possession of which was ultimately the subject of a charge, Mitchell did not sign the notes, nor do they indicate that Mitchell was offered the opportunity to sign them in order to confirm their accuracy.¹¹⁸ According to Conwell, when Mitchell was spoken to he was not told of any suggestion that he had stolen liquor or money from the

¹¹³ PIC Transcript, J S Davidson, 23 November 2000, p. 386.

¹¹⁴ PIC Transcript, J S Davidson, 23 November 2000, p. 387.

¹¹⁵ PIC Transcript, J S Davidson, 23 November 2000, p. 387.

¹¹⁶ PIC Transcript, J S Davidson, 23 November 2000, pp. 387-388.

¹¹⁷ PIC Transcript, A R Conwell, 28 November 2000, p. 595.

¹¹⁸ PIC Transcript, A R Conwell, 28 November 2000, p. 610.

Hotel, but that police had been told that “a Maori woman is living here, that she is wanted by the Feds over some drugs she’s brought in”.¹¹⁹ Mitchell is recorded in the notebook as telling the police that a woman called TC had stayed a few nights at the premises three weeks earlier, and that she had previously worked at the Oxford Tavern. According to the notebook and Conwell’s evidence, Mitchell invited the police to search the premises and during the search the paper towel dispenser was found and the events, previously set out, occurred in relation to the arrest and charging of Mitchell.

- 4.16 Conwell said that Mitchell was arrested rather than summonsed for such a minor offence because as far as he was aware, at that time, people convicted after appearing pursuant to a summons did not obtain a criminal record, and it was quicker to arrest and charge rather than to issue a summons.¹²⁰ According to Conwell, Mitchell was taken to Petersham Police Station to be charged because Mitchell was required to open up the Hotel for the cleaners.¹²¹ Conwell claimed that after the incident he made an inquiry with the Federal Police about whether or not they wanted a person by the name of TC. He claimed to have a recollection that he was told that there was no notation of her being a wanted person. He could provide no details as to who he had made the inquiry with at the Federal Police. He had no recollection of discussing what he had been told by the Federal Police with Davidson.¹²² Conwell took out a warrant for Mitchell’s arrest when he failed to appear at court in response to the charge.¹²³

ASSESSMENT OF TUNSTALL’S EVIDENCE

- 4.17 There is a clear conflict between the accounts given by Davidson and Tunstall as to the source of information concerning the Oxford Tavern which, on the evidence, was partially responsible for the attendance of Davidson and Conwell at Mitchell’s premises. In this instance, the Commission prefers the account of Tunstall to that of Davidson. According to Tunstall’s evidence, he was not briefed by Petford or Tanswell in relation to any allegation that Mitchell may have been stealing liquor from the Hotel, nor did he observe any evidence to support such an assertion. His evidence concerning what he was engaged to do in terms of his surveillance duties was confirmed by Petford. While Petford gave evidence that there were a number of investigations of theft from the Oxford Tavern that he was engaged in, and that some involved allegations of the theft of stock, his evidence was that Tunstall was only engaged to investigate the theft of money. There is no evidence that Tunstall knew at the relevant time that

¹¹⁹ PIC Transcript, A R Conwell, 28 November 2000, p. 597.

¹²⁰ PIC Transcript, A R Conwell, 28 November 2000, p. 603.

¹²¹ PIC Transcript, A R Conwell, 28 November 2000, p. 602.

¹²² PIC Transcript, A R Conwell, 28 November 2000, pp. 605-606.

¹²³ PIC Transcript, A R Conwell, 28 November 2000, p. 604.

there were suspicions of Mitchell stealing liquor from the Hotel. Whilst it is not certain that the direct source of the information to Davidson was Tunstall, it is clear that the result of his investigation into the theft of money was the purported basis for the search, and that the information came from Tanswell or someone closely associated with him. This is particularly so given Tanswell's evidence that he was clearly talking to police around this time about Mitchell and his address and the person TC.

ASSESSMENT OF DAVIDSON AND CONWELL'S EVIDENCE

- 4.18 The circumstances concerning the attendance of the police at Mitchell's premises are a matter of concern to the Commission. The Commission is of the view that the evidence given by Davidson and Conwell, that one of the reasons they attended was because Tunstall had told them that there was a woman staying at the premises who was wanted by the Federal Police on narcotics offences, is implausible. Davidson and Conwell were then working for the Breaking Squad and had no responsibility for the investigation of State, let alone Federal, narcotics offences. Even assuming it could be said there was some legitimacy attached to them carrying out such an inquiry, they gave no evidence of making any checks with the Federal Police prior to attending the premises, to determine if what they claimed to have been told could be confirmed, or whether by attending at the premises they might compromise an ongoing Federal Police investigation. If what they claimed to have occurred did in fact occur, at least such limited checks would usually have been made. At the time they attended the premises they did not have the name of the woman they claimed they were seeking. They had no search warrant and had no information which would entitle them to arrest any person found on the premises or to search the premises without a warrant. The Commission is of the opinion that the explanation for the attendance at the premises, in so far as it was suggested involvement in an investigation of someone they had been told was wanted by the Federal Police in relation to narcotics offences, is not credible.
- 4.19 The Commission does not accept Davidson and Conwell's explanation for their search of Mitchell's premises and regards their evidence to be unreliable.
- 4.20 The Commission is of the opinion that the police attended the premises at the instigation of Tanswell or someone closely associated with him. Whether it was to investigate Tanswell's suspicions in relation to possible thefts by Mitchell or for some other reason remains unclear. What is clear is that this incident is a further example of the relationship that existed between police and Tanswell during the time that he was the licensee of the Oxford Tavern. It is also clear that the incident reflected a deterioration in the relationship between Tanswell and Mitchell after the conclusion of the Inquest.

5. THE INVESTIGATION BY BURWOOD DETECTIVES OF THE SHOOTING OF GARY MITCHELL

SIGNIFICANT EVENTS IN THE INVESTIGATION

- 5.1 On the evening of 18 August 1988 Gary Keith Mitchell was shot in the groin outside his home at Concord. The initial investigation from that date to 24 November 1989 was conducted by Burwood Detectives and was led by former Detective Sergeant Roger Harborne and former Detective Senior Constable David Joachim.
- 5.2 The evidence adduced before the Commission indicates that the shooting took place at around 8:45 pm after Mitchell had walked down the driveway to his flat.¹²⁴ It appears that the first police on the scene were Sergeant Mitchell and Constables Burling, Lamberton and Caruana. Within a short period of time, the investigation of the shooting was taken over by Burwood Detectives. Former Detective Constables Frazer and Bruce from Burwood Detectives attended the scene prior to ambulance officers taking Mitchell to hospital. Detective Frazer recorded in his notebook that he attended the scene around 9:14 pm.¹²⁵
- 5.3 Detective Frazer gave evidence before the Commission. His recollection of his involvement in the investigation was poor and substantially dependent upon what he had recorded in his duty book and notebook. Detectives Frazer and Bruce, after making initial inquiries at the scene, attended Mitchell at Concord Hospital. Detective Frazer's notebook indicated that during the initial attendance at the scene he ascertained that the shooting had occurred around 8:45 pm, that the victim's name was Gary Mitchell and that there was a witness, Len Beecheno, a neighbour who lived in another flat in Mitchell's building. According to Detective Frazer's notebook, when he initially arrived at the scene Mitchell was on the ambulance stretcher in the street. The notebook suggests that the ambulance officers had found Mitchell sitting on the front fence of the property. Mitchell arrived at Concord Hospital at approximately 9:25 pm. Detectives Frazer and Bruce spoke to him at the hospital and Mitchell indicated that his assailant had said to him, before he was shot, "Oxford Tavern mate". He said that the gun had been a long barrelled weapon and at one point the gun had jammed. Mitchell also reported that after he was shot he heard a car drive off.

¹²⁴ PIC Exhibits 12, 33.

¹²⁵ PIC Exhibit 35.

- 5.4 After speaking to Mitchell at the hospital, Detective Frazer returned to the scene of the shooting and conferred with officers from the Crime Scene Unit who were in attendance. He also conducted a search of Mitchell's flat and spoke to Beecheno. He conveyed Beecheno to Burwood Police Station and obtained a statement from him before returning to the scene. Detective Frazer's notebook also indicated that he was told by Mitchell at some point during the evening that at about 9:30pm on the evening prior to the shooting, two women who "looked dark" knocked on Mitchell's door wanting to use the phone as their car had broken down. Mitchell had not allowed them to do so. They came back an hour later swearing and again were not allowed in.¹²⁶
- 5.5 Detective Frazer's notebook further records that at 12:10 am on 19 August 1988 he spoke to Tanswell and the "big guy" from the Oxford Tavern although the notebook does not record what, if anything, he was told by either of those persons.¹²⁷ In his evidence before the Commission Detective Frazer could not remember the name of the "big guy", where he spoke to them or why.¹²⁸
- 5.6 The statement taken from Beecheno by Detective Frazer has not been produced to the Commission and Detective Frazer could not remember any of its contents.¹²⁹ Beecheno gave evidence before the Commission and confirmed that he had made a statement at Burwood Police Station on the evening of the incident although he had no recollection of what he told the police in the statement.¹³⁰ He did not believe that he told the police anything that Mitchell may have told him identifying his assailant. On 13 January 2000 Beecheno provided a statement in which he said that Mitchell had told him on the night of the shooting that the person who shot him "was my boss Mal Tansly (sic)".¹³¹ In his evidence before the Commission he was of the view that this conversation took place three or four months after the shooting.
- 5.7 Detective Frazer's recollection was that he had no further involvement in the investigation after the night of the shooting and the responsibility for the investigation was that of Detective Harborne and Joachim, both of whom gave evidence before the Commission.¹³² Detective Harborne was the senior officer and in charge of the investigation. According to Harborne's evidence and his duty book for that time, he was recalled to duty at 11:30 pm on 18 August 1988 and conferred with Detectives Joachim,

¹²⁶ PIC Exhibit 35.

¹²⁷ PIC Exhibit 35.

¹²⁸ PIC Transcript, J R Frazer, 27 November 2000, pp. 484-485.

¹²⁹ PIC Transcript, J R Frazer, 27 November 2000, p. 485.

¹³⁰ PIC Transcript, L D Beecheno, 27 November 2000, pp. 422-423.

¹³¹ PIC Exhibit 32.

¹³² PIC Transcript, J R Frazer, 27 November 2000, pp. 481, 485.

Bruce and Frazer. He and Detective Joachim attended the Oxford Tavern and then attended upon Tanswell at his residence. When they arrived at Tanswell's premises it appeared that someone from the Hotel had contacted him and he was expecting them.¹³³ Harborne had met Tanswell on a number of prior occasions in a social context while performing relieving work at Petersham Detectives in 1982 and 1983.¹³⁴ Neither Detective Harborne or Joachim took notes of the meeting with Tanswell and their recollections of what was said by him were vague. They both recalled having a beer with Tanswell. According to Harborne, Tanswell was asked where he had been on the evening of the shooting. Tanswell told Harborne that he had been out with "his wife or his girlfriend, with Allan Doyle and his wife".¹³⁵ According to Harborne, Tanswell was not a suspect at that time and he was endeavouring to locate a relative of Mitchell.¹³⁶ Joachim had seen Tanswell prior to the night of the shooting as he had been to the Oxford Tavern in relation to other inquiries and had attended a police social function there.¹³⁷

- 5.8 According to the duty books of Harborne and Joachim, which are identical in this respect, after attending upon Tanswell they returned to the station at about 4:00 am. They then conducted inquiries into Mitchell's antecedents and his associates and discussed the matter with Detective Senior Sergeant Mathews and Detective Sergeant Walsh who were first and second in command at Burwood Detectives. According to Joachim, at that time they had a vague description of a possible suspect from one of the other police officers, presumably Frazer, and were aware that Mitchell had said that his assailant had referred to the Oxford Tavern. This generated a suspicion that someone connected with the Oxford Tavern may have been responsible for the shooting.¹³⁸ The duty books also indicate that inquiries were made of the hospital regarding Mitchell's condition. According to Joachim's recollection, they did not speak to Mitchell on this occasion and only spoke to the doctors concerned.
- 5.9 According to the duty books, Harborne and Joachim did not attend the scene until 7:00 am on 19 August 1988, some 10 hours after the shooting. Harborne gave evidence that he believed he had attended the scene during the night but there is no entry in his duty book, or that of Joachim, to indicate that they did attend prior to 7:00 am the next morning. Harborne had no recollection of a 'doorknock' being conducted in the area.¹³⁹ Joachim gave evidence that he thought that Detective Frazer had organised

¹³³ PIC Transcript, R A Harborne, 28 November 2000, p. 627.

¹³⁴ PIC Transcript, R A Harborne, 28 November 2000, p. 625.

¹³⁵ PIC Transcript, R A Harborne, 28 November 2000, p. 627.

¹³⁶ PIC Transcript, R A Harborne, 28 November 2000, pp. 627-628.

¹³⁷ PIC Transcript, D L Joachim, 27 November 2000, p. 435.

¹³⁸ PIC Transcript, D L Joachim, 27 November 2000, pp. 437-438.

¹³⁹ PIC Transcript, R A Harborne, 28 November 2000, p. 629.

one,¹⁴⁰ although Frazer gave no evidence to that effect. No documentation was available to establish whether or not a doorknock was carried out, and if so what the results were.

- 5.10 At 9:30 am on 19 August 1988, Detective Harborne, Detective Senior Sergeant Mathews and Detective Walsh attended Concord Hospital and interviewed Mitchell.¹⁴¹ The evidence before the Commission suggests that Detective Joachim did not attend as he had duties associated with another matter at that time. Harborne gave evidence that Mitchell gave a description of the person who shot him and told them that he had heard a vehicle driving off. It does not appear that any notes of this interview with Mitchell were made. Harborne gave evidence that, almost from the start of his inquiries, he formed the impression that Mitchell was not being frank with the investigators.¹⁴² In evidence before the Commission, Harborne agreed that it was unusual for three senior detectives to attend upon a victim of a shooting, but could give no explanation as to why three detectives attended on this occasion. Detective Senior Sergeant Mathews, who was head of Burwood Detectives at the relevant time, gave evidence before the Commission concerning his attendance on Mitchell on this occasion. He had no recollection of the attendance although did not doubt that it occurred.¹⁴³ He gave evidence that a shooting in Burwood in the late 1980's was an extraordinary event.¹⁴⁴ The only explanation that he could offer for his and Walsh's attendance was to assess the resources required by Harborne for the investigation, and that it was part of his "leadership style" to attend.¹⁴⁵ Notwithstanding, no notes were taken by any of the detectives of the interview with Mitchell.
- 5.11 According to Detective Harborne's notebook, after the interview with Mitchell in the hospital he returned to the station, conferred with Detective Joachim and another officer, and then returned to the crime scene and spoke to officers there. He then circulated a wireless message regarding the shooting and the suspect described by Mitchell. Although the text of the wireless message is not available to the Commission, the 'Person of Interest Report' prepared by Detective Harborne on 22 August 1988 was tendered as an exhibit.¹⁴⁶ This exhibit refers to wireless message 23 on 19 August 1988. The report describes the person sought as being male, 30-40 years of age, 183 cm tall, solid build, white, wearing a dark jacket and dark jeans.¹⁴⁷

¹⁴⁰ PIC Transcript, D L Joachim, 27 November 2000, p. 438.

¹⁴¹ PIC Transcript, R A Harborne, 28 November 2000, p. 629.

¹⁴² PIC Transcript, R A Harborne, 28 November 2000, p. 631.

¹⁴³ PIC Transcript, S J Mathews, 13 June 2001, p. 1037.

¹⁴⁴ PIC Transcript, S J Mathews, 13 June 2001, p. 1038.

¹⁴⁵ PIC Transcript, S J Mathews, 13 June 2001, p. 1038.

¹⁴⁶ PIC Exhibit 14.

¹⁴⁷ PIC Exhibit 14.

- 5.12 In his evidence before the Victims Compensation Tribunal Mitchell said, in the context of explaining his later disclosure to Harborne of the circumstances of the shooting, that.¹⁴⁸

I explained to him that I didn't want to tell the police on the morning they came to see me after the shooting because I recognised some detectives with him that frequented the Oxford Tavern in the company of Malcolm Tanswell.

ASSESSMENT OF MATTHEWS' EVIDENCE

- 5.13 Although there is no evidence to suggest that Matthews had any contact with Tanswell prior to the shooting investigation or was in any way subject to influence by him, the Commission is of the view that the evidence of Matthews appears troubling, particularly in the light of the broader picture of Tanswell's influence with police and Mitchell's claims of being afraid to provide police with details of the attack. However, there is no firm basis upon which an assessment can be made to reject the evidence.

FURTHER EVIDENCE IN RELATION TO HARBORNE AND JOACHIM'S INVESTIGATION OF THE SHOOTING

- 5.14 Detective Harborne's duty book indicates that on 20 August 1988 he was engaged in further inquiries in relation to the Mitchell shooting, although these inquiries are not particularised in the duty book. When Harborne gave evidence before the Commission he had no recollection of what those duties were.¹⁴⁹ Harborne gave evidence that, based on an entry in Detective Joachim's duty book, he recalled that on 21 August 1988, he and Detective Joachim attended Flemington Police Station and spoke to Inspector Allan Doyle about the Mitchell shooting. There is no record of such an attendance or discussion with Doyle in Detective Harborne's notebook. Harborne's recollection was that he went to Flemington specifically to talk to Doyle to confirm what Tanswell had said regarding his location on the night of the shooting. Doyle told him he had been out with Tanswell on that night. He did not take a statement from Doyle and could not remember if any notes were taken of the conversation.¹⁵⁰ He did not speak to Doyle's wife.¹⁵¹
- 5.15 Joachim's recollection of the attendance upon Inspector Doyle at Flemington was that he was not present for the whole of the conversation between Harborne and Doyle. He did not take a statement from the Inspector and did not make any notes of the conversation.¹⁵² Joachim's

¹⁴⁸ PIC Exhibit 20.

¹⁴⁹ PIC Transcript, R A Harborne, 28 November 2000, p. 632.

¹⁵⁰ PIC Transcript, R A Harborne, 28 November 2000, p. 633.

¹⁵¹ PIC Transcript, R A Harborne, 28 November 2000, p. 634.

¹⁵² PIC Transcript, R A Harborne, 28 November 2000, p. 440.

duty book indicated that after speaking to Doyle he spoke to Ray Cochran in relation to “Oxford Hotel Petersham re threats on Mitchell by anon male at 2.40 pm”.¹⁵³ Joachim’s evidence was that he recalled that Cochran was present at Flemington Police Station when Harborne spoke to Doyle. Joachim gave evidence that he was not present when Harborne spoke to Cochran.¹⁵⁴ Harborne had no recollection of any meeting with Cochran.¹⁵⁵

5.16 Doyle was questioned about his recollection of being spoken to by Detectives Harborne and Joachim concerning the shooting of Mitchell and the location of Tanswell on the 18 August 1988. He claimed that he was not spoken to on 21 August 1988 as that was a Sunday and he never worked during weekends. He said he had no recollection of ever being spoken to by Joachim and that he may have been spoken to by Harborne at some time, although after 21 August 1988. He had no real recollection of what was discussed and believed that it was “just chat”.¹⁵⁶

5.17 On 22 August 1988 a Police Incident Report was prepared in relation to the shooting of Mitchell. That report was prepared either by Harborne or Joachim, and was approved by Senior Sergeant Mathews.¹⁵⁷ Materially that report indicated that the shooting occurred at about 8:45 pm on 18 August 1988. The report further indicated that before firing at Mitchell the assailant said “G’day mate, Oxford Tavern, hey” and pointed a sawn off rifle or handgun at the lower part of Mitchell’s body. Four .22 calibre cartridges were recovered from the crime scene. The report further indicated that Mitchell was a “punter and sometime SP bookmaker, and womaniser”, although Mitchell had denied it. The report also indicated that at 10:30pm on 20 August 1988, 2:40pm on 21 August 1988 and 8:10 am on 22 August 1988 there had been telephone calls received at the Oxford Tavern being “further offer(s) of violence” to Mitchell.¹⁵⁸ Harborne had no recollection of the information concerning other “offer(s) of violence” to Mitchell.¹⁵⁹ Joachim had no recollection himself of carrying out any inquiries in relation to the telephone calls although he thought that Detective Harborne did.¹⁶⁰ On 22 August 1988 Detective Harborne completed the ‘Person of Interest Report’ referred to in paragraph 5.11.¹⁶¹ According to Harborne’s evidence, the information contained in the report, that Mitchell was a punter and SP Bookmaker, came from a friend of Harborne’s, Morton Monk, who was a butcher in Burwood.¹⁶² He gave evidence that the

¹⁵³ PIC Exhibit 41.

¹⁵⁴ PIC Transcript, D L Joachim, 27 November 2000, p. 445.

¹⁵⁵ PIC Transcript, R A Harborne, 28 November 2000, p. 634.

¹⁵⁶ PIC Transcript, A R Doyle, 13 June 2000, pp. 967-969.

¹⁵⁷ PIC Exhibit 13.

¹⁵⁸ PIC Exhibit 13.

¹⁵⁹ PIC Transcript, R A Harborne, 28 November 2000, p. 636.

¹⁶⁰ PIC Transcript, D L Joachim, 27 November 2000, p. 449.

¹⁶¹ PIC Exhibit 14.

¹⁶² PIC Transcript, R A Harborne, 28 November 2000, p. 646.

information that Mitchell was a “womaniser” came from Mitchell’s brother-in-law.¹⁶³

5.18 The evidence before the Commission revealed that a day or two after Mitchell’s shooting he was visited in hospital by Constable Keith McLachlan and Sergeant Cheeseman from Petersham Police.¹⁶⁴ Constable McLachlan asked Mitchell if he knew who had shot him and Mitchell told him that he had no idea. Constable McLachlan raised with Mitchell an incident that had occurred six days prior to the shooting for which he had attended the Oxford Tavern. On 12 August 1988 Constable McLachlan and another officer escorted two men from the Oxford Tavern for unruly behaviour. Both men had abused Mitchell and made “threats that they were going to get him.”¹⁶⁵ McLachlan gave evidence that he brought the details of the 12 August 1988 incident to the attention of a Detective at Burwood who was investigating the shooting. McLachlan said and had a recollection that he may have faxed a copy of the facts sheet, relating to the arrest of two men as a result of that incident, to the Detective.¹⁶⁶ Harborne had no recollection of being provided with any such information but agreed that if the information had been made available, it was information that ought to have been pursued.¹⁶⁷

5.19 Constable McLachlan knew Tanswell from business activities associated with the Hotel and had visited his home. After Tanswell sold the Hotel he also saw him at the Gold Coast in about 1993.¹⁶⁸ He also knew Mitchell and occasionally would have a drink with him at the Hotel after Mitchell finished his shift. He did not endorse the description of Mitchell above, particularly as an SP bookmaker or a womaniser. He gave evidence describing Mitchell as follows:¹⁶⁹

I liked him. I thought he was quite a nice fellow - he had - he was much - how can I put it? - he was quieter than other bar managers. He wasn’t loud and he wasn’t - he was just an easygoing placid person to speak with. We had many conversations.

5.20 As to the reason for visiting him in hospital, McLachlan said in evidence:¹⁷⁰

He was a friend. I was in the area. I was on morning shift. And the person I was working with also shared the same opinion that he was a nice chap, and that we got on well with him. We dropped in to say hello.

¹⁶³ PIC Transcript, R A Harborne, 28 November 2000, p. 647.

¹⁶⁴ PIC Transcript, K L McLachlan, 13 June 2001, p. 996.

¹⁶⁵ PIC Transcript, K L McLachlan, 13 June 2001, p. 998.

¹⁶⁶ PIC Transcript, K L McLachlan, 13 June 2001, pp. 998, 1005.

¹⁶⁷ PIC Transcript, R A Harborne, 28 November 2000, pp. 638-639.

¹⁶⁸ PIC Transcript, K L McLachlan, 13 June 2001, pp. 993-994.

¹⁶⁹ PIC Transcript, K L McLachlan, 13 June 2001, p. 995.

¹⁷⁰ PIC Transcript, K L McLachlan, 13 June 2001, p. 997.

- 5.21 There is no reason to doubt McLachlan's evidence that he brought the information to the attention of the investigation detectives. There is no evidence before the Commission that indicates that any inquiries were made of the persons involved in the 12 August 1988 incident in relation to whether or not they may have had some connection with Mitchell's shooting. This was an obvious line of inquiry that ought to have been pursued.
- 5.22 Harborne's duty book indicates that he and Joachim visited Mitchell in hospital on 29 August 1988, which was the date of his discharge. Harborne's recollection was that on that occasion he was trying to make arrangements for Mitchell to make a comprehensive statement. Those arrangements were not made.¹⁷¹ Also on the same day Harborne's duty book indicates that Harborne and Joachim attended the Oxford Tavern "re Tanswell re Mitchell shooting".¹⁷² Harborne had no recollection of what occurred while at the Hotel on that occasion, or with whom he spoke.¹⁷³ Joachim's recollection of the day was that a description of the assailant was obtained from Mitchell and that they went to see Tanswell to see if he knew anyone who fitted the description. Joachim's recollection was that the description provided did not vary "too much" from that provided by Mitchell on the night of the shooting.¹⁷⁴ It appears no note of this further meeting with Mitchell, apart from that contained in the detectives' respective duty books, was made. There is no record of any further description that might have been provided by Mitchell.
- 5.23 An entry also appears in Harborne's and Joachim's duty books that they attended the Oxford Tavern on 1 September 1988 in relation to the Mitchell shooting investigation. Detective Harborne's duty book indicates that Detectives Walsh and Long also attended. According to Harborne no inquiries were made on this occasion and they were simply "having a beer".¹⁷⁵ The entries in Detective Harborne's duty book indicate that he spoke to Tanswell regarding the investigation during the 2 hours that he was at the Hotel. Harborne gave the following evidence in relation to his attendance at the Oxford Tavern on that date:¹⁷⁶

Q. Were you there having a beer and then spoke to Mr Tanswell or did you go there to speak to Mr Tanswell and have a beer?

A. We went there to have a beer.

Q. What, and Mr Tanswell happened to appear?

A. Well, he was there.

¹⁷¹ PIC Transcript, R A Harborne, 28 November 2000, p. 637.

¹⁷² PIC Exhibit 42.

¹⁷³ PIC Transcript, R A Harborne, 28 November 2000, p. 638.

¹⁷⁴ PIC Transcript, D L Joachim, 27 November 2000, p. 447.

¹⁷⁵ PIC Transcript, R A Harborne, 28 November 2000, pp. 639-640.

¹⁷⁶ PIC Transcript, R A Harborne, 28 November 2000, p. 639.

Q. Well, did you speak to Mr Tanswell re the Mitchell attempt murder?

A. I don't think I did, sir. I can't remember, but I don't think I did.

Q. According to your duty book, you say at 1.30 you went out with those officers to the Oxford Tavern and then returned at 3.30?

A. Yes, sir.

Q. Is the truth that you were just having a few beers during that time?

A. That's correct, sir.

Q. And that this entry is false?

A. Yes, but we were there.

Q. Yes, but in so far as it says, "Out with those officers to Oxford Tavern, speak with Tanswell re attempt murder" —

A. No, I did not speak to them, as far as I recollect.

Q. Those entries are false, are they?

A. That is.

5.24 Joachim claimed to have no recollection of what took place during this attendance at the Oxford Tavern.¹⁷⁷

5.25 According to the evidence of Harborne he considered that the investigation had come to an end after about three months.¹⁷⁸ He gave evidence that during that time Mitchell had agreed on a number of occasions to come in to make a statement but never did. He did not contact Mitchell after his discharge from hospital on 29 August 1988, as Mitchell was to contact him and appeared reluctant to provide police with his address. Harborne had no recollection of making inquiries of Mitchell as to why he was reluctant to provide police with his address.¹⁷⁹

5.26 The next significant event that occurred in relation to the investigation was a meeting between Detective Joachim and Mitchell on 17 October 1988, two months after the shooting. Detective Joachim's duty book indicates that at approximately 2.00 pm that day he went to the Royal Sheaf Hotel in Burwood and saw Mitchell "re shooting and information". This meeting is of importance as Mitchell subsequently claimed that this was when he told Detective Joachim that his assailant was in fact Tanswell and that Detective Joachim was the first person to whom he had told that

¹⁷⁷ PIC Transcript, D L Joachim, 27 November 2000, p. 448.

¹⁷⁸ PIC Transcript, R A Harborne, 28 November 2000, p. 642.

¹⁷⁹ PIC Transcript, R A Harborne, 28 November 2000, pp. 640-641.

fact. During Joachim's evidence before the Commission he was questioned about the conversation he had with Mitchell on 17 October 1988:¹⁸⁰

- Q. Did you make a report about that, about that conversation, or that aspect of it?
- A. Told Harborne when I saw him next that there was nothing that came out of the meeting, nothing to indicate an actual - you know, any further information as to an offender, any other significant lead.

5.27 This meeting between Mitchell and Joachim assumes further significance as a statement was taken from Joachim during the investigation by Detectives Lenon and James. In his statement Joachim denied any further meeting after seeing Mitchell in hospital, although according to James, he confided to James before making the statement that there had been a further meeting between himself and Mitchell.

5.28 Joachim's evidence was that he in fact met Mitchell alone in a car park of what he thought was the Royal Sheaf Hotel but was in fact a hardware store, the Hotel having undergone some type of conversion.¹⁸¹ His evidence was that Mitchell asked him a few questions as to how the inquiries were going. Joachim asked Mitchell if he could provide any further information and whether he could elaborate upon the description he had provided. According to Joachim's evidence Mitchell did not tell him who shot him.¹⁸² Detective Joachim made no notes in his notebook, as distinct from his duty book, regarding this meeting and the notes in his duty book did not record what he discussed with Mitchell.¹⁸³ Joachim gave the following evidence with respect to that meeting:¹⁸⁴

- Q. ... Could it be the fact that on 17 October 1988 Mitchell did give you information to the effect that Mr Tanswell was the person who shot him, but you chose not to investigate that?
- A. No, sir. The conversation went along the lines that he said he didn't know who he could trust. He was in trouble. When I asked him to nominate someone, he said, "I'd rather not say." I think I said well, the inquiry's down to what he has to say, if he could assist us, and he chose not to.
- Q. When you say that he said that he didn't know who he could trust, did you understand him to be referring to police?
- A. No.
- Q. Did you ask him why he felt that he couldn't trust people?

¹⁸⁰ PIC Transcript, D L Joachim, 27 November 2000, p. 445.

¹⁸¹ PIC Transcript, D L Joachim, 27 November 2000, pp. 450-451.

¹⁸² PIC Transcript, D L Joachim, 27 November 2000, pp. 451-452.

¹⁸³ PIC Transcript, D L Joachim, 27 November 2000, p. 455.

¹⁸⁴ PIC Transcript, D L Joachim, 27 November 2000, p. 455.

A. No. He just said he thought - he said it all in the one sentence. He said, "I didn't know who I could trust. I think I'm in trouble". I said, "Well, could you tell us?", meaning me, and he didn't say anything.

Q. Did you ask him who he couldn't trust?

A. No.

Q. Did you ask him why he couldn't trust people?

A. No.

Q. Did you ask him what he meant by saying, "I think I'm in trouble."?

A. I think I asked him could he assist.

Q. Did you say, "What do you mean?"

A. I can't recall exactly what I said, but I know that's the gist of the conversation.

Q. What did he say about that?

A. He didn't say - he didn't nominate any person.

5.29 Joachim gave evidence he did not otherwise explore Mitchell's comments that Mitchell didn't know whom he could trust, or suggest that the police might provide any form of protection.¹⁸⁵

5.30 This version is in conflict with the accounts previously given by Mitchell. In his interview with Hollis on 5 December 1989 Mitchell said, "... I tried to get in touch with Detective Joachim which I did and told him everything ...".¹⁸⁶ In his evidence at the Victims Compensation Tribunal on 2 September 1992 he told the Magistrate that he had met Detective Joachim at the Royal Sheaf Hotel and "I told him who had shot me on 18.08," and "I said my boss, Malcolm Tanswell from the Oxford Tavern had shot me".¹⁸⁷

5.31 Harborne gave evidence before the Commission that he was on leave on 17 October 1988 and returned to work some time in November 1988. He gave evidence that Joachim did not tell him of his meeting with Mitchell on his return from leave.¹⁸⁸ According to Harborne's evidence, the first time he knew of that meeting was in 1999.¹⁸⁹

Q. When was the first occasion that you learnt of any meeting between Detective Joachim and Mr Mitchell on that date?

¹⁸⁵ PIC Transcript, D L Joachim, 27 November 2000, pp. 455-457.

¹⁸⁶ PIC Exhibit 16.

¹⁸⁷ PIC Exhibit 20.

¹⁸⁸ PIC Transcript, R A Harborne, 28 November 2000, p. 642.

¹⁸⁹ PIC Transcript, R A Harborne, 28 November 2000, p. 643.

A. Shortly before - I think it was a week before or a week after that Detective Joachim was going to appear before the Crime Commission. He rang me from Queensland, I think it was.

Q. Last year that was?

A. Yes, last year. He told me that - or he asked me what were they looking for? I said, "I don't know. All you've got to do is tell the truth." He said - we had a little bit more conversation and then he said, "Oh, I think I forgot to tell you something. I had a meeting with Mitchell at the Sheaf Hotel, but nothing happened. He talked shit." I said, "All right. Well, just tell the Commission the truth." And that was it until this year, when I was being interviewed at Newtown police station, I was provided with a document that was a statement of Mitchell in which I read that Mitchell had told him who had shot him and that he had some information about either a murder or a killing;

5.32 The evidence concerning whether or not Detectives Harborne and Joachim ever compiled anything that might be said to be a brief of evidence or an investigation brief is unsatisfactory. According to Joachim he did not add to the brief and it would have consisted of a collection of running sheets and "things like that".¹⁹⁰ Harborne gave evidence that there would have been a brief of what had been done in relation to the investigation at the time he considered it had concluded, some three months after the shooting. He had no recollection of it containing any statements.¹⁹¹

5.33 According to Harborne's evidence, Mitchell visited Harborne at Burwood Police Station on 24 November 1989, having walked in unannounced. During that meeting, Mitchell told Detective Harborne that he knew who shot him and that he had information about a murder. Harborne could not remember whether Mitchell told him that he knew the identity of the man who shot him.¹⁹² According to Harborne's evidence, he took no steps to record what Mitchell told him at this meeting and made no notes of it. No record of what was said at this meeting is available to the Commission.¹⁹³ Harborne stated that he immediately contacted the Homicide Squad, and within 45 minutes Detective Geoff Hollis and possibly another detective arrived. According to Harborne, he had no memory of briefing those detectives on the shooting investigation and could not recall if he gave them any documentation produced during that investigation. He did not believe that he told Hollis of the information he had that Tanswell was with Inspector Doyle and his wife on the night of the shooting.¹⁹⁴ On the evidence available to the Commission, the handing over of Mitchell to Detective Hollis was the last step taken in the investigation into Mitchell's shooting, which was led by Detective Harborne.

¹⁹⁰ PIC Transcript, D L Joachim, 27 November 2000, p. 445.

¹⁹¹ PIC Transcript, R A Harborne, 28 November 2000, p. 642.

¹⁹² PIC Transcript, R A Harborne, 28 November 2000, p. 644.

¹⁹³ PIC Transcript, R A Harborne, 28 November 2000, pp. 644-645.

¹⁹⁴ PIC Transcript, R A Harborne, 28 November 2000, pp. 645-646.

ASSESSMENT OF HARBORNE AND JOACHIM'S EVIDENCE

- 5.34 Joachim and Harborne's evidence, concerning whether or not Joachim told Harborne in 1988 of the meeting he had with Mitchell on 17 October 1988, is in direct conflict. The fact that Harborne gave evidence that in 1999 Joachim had telephoned him and told that he had forgotten to tell him something suggests that the evidence by Joachim on that issue may have been a deliberate lie. The telephone call to Harborne in 1999 suggests that Joachim knew, by the time he gave his evidence before the Commission, that he had not told Harborne prior to that telephone call of his meeting with Mitchell on 17 October 1988.
- 5.35 It is difficult to resolve the conflict between the versions of Mitchell, who is deceased, and Joachim, who gave evidence before the Commission. There are two issues that arise from the evidence surrounding the meeting between Joachim and Mitchell at the Golden Sheaf Hotel car park on 17 October 1988. The first is whether, at that meeting, Mitchell told Joachim that Tanswell was responsible for the shooting. The second is whether Joachim later told Harborne of the meeting. In relation to the first issue, despite Mitchell's statement in his record of interview and in his evidence at the Victims Compensation Tribunal, the Commission cannot conclude that Mitchell told Joachim that Tanswell was responsible for the shooting. If Joachim had been so informed, and had wished to conceal the information he had been given, it would be unlikely that he would make any reference in his duty book to the meeting at all. Recording the meeting as he did lends credibility to his assertion that he met with Mitchell but received no further information concerning the shooting.
- 5.36 In view of the absence of witnesses and Mitchell's refusal to provide a detailed description of his attacker, the Commission is not able to make an adverse assessment with respect to the investigation by Harborne and Joachim. They pursued an apparent connection with the Oxford Tavern and the previous incident and otherwise had little opportunity, in view of Mitchell's lack of co-operation, to take the matter any further. However, as outlined above there are clearly some aspects of their investigation which were unsatisfactory in that they failed to keep proper records and they had a drink with Tanswell at an early stage in their investigation, at a time when they should have regarded Tanswell as a person of interest. Furthermore, the entries in Detective Harborne's duty book that inquiries were made with Tanswell, when in fact they spent two hours drinking at the Hotel, was clearly deceptive.

6. THE INVESTIGATION BY THE HOMICIDE UNIT, SOUTH WEST MAJOR CRIME SQUAD, OF THE DEATH OF PHILLIP DILWORTH AND THE SHOOTING OF GARY MITCHELL

SIGNIFICANT EVENTS IN THE INVESTIGATION

- 6.1 As noted previously, on 24 November 1989 the investigation of the allegations made by Mitchell on that day became the responsibility of Detectives Hollis and McLennan of the Homicide Unit attached to the South West Major Crime Squad. Detective Hollis was the senior officer in charge of the investigation and is no longer a serving police officer. He was not called to give evidence before the Commission due to his medical condition. The medical evidence provided to the Commission on behalf of Hollis indicated that on 7 January 1996 he suffered a cerebral infarction which affected a large part of the right fronto-parietal area of his brain.¹⁹⁵ That evidence also indicated that his memory had been affected by that condition and that he confabulated “quite easily to maintain attention and to stay in conversations”.¹⁹⁶ Three records of interview with Hollis, conducted by Detective Inspector Geoff Leonard in early 2000, concerning the conduct of the investigation were admitted into evidence before the Commission.¹⁹⁷
- 6.2 The Commission is of the view that a fair reading of his interviews, all of which took place since developing that condition, indicates that an assessment of his answers about material factual matters must take his condition into account. It should also be noted that at the time of the interviews his duty books for the relevant time period had not been found and it is clear that his ability to answer relevant questions was hindered by that fact.
- 6.3 Detective McLennan remains a serving police officer and gave evidence before the Commission in relation to the conduct of the investigation. In relation to the meeting with Mitchell at Burwood Police Station on 24 November 2000, McLennan gave evidence that Mitchell indicated he and others had given false evidence at the Inquest. Mitchell had further alleged that a number of the witnesses had been paid money to give the false evidence, and that Tanswell was responsible for the death of Dilworth. Detective McLennan’s evidence was that Mitchell also stated that he knew the identity of the person who had shot him, although the Detective could not recall if Mitchell nominated a person as the shooter on this occasion.¹⁹⁸

¹⁹⁵ PIC Exhibit 74.

¹⁹⁶ PIC Exhibit 74.

¹⁹⁷ PIC Exhibits 75, 76, 77.

¹⁹⁸ PIC Transcript, S F McLennan, 28 November 2000, p. 662.

- 6.4 According to McLennan's evidence, the only documentation he received from Harborne relating to the investigation of Mitchell's shooting was the Crime Incident Report.¹⁹⁹ He did not receive a brief or a file concerning the initial investigation. He did not see the crime scene photographs until 2000 and, apart from the initial discussions with Detective Harborne on 24 November 1989, received no oral briefing concerning the investigation.²⁰⁰ Initially Hollis could not recall speaking to Mitchell on 24 November 1989 and did not recall that he and Detective McLennan had attended Burwood Police Station that day. However, in subsequent records of interview he confirmed in substance the account given by Detective McLennan.²⁰¹
- 6.5 Detectives Hollis and McLennan conducted formal interviews with Mitchell on 5 and 6 December 1989. According to the evidence of McLennan, prior to those interviews, he obtained a copy of the Inquest papers relating to Dilworth's death and spoke to the forensic pathologist, Dr. Lawrence. He initially gave evidence that the papers from the Inquest included the statements of all persons who gave evidence and the transcript of their evidence. However, later in his evidence he was unsure as to whether or not the material did include copies of the statements.²⁰² McLennan was unaware of any steps Hollis took to prepare for the interviews with Mitchell. According to McLennan's evidence, prior to speaking with Mitchell in Armidale he and Hollis did not discuss any particular approach to be taken when interviewing Mitchell. This was despite being aware of the serious allegations Mitchell had made, and that Mitchell had expressed fears for his safety because the person against whom he had made allegations had particular connections with NSW police officers.²⁰³ The evidence given by McLennan, as to what was done prior to the December interviews with Mitchell, is in the main confirmed in the interviews conducted with Hollis.²⁰⁴
- 6.6 There were a number of significant matters raised by Mitchell in his interviews on 5 and 6 December 1989 which warranted following up. According to McLennan's evidence those matters were not pursued by him. During the interview on 5 December 1989, Mitchell indicated that he had previously contacted Joachim and had "told him everything".²⁰⁵ McLennan gave evidence that he never spoke to Harborne regarding Mitchell's suggestion that he had previously told Joachim that Tanswell was the shooter. He also took no steps to locate Joachim who by that time

¹⁹⁹ PIC Exhibit 13.

²⁰⁰ PIC Transcript, S F McLennan, 28 November 2000, pp. 663-664.

²⁰¹ PIC Exhibit 75.

²⁰² PIC Transcript, S F McLennan, 29 November 2000, pp. 668-669.

²⁰³ PIC Transcript, S F McLennan, 29 November 2000, p. 672.

²⁰⁴ PIC Exhibit 75.

²⁰⁵ PIC Exhibit 16.

had left the NSW Police Service. He was unaware of whether Detective Hollis took any such steps.²⁰⁶

- 6.7 During the interview on 6 December 1989, Mitchell referred to talking to a neighbour immediately after the shooting and asking him to telephone the police and ambulance after he had been shot.²⁰⁷ This was obviously a reference to Beecheno. McLennan stated that he did not ascertain from Harborne whether or not the police who had initially investigated the shooting had spoken to Beecheno.²⁰⁸ McLennan did not know if Hollis made any such inquiries.
- 6.8 Mitchell further stipulated during the 6 December 1989 interview that the reason he had not initially told Joachim and Harborne that it was Tanswell who had shot him, was because Tanswell “was friendly with a lot of police and I didn’t know who I could trust.”²⁰⁹ McLennan gave evidence that he did not consider it was relevant to investigate whether or not Tanswell had friendships with the police who had investigated the Dilworth death or the Mitchell shooting because “at that particular time, I suggest that most publicans would be friendly with police.”²¹⁰ This was despite Mitchell’s claim that his premises being searched by Detective Davidson was an example of the influence Tanswell supposedly had with police.²¹¹ The interviews conducted with Hollis in early 2000 indicate that he did not conduct any follow up of the matters raised in evidence with McLennan.²¹²
- 6.9 On the way back from interviewing Mitchell, McLennan and Hollis interviewed and took statements from Mitchell’s sister and her husband. Those statements indicated that at a relatively short time after he was shot, Mitchell claimed to them that his shooter was his employer.²¹³
- 6.10 Between the interview of Mitchell in December 1989 and the interview of Tanswell on 4 December 1991, the only other step taken in the investigation was an unsuccessful attempt to interview Semenak, who Mitchell had claimed was one of the persons who had given false evidence at the Inquest.²¹⁴ In essence nothing happened in both investigations for almost two years. The evidence suggests that the only reason anything further happened was because Mitchell lodged a complaint.²¹⁵

²⁰⁶ PIC Transcript, S F McLennan, 29 November 2000, pp. 676-678.

²⁰⁷ PIC Exhibit 15.

²⁰⁸ PIC Transcript, S F McLennan, 29 November 2000, pp. 679-680.

²⁰⁹ PIC Exhibit 15.

²¹⁰ PIC Transcript, S F McLennan, 29 November 2000, p. 680.

²¹¹ PIC Exhibit 15.

²¹² PIC Exhibit 76.

²¹³ PIC Exhibits 18, 19.

²¹⁴ PIC Transcript, S F McLennan, 29 November 2000, pp. 686-689.

²¹⁵ PIC Exhibits 45, 75, 76.

- 6.11 McLennan agreed that, given the nature of the allegations, that Tanswell was responsible in part for a number of persons giving false evidence at the Inquest, it would have been more appropriate that Tanswell be interviewed after those persons said to have given false evidence were spoken to.²¹⁶ McLennan could not explain why it was that the first person he and Hollis interviewed, once Semenak declined to be interviewed, was Tanswell. In the interview between Hollis and Leonard, Hollis also agreed it would have been more appropriate to interview Tanswell last, after interviewing the witnesses whom it was alleged had given false evidence at Tanswell's request during the Dilworth inquest.²¹⁷
- 6.12 McLennan could not recall the steps he and Hollis took to prepare for the interview with Tanswell. Significantly his duty book recorded that he spoke to Inspector Doyle on the afternoon of 27 November 1991 "re Tanswell". McLennan could not recall why he discussed Tanswell with Doyle within a week of interviewing Tanswell in relation to Mitchell's allegations.²¹⁸
- 6.13 McLennan gave evidence that he and Hollis took a copy of the interviews they had conducted with Mitchell and the brief that had been obtained from the Coroner with them to Queensland where Tanswell was then residing. They conducted two interviews with Tanswell on 4 December 1991 at Southport Police Station.²¹⁹ The first interview lasted approximately 36 minutes and concerned the allegations made by Mitchell in relation to the death of Dilworth. The second interview, which dealt with the allegation that Tanswell had shot Mitchell, commenced at 1:10pm and concluded shortly after 1:21pm, being only 11 minutes in duration.
- 6.14 According to McLennan's evidence, unedited versions of Mitchell's interviews were given to Tanswell. This was despite the concerns Mitchell had expressed in relation to his safety and his allegations concerning Tanswell and the shooting. The copies of the interviews contained Mitchell's residential address in Armidale.²²⁰ Given Mitchell's allegations concerning Tanswell, it was inappropriate to show any document to Tanswell containing Mitchell's current address. Hollis confirmed that during the interviews with Tanswell, he provided him with copies of the records of interviews conducted with Mitchell which contained his then current Armidale address.²²¹

²¹⁶ PIC Transcript, S P McLennan, 29 November 2000, pp. 685, 690-691.

²¹⁷ PIC Exhibit 76.

²¹⁸ PIC Transcript, S P McLennan, 29 November 2000, p. 693.

²¹⁹ PIC Exhibits 46, 47.

²²⁰ PIC Transcript, S F McLennan, 29 November 2000, pp. 695, 703-704.

²²¹ PIC Exhibit 76.

- 6.15 McLennan gave evidence to the Commission that, at the conclusion of the interviews with Tanswell, McLennan and Hollis went to lunch with Tanswell and alcohol was consumed. At the conclusion of the lunch Tanswell drove them both back to Southport Police Station.²²² McLennan conceded that never before or since had he gone off and had a lunch with a person whom he had just interviewed on the basis that they were a suspect in a wrongful death, conspiracy to pervert the course of justice and shooting investigation.²²³ In his interview with Detective Inspector Leonard, Hollis gave a similar account of the lunch.²²⁴ Tanswell's evidence was that he had no recollection of having lunch with the Detectives after the interviews and believed he had gone straight home after the interviews to discuss what had occurred with his wife.²²⁵
- 6.16 In relation to the issue of the lunch the Commission prefers the recollections of McLennan and Hollis. Apart from the fact that they substantially corroborate each other, not only as to the occurrence of the lunch but also what occurred during the lunch, their evidence concerning the lunch is, in effect, evidence against their own interests. Given the impropriety attached to having lunch with Tanswell under those circumstances, the Commission more readily accepts the evidence of McLennan and Hollis in this instance.
- 6.17 There were a number of significant matters arising out of McLennan and Hollis' interviews with Tanswell. In particular, it would seem that there was a need to compare what Tanswell said in the interviews about relevant events with what he had said on earlier occasions. McLennan had no recollection of ever comparing what Tanswell said in the interview, regarding the death of Dilworth, with what he had said in his initial police statement or with the evidence he gave at the Inquest. McLennan's evidence was that he had never seen the transcripts of the interviews until they were produced during the committal proceedings involving Tanswell and the charges relating to the death of Dilworth.²²⁶ In the interview concerning the shooting of Mitchell, Tanswell indicated that one of the original investigating detectives had asked him to try to persuade Mitchell to tell the truth as he "kept changing his evidence in regard to the description of the person that shot him".²²⁷ McLennan gave evidence that neither he nor Hollis followed up this information with Harborne.²²⁸

²²² PIC Transcript, S F McLennan, 29 November 2000, pp. 707-708.

²²³ PIC Transcript, S F McLennan, 29 November 2000, pp. 708-709.

²²⁴ PIC Exhibit 76.

²²⁵ PIC Transcript, M C Tanswell, 30 November 2000, p. 815.

²²⁶ PIC Transcript, S F McLennan, 29 November 2000, p. 720.

²²⁷ PIC Exhibit 46; PIC Transcript, S F McLennan, 29 November 2000, p. 706.

²²⁸ PIC Transcript, S F McLennan, 29 November 2000, p. 706.

- 6.18 After conducting the interviews with Tanswell, Hollis and McLennan conducted interviews with the various people who Mitchell had said had given false evidence in the Inquest. This was contrary to the investigative approach that both McLennan and Hollis agreed would have been the most appropriate, given the allegations that had been made against Tanswell. From those interviews it appears that when the individuals were spoken to they were not questioned as to whether or not they had recent contact with Tanswell.²²⁹ McLennan could not recall ever comparing what those individuals said in the interviews with the evidence they had previously provided to the Coroner.
- 6.19 On 21 January 1992, two days after interviewing Kim Wiggins, McLennan prepared a report addressed to the Commander of the Major Crime Squad, South West Region, suggesting that the file be forwarded to the Commander of Legal Services for assessment as to whether any person should be prosecuted. The report also suggested that a copy be forwarded to the DPP for consideration of prosecution action against Mitchell in relation to perjury committed during the Inquest.²³⁰ Nowhere in that report did McLennan refer to the fact that Mitchell had stated that the reason he had not provided the true identity of the person who had shot him was because Tanswell had friends in the NSW Police Service. This was despite being aware at that time that Tanswell had a close connection with Doyle.
- 6.20 Prior to the report being finalised, McLennan forwarded a copy of the report to Doyle, who at that time was stationed at Broken Hill. McLennan gave evidence that he forwarded a copy of this report to Doyle so that Doyle could “refresh his memory” in relation to his involvement in the investigation of the Dilworth death.²³¹ Doyle was not asked at that time to provide a statement concerning the suggestion that he had been out with Tanswell on the night that Mitchell was shot.²³² In the circumstances of the allegations made by Mitchell, it was inappropriate to forward a copy of the draft review of the investigation to Doyle before any statement was obtained from him in relation to issues raised about the initial investigation into the death of Dilworth. It is surprising that no statement was sought from Doyle at that time as to his whereabouts on the night Mitchell was shot given the contents of Tanswell’s interviews. Hollis, in his interview, indicated that he would have had some input into the preparation of the report, but had no knowledge of it being sent to Doyle.²³³
- 6.21 According to McLennan’s evidence, Hollis and McLennan had lunch again with Tanswell, this time at the Watsons Bay Hotel on 30 January 1992,

²²⁹ PIC Exhibits 48, 49, 50.

²³⁰ PIC Exhibit 51.

²³¹ PIC Transcript, S F McLennan, 29 November 2000, p. 752.

²³² PIC Transcript, S F McLennan, 29 November 2000, pp. 722-723.

²³³ PIC Exhibit 76.

during which they had a few drinks. McLennan had no recollection of what was discussed with Tanswell on that occasion, although he agreed that there had been no final decision made as to whether any charges would be laid against Mitchell as referred to in McLennan's report of 21 January 1992.²³⁴ Detective McLennan conceded in his evidence that his duty book entry in relation to this meeting with Tanswell was false in that it was designed to give the impression that no meal was taken with Tanswell and that the meeting was simply a step in the investigation when it was not.²³⁵ Apart from the entry in Detective McLennan's duty book, no other record of this meeting with Tanswell was made.

- 6.22 Tanswell's evidence concerning this lunch was that it did occur and that he had arranged the meeting with the Detectives because he wanted to find out where the investigation was going and he was looking for a letter of comfort indicating that he would not be charged.²³⁶ Hollis, in his interview, stated that the only time he had a meal with Tanswell was at the conclusion of the interviews in Queensland in December 1991 and he did not attend a lunch at the Watsons Bay Hotel with McLennan and Tanswell.²³⁷
- 6.23 The evidence of Tanswell and McLennan in effect corroborate each other on the issue of Hollis having attended the lunch. Also, given Tanswell's stated reasons for having the lunch, it is unlikely that he would have had it unless the senior officer in charge of the investigation was in attendance. For these reasons the Commission accepts the evidence that Hollis did attend the lunch with McLennan and Tanswell at Watsons Bay on 30 January 1992.
- 6.24 Soon after the lunch at Watson's Bay, McLennan received a fax from Detective Sergeant Michael Hosi from Petersham Police Station dated 6 March 1992. Hosi was the Chief of Detectives at Petersham Police Station from 1990 to the end of 1993.²³⁸ The fax enclosed a letter from Tanswell dated 24 February 1992 addressed to McLennan attaching a statement from Tanswell's wife, a statement from Cochran and diary notations from the Oxford Tavern in relation to Tanswell's whereabouts on 18 August 1988.
- 6.25 Hosi gave evidence to the Commission that he knew Tanswell socially before he was transferred to Petersham Police Station, and that they were friends. Hosi had been entertained on Tanswell's yacht at Hamilton Island on two occasions, the first in about 1990/1991 and the second in about

²³⁴ PIC Transcript, S F McLennan, 29 November 2000, pp. 726-729.

²³⁵ PIC Transcript, S F McLennan, 29 November 2000, pp. 728-729.

²³⁶ PIC Transcript, M C Tanswell, 30 November 2000, p. 816.

²³⁷ PIC Exhibit 76.

²³⁸ PIC Transcript, M Hosi, 13 June 2001, p. 1021.

1993.²³⁹ Hosi stated that he had no recollection of receiving the documentation from Tanswell, and had no idea of how it came to be in his possession.²⁴⁰ He conceded that it was his signature on the fax cover sheet to McLennan dated 6 March 1992 but had no recollection of forwarding the material to McLennan.²⁴¹ McLennan's duty book showed that he attended Petersham Police Station on 6 March 1992 to speak to "Detective Sergeant Hosi re any documents re Mitchell matter".²⁴² McLennan could not remember his discussion with Hosi on that day and could not explain why the documentation from Tanswell was forwarded to him through Hosi.²⁴³

- 6.26 Tanswell gave evidence that he had an ongoing friendship with Hosi, but had no recollection of why the material was sent forwarded to Hosi and not sent directly to McLennan.²⁴⁴ There was no satisfactory explanation provided to the Commission of why Tanswell's alibi statements for his whereabouts on 18 August 1988 were forwarded to McLennan via Hosi, a close personal friend of Tanswell's who had no involvement in the investigation.
- 6.27 On 22 July 1992 Doyle provided a statement confirming that in 1988 he and his wife had attended the musical production 'Les Miserables' with Mr and Mrs Tanswell, although Doyle was unable to recall the actual date in 1988 when this occurred. Doyle's statement was not obtained until almost 4 years after Doyle had first been spoken to about the Mitchell shooting in August 1988.
- 6.28 On 12 September 1996 police executed a search warrant on Tanswell's premises and located two copies of McLennan's report dated 21 January 1992, addressed to the Commander, Major Crime Squad South West Region. Tanswell said in evidence that he had received a copy of the report from Hollis sometime after the lunch at the Watsons Bay Hotel.²⁴⁵ He believed he received a copy of that report as a consequence of the request he made at the lunch for documentation that indicated that he was no longer a suspect. He could not recall where or when he was given a copy of the report, but was sure that he had received it from Hollis.²⁴⁶ McLennan gave evidence that he did not provide a copy of the report to Tanswell.²⁴⁷ Hollis, in his interview, denied giving a copy of the report dated 21 January 1991 to Tanswell.²⁴⁸

²³⁹ PIC Transcript, M Hosi, 13 June 2001, p. 1022.

²⁴⁰ PIC Transcript, M Hosi, 13 June 2001, pp. 1025-1026.

²⁴¹ PIC Transcript, M Hosi, 13 June 2001, p. 1028.

²⁴² PIC Transcript, S F McLennan, 29 November 2000, p. 729.

²⁴³ PIC Transcript, S F McLennan, 29 November 2000, p. 730.

²⁴⁴ PIC Transcript, M C Tanswell, 30 November 2000, p. 782.

²⁴⁵ PIC Transcript, M C Tanswell, 30 November 2000, pp. 817-819.

²⁴⁶ PIC Transcript, M C Tanswell, 30 November 2000, p. 817.

²⁴⁷ PIC Transcript, S F McLennan, 30 November 2000, p. 752.

²⁴⁸ PIC Exhibit 76.

- 6.29 Tanswell gave evidence that he is not certain as to how he came into possession of the report although he stated that to the best of his recollection he received it from Hollis.²⁴⁹ It seems likely on the evidence that the report was provided to him by either McLennan or Hollis. It is not possible on the evidence for the Commission to conclude whether it was Hollis or McLennan who supplied the report. Both deny providing it and Tanswell's recollection as to how he obtained it is not definite. However, the Commission is of the opinion that it was obtained as a consequence of the improper relationship that existed between the two investigating detectives and Tanswell during the course of the investigation.
- 6.30 As a consequence of the submission of McLennan's report of 21 January 1992 to the Coroner's office, the Coroner requested that Julie Cree and Pamela Dilworth be re-interviewed by police.²⁵⁰ Both women were re-interviewed by McLennan. In her interview, Ms Dilworth referred to the fact that after the Inquest had concluded, she had received on her answering machine an anonymous message that said "Malcolm Tanswell hit your brother".²⁵¹ She said that she had provided a taped copy of the message to Detective Doyle. She further indicated that she had the original tape.²⁵² In his response to the Coroner, McLennan made no reference to this additional material, which would not have been known to the Coroner.²⁵³ He did not obtain the tape from Ms Dilworth or carry out any investigations in relation to the message contained on it. While it may be that a copy of the interview with Ms Dilworth was provided with his response to the Coroner, it was a significant omission by McLennan, not to draw the attention of the Coroner to this important piece of additional material. Similarly it was a significant oversight not to carry out any investigations in relation to the message recorded on the tape or to inquire of Doyle what, if anything, he had done after having been given the tape of the message by Ms Dilworth. Hollis in his interview stated that he made no inquiries in relation to the recorded message referred to by Ms Dilworth.²⁵⁴

ASSESSMENT OF THE INVESTIGATION BY DETECTIVES HOLLIS AND McLENNAN

- 6.31 There was a two year delay in the investigation between the interviews with Mitchell in early December 1989 and the interviews with Tanswell in early December 1991. This delay has not been satisfactorily explained and the investigation only progressed after Mitchell had made a complaint. There were a number of matters raised by Mitchell in his interviews that should have been followed up, but were not further investigated.

²⁴⁹ PIC Transcript, M C Tanswell, 30 November 2000, p. 813.

²⁵⁰ PIC Exhibit 53.

²⁵¹ PIC Transcript, S F McLennan, 30 November 2000, p. 732.

²⁵² PIC Transcript, S F McLennan, 30 November 2000, p. 732.

²⁵³ PIC Transcript, S F McLennan, 29 November 2000, pp. 731-736.

²⁵⁴ PIC Exhibit 77.

- 6.32 There were aspects of the investigation by McLennan and Hollis that were inappropriate, such as the lack of a real attempt to interview other witnesses referred to by Mitchell before interviewing Tanswell, despite both officers agreeing that would have been the most appropriate approach to the investigation. The approach to Doyle in November 1991 just prior to the interview of Tanswell also raises questions. It is significant to note that the other witnesses were promptly interviewed after Tanswell was interviewed. A number of obvious inquiries were not undertaken both prior to and after the interviews of Tanswell. The investigating detectives did not properly compare the information provided by Tanswell in his interviews with them with statements made by Tanswell and others on other occasions, and in particular during the Inquest.
- 6.33 The Commission is of the view that it was improper for the investigating detectives to join Tanswell for lunch in Queensland, having just interviewed him as a suspect in relation to three serious criminal offences. It was a serious error in judgment to provide copies of Mitchell's records of interview, which contained his current address, to Tanswell. Similarly it was improper for the investigating detectives to have lunch with Tanswell on 30 January 1992 at the Watsons Bay Hotel at a time when the investigation into the allegations made by Mitchell against Tanswell had not been concluded.
- 6.34 The Commission is further of the view that it was improper for Detective McLennan to make a false entry in his duty book concerning the lunch on 30 January 1992. The provision of the report dated 21 January 1992 to Tanswell was also improper. Although the evidence is unsatisfactory as to who provided the document to Tanswell and by what means, both investigating detectives should share the responsibility due to the improper manner in which they dealt with Tanswell during the course of the investigation.
- 6.35 The Commission is of the opinion that the investigation by Hollis and McLennan was seriously flawed, both by the investigative methods adopted and by the improper conduct of both the investigating detectives.

EXTORTION LETTERS RECEIVED BY TANSWELL FROM MITCHELL

- 6.36 There was considerable evidence given to the Commission concerning the receipt by Tanswell of letters from Mitchell seeking the payment of money. Cochran gave evidence that on one occasion while working at the Oxford Tavern, he was in the office section of the Hotel and heard Tanswell refer to an extortion letter from Gary Mitchell relating to the Dilworth matter. This occurred after Mitchell was no longer working at the Hotel.²⁵⁵

²⁵⁵ PIC Transcript, R P Cochran, 23 November 2000, pp. 320-325.

- 6.37 Ms Wiggins gave evidence that in 1991, after Tanswell had left the Oxford Tavern, and while she was working for Tanswell collecting rent from properties he owned, she received two letters in her letterbox.²⁵⁶ One letter had her name on it and the other had Tanswell's name on it. The letters stated that the author knew what had happened at the Hotel in relation to Dilworth and that if the author was not paid \$20,000 the author would tell the police.²⁵⁷ Ms Wiggins gave evidence that she telephoned Tanswell in Queensland who told her that he would contact Allan Doyle and that Doyle would contact her. According to Ms Wiggins evidence, a short time later Doyle contacted her and told her to take the letters to Flemington Police Station, which she did. Doyle had given her the name of a particular police officer to see but she could not remember the name. The officer took possession of the letters and she heard no more about them.²⁵⁸ Ms Wiggins also gave evidence that she took a typewriter with her to the Flemington Police Station as she thought her father might have been the author of the letters. The police advised her that the letters had not been written on that typewriter.²⁵⁹
- 6.38 According to Doyle's evidence, on an occasion when he was working outside of Sydney, he was contacted by Flemington Police or the Major Crime Squad and told that Ms Wiggins wanted to speak with him. He phoned Ms Wiggins and she told him that she had received two letters, one addressed to her and the other to Tanswell, which were in the nature of blackmail and concerned the Dilworth inquiry. He told her to report it to the police and believes that he may have told her to report it to the Major Crime Squad, which was housed within Flemington Police Station.²⁶⁰ Doyle's recollection was that he did not speak to Tanswell regarding the letters, as he understood that Ms Wiggins had already done so. This was despite the fact he was concerned about the implications of the letters for Tanswell. Doyle did nothing in relation to the Dilworth investigation, the reason advanced being that it was some time until he returned to the Metropolitan area.
- 6.39 Tanswell gave evidence that he had received letters from Mitchell demanding money both before and after he sold the Oxford Tavern. The letters had a common theme in that Mitchell sought the payment of money, or wanted Tanswell to assist in his claim for workers' compensation in relation to the shooting, or he would change his evidence in relation to how Dilworth was evicted from the Hotel.²⁶¹ Tanswell gave evidence that he had not taken the letters seriously and that he had not referred them either to the police or to his workers compensation insurer.

²⁵⁶ PIC Transcript, K D Wiggins, 20 November 2000, p. 547.

²⁵⁷ PIC Transcript, K D Wiggins, 20 November 2000, p. 71.

²⁵⁸ PIC Transcript, K D Wiggins, 20 November 2000, pp. 71-73.

²⁵⁹ PIC Transcript, K D Wiggins, 20 November 2000, p. 78.

²⁶⁰ PIC Transcript, A R Doyle, 12 June 2001, p. 961.

²⁶¹ PIC Transcript, M C Tanswell, 30 November 2000, pp. 784-787.

- 6.40 Tanswell also gave evidence that, not long prior to being interviewed by Hollis and McLennan, Ms Wiggins contacted him and told him that she had received a letter making a demand for money. She led him to believe that Mitchell was the author of the letter. The letter contained a threat that evidence concerning the Dilworth matter would be changed if the money was not paid. Tanswell said that he told Ms Wiggins to take the letter to the police and that she replied that she had already done so. He could not exclude the possibility that he told her to take it to Doyle. Soon after the conversation with Ms Wiggins he was contacted by Hollis and McLennan. During one of the interviews it was noted that there was a separate investigation by members of the Major Crime Squad at Flemington in relation to a letter received by a former employee of Tanswell.²⁶² This would appear to be a reference to the letter Ms Wiggins said she received.
- 6.41 When police executed a search warrant on Tanswell's premises they located an extortion letter.²⁶³ Ms Wiggins gave evidence that it was not the letter she received and that she had not seen it except when shown to her during court proceedings.²⁶⁴ Tanswell gave evidence that he believed he received the letter after the interviews with Hollis and McLennan. He said that he forwarded a copy of the letter to the Major Crime Squad in 1992 although he could not recall if he forwarded it to any particular officers. According to Tanswell, he believed that the letter came from Mitchell and that the text of it indicated that Ms Wiggins had a role in the preparation of it.²⁶⁵ The text of the letter suggests, however, that the author had more than a passing knowledge of legal processes, which was unlikely to be possessed by Ms Wiggins or Mitchell.
- 6.42 No extortion letters or records of any investigation into them have been located in the records of the Major Crime Squad. Hollis had no recollection of ever receiving an extortion letter from Ms Wiggins or from Tanswell.²⁶⁶
- 6.43 The extortion letters were an important aspect of the investigation of the allegations by Mitchell for a number of reasons. Firstly, they suggested a reason for animosity between Mitchell and Tanswell, and confirmed that Mitchell had asserted for a long time that his evidence at the Inquest was false. They were also important in relation to an assessment of the

²⁶² PIC Exhibit 47.

²⁶³ PIC Exhibit 36.

²⁶⁴ PIC Transcript, K D Wiggins, 20 November 2000, p. 78-79.

²⁶⁵ PIC Transcript, M C Tanswell, 30 November 2000, pp. 777, 787, 805.

²⁶⁶ PIC Exhibit 47.

credibility of Mitchell. Due to the lack of records concerning any investigation into those letters it is difficult to make a conclusion in relation to this aspect of the inquiry. What can be said is that it is surprising that Doyle took no steps to follow up Ms Wiggins initial discussions with him concerning her receipt of the letters. Furthermore, it is also surprising that McLennan and Hollis appear not to have followed up the matters raised by Tanswell during the interviews, in particular the suggestion that there was a separate investigation into the letters underway at the time of the interviews.²⁶⁷

²⁶⁷ PIC Exhibit 47.

7. THE INVESTIGATION BY DETECTIVES LENON AND JAMES OF THE DEATH OF PHILLIP DILWORTH, THE SHOOTING OF GARY MITCHELL AND THE DEATH OF GARY MITCHELL

INTERVIEWING WITNESSES

7.1 Detective Sergeant Michael Lenon and Detective Senior Constable Garry James of the North West Region Major Crime Squad were directed on 26 March 1996 to investigate the death of Gary Mitchell at Armidale on 24 March 1996. They were provided with documents that included the Coronial Brief relating to the death of Dilworth in 1986 and files relating to the investigation into the shooting of Mitchell in 1988. Lenon read the material while travelling to Armidale where they proceeded to speak to members of Mitchell's family. Documents were also located in Mitchell's premises, which included material relating to his victim's compensation claim and the workers compensation proceedings.

7.2 Both Lenon and James state that within a short period of time, they held concerns about the manner in which the previous investigations had taken place.²⁶⁸ Their concerns were heightened by the discovery of a newspaper article at Mitchell's premises. Lenon gave the following evidence with respect to these concerns:²⁶⁹

Q. When you reached Mr Mitchell's premises, were there materials there which also caused you some concern?

A. Yes, I think it was the following day we - with the permission of his family, documentation was recovered from Mitchell's premises. That included a lot of paperwork relating to his various compensation claims, victims compensation claims and a future or a current compensation claim that was ongoing at the time of his death. I suppose the only other document that was present which did cause me concern at that time was there was a 'Naked City' article from a newspaper which depicted Detective John Davidson and it had a story which related to a task force that we had been involved on together and I made that - made that known to Mr Morgan when I got back to Sydney because Davidson's name had popped up in the documentation that I had read on my way up to Armidale, so to me it was relevant that that had been found at his home.

Q. Did the article refer to you by name?

A. It did, yes.

²⁶⁸ PIC Transcript, M R Lenon, 14 June 2001, p. 1047; G J James, 14 June 2001, p. 1092.

²⁶⁹ PIC Transcript, MR Lenon, 14 June 2001, pp. 1047-1048.

- Q. Having directed the attention of Mr Morgan to that issue, did he give you permission to continue to investigate?
- A. Well, yes. It didn't appear to be a major concern to him. I just wanted it known to him that there was an article in existence. It did mention my name and it referred to Davidson and that, of course, Davidson's name had come up in the paperwork or in the long-running saga, so to speak, which commenced in '86.
- Q. Was the reference to Davidson in the paperwork in the context of the execution of a search warrant on Mitchell's premises in about 1988 —
- A. Yes.
- Q. — which led to Mitchell being charged with some matters?
- A. Yeah, he was charged with a goods in custody of a - I think I've always referred to it as a Telecom towel, but I believe it's actually a towel dispenser, but I don't think the initial warrant that was done on, or - whether there was a search warrant, I'm not sure - whether the original search on Mitchell's, say, Sydney premises didn't relate to him from my understanding at that time.
- Q. Did the newspaper article have anything to do with Mitchell?
- A. No, it didn't. It referred to the arrest of some fellows for an Armaguard robbery around the time of the task force, which was running in '91.

7.3 As a result of the information gathered early in the investigation by Lenon and James, it was expanded to include a reinvestigation of the death of Dilworth and the shooting of Mitchell in 1988.

7.4 The Commission is of the opinion that the investigators embarked on the investigation with a vigour that had been lacking in the past. Various strategies were adopted including telephone intercepts and surveillance of Tanswell and others, and a Media Release, which was successful in that it led to Kim Wiggins making contact with the investigators and eventually making the statement referred to previously. They also embarked upon an extensive search for witnesses of the various events and eventually gathered a substantial volume of evidence.²⁷⁰

7.5 On 3 April 1997 Lenon submitted a request for advice from the DPP through the Commander Major Crime Squad North West as to whether criminal proceedings could be instigated against Tanswell, Semenak and Peterson.²⁷¹ In accordance with the advice received from the DPP, Tanswell and Semenak were arrested and charged in connection with the death of Dilworth. Peterson was also charged at about the same time with an offence of conspiring to pervert the course of justice in relation to what was alleged

²⁷⁰ PIC Exhibit 85.

²⁷¹ PIC Exhibit 84.

to be his false statement regarding Dilworth's removal from the Hotel. No charges were laid at that time in relation to Mitchell's shooting in 1988 or his death on 24 March 1996.

- 7.6 Lenon and James continued to investigate Mitchell's shooting and death and eventually enlisted the assistance of the Crime Commission. The Crime Commission assisted the detectives in the ongoing investigation by conducting a number of private hearings.
- 7.7 On 1 December 1997 Lenon submitted a report raising concerns in relation to the police investigations of all the matters. This report followed discussions with the Office of the DPP who also had concerns in relation to the police investigation.²⁷² The DPP conveyed the concerns to the Commissioner of Police. As a result, Internal Affairs directed that the investigation being conducted by Lenon and James, (then known as Operation Manganite²⁷³), should be expanded to incorporate an investigation into the integrity of the original investigations into the murder of Dilworth and the shooting of Mitchell. As Lenon and James were then attached to the Crime Agencies Command, the expanded investigation (later renamed Strike Force Carbonia²⁷⁴) was conducted within that command under the direction of Detective Inspector Geoff Leonard. The investigation continued as a joint operation under the direction of Leonard, Lenon and the Crime Commission. The report prepared by Detective Inspector Leonard was a valuable guide in the conduct of the Commission's investigation.

THE COMMITTAL PROCEEDINGS

- 7.8 The committal proceedings against Tanswell and Semenak, in relation to the charges against them for the murder of Dilworth, commenced on 15 June 1999. The proceedings concluded with the ruling by the Magistrate on 17 January 2000 that the defendants should be discharged pursuant to section 41(6) of the *Justices Act 1902*. The DPP was subsequently ordered to pay costs. Wiggins and Peterson, who had provided statements as described earlier (changing their original version of the circumstances of Dilworth's removal from the Oxford Tavern), gave evidence and were cross-examined at length. The Magistrate was critical of their evidence, for reasons already discussed. Lenon and James were also subjected to extensive cross-examination over a number of days. They were questioned at length about their investigation and the methodology adopted. Counsel for the defendants made many criticisms of their conduct.

²⁷² PIC Exhibit 83.

²⁷³ PIC Transcript, M R Lenon, 14 June 2001, p. 1051.

²⁷⁴ PIC Transcript, M R Lenon, 14 June 2001, p. 1052.

IMPROPER CONDUCT DURING THE INVESTIGATION

- 7.9 Many of the issues raised in cross-examination of the investigators during the committal proceedings did not warrant the attention of the Commission's investigation. However, some matters occurred in the course of the investigation which require consideration.
- 7.10 Kim Wiggins was placed under the Witness Protection Program after she made contact with Lenon and made a statement implicating Tanswell and Semenak in the death of Dilworth. She was relocated and purchased a new motor vehicle in her name but with a different address to where she was living. However on 20 November 1997, after leaving a gymnasium and returning to her vehicle, she found a message comprised of cut-out pieces of newspaper or magazine fixed to her windscreen and bearing the words "change your story slut or die".²⁷⁵ Her whereabouts may have been ascertained by accident, or alternatively there may have been a breach of security within the Witness Protection Unit. No evidence has been obtained either way, and the circumstances of the note being placed on her windscreen remain unknown. There is no evidence that any police officer was involved in revealing her whereabouts.
- 7.11 During the committal proceedings it was put to Lenon that he and James had been unnecessarily aggressive during interviews with witnesses in order to badger them into making statements which supported the prosecution case. In particular, it was suggested that Garry William Peterson had been threatened during his interview, and that when questioning Davidson voices had been raised and the table thumped. Furthermore, during the interview of Czyniewski, an officer of Marrickville Council who had been interviewed by the detectives on 19 August 1996 in relation to construction work at the Oxford Tavern, the police had adopted a 'good cop/bad cop' routine. During their evidence before the Commission both Lenon and James denied any excessive use of vigour or any such device to intimidate witnesses. Lenon gave the following evidence:²⁷⁶

Q. Was that the fact? Did you adopt such a device in an endeavour to get people to give you the evidence that you wanted?

A. No. It wasn't something that was planned it was more a case of - I considered myself to be a more calmer person than Garry, Garry James. Garry does get excitable. He does get worked up a bit. But, I mean, it wasn't a premeditated thing whereby we would say, "Oh, well, Garry, you're the good cop again - the bad cop again", it wasn't like that. It was just the way things turned out when we spoke to people. But, no, it wasn't - it wasn't planned at all, no.

²⁷⁵ PIC Transcript, K D Wiggins, 20 November 2000, pp. 77-78.

²⁷⁶ PIC Transcript, M R Lenon, 14 June 2001, p. 1055.

7.12 Peterson made a statement on 20 December 1986 to the effect that he was sitting outside the Oxford Tavern and saw Dilworth harmlessly escorted from the hotel.²⁷⁷ Peterson maintained that account when interviewed by Lenon and James on 2 July 1996. Peterson subsequently complained about the conduct of Lenon and James, having been taken by Tanswell to see Trevor Nyman, a solicitor. After Peterson was arrested and charged with conspiracy to pervert the course of justice, he retracted his earlier statement and admitted that he had not been present at the Hotel at all on the day in question. In evidence before the Commission he said he now had no complaint about the way he was interviewed on 2 July 1996 and his complaint at that time was an attempt to impede the police investigation. Peterson gave the following evidence in relation to this matter:²⁷⁸

Q. Do you still complain about the way in which you were treated by those detectives when they interviewed you at Five Dock?

A. No.

Q. Why did you complain at the time in 1996?

A. So as to attempt to stop the police or get the police off the case. They wouldn't let it drop, see.

Q. Were you asked to do something in relation to obtaining a copy of the statement or interview that you had with the police at Five Dock?

A. Yes, I was asked to - or Mr Nyman drafted up a letter requesting that a copy of that interview be sent out to me, but it was actually related through to another solicitor that I rang up, I was asked to ring up, forwarded that copy again on to Mr Nyman or Mr Tanswell. It wasn't done directly from Mr Nyman because it looked suspicious.

Q. Were you later told whether a copy of the statement had been obtained?

A. Yes, I had. I did ask that and they had - and Mr Tanswell had seen that interview, yes, or that record of interview.

...

Q. Eventually - I think on 16 September 1997 - you made another statement, did you not, about all of these events going back to the death of Mr Dilworth?

A. What year was that, sorry?

Q. It was 16 September 1997.

A. '97, yes.

²⁷⁷ PIC Exhibit 1.

²⁷⁸ PIC Transcript, G W Peterson, 21 November 2000, p. 118.

Q. In that statement you gave an account similar to that which you've given today about being asked to make the statement and about the fact that you hadn't been at the hotel on the night of Mr Dilworth's injuries?

A. That's correct.

Q. Why was it that you at that time decided to say something different to what you had said before?

A. Well, I'd been arrested and I was going to be charged, or I'd been charged, on some very serious charges, so as far as I was concerned, I put my hand up and said, "Yep, it's enough. I'll tell you what you want to know. Ask me the questions and I'll give a statement."

7.13 Lisa Selby made a statement to Lenon and Detective Bostock on 7 February 1997 at Parramatta Police Station, which was typed and then signed by her.²⁷⁹ In her statement she said that she saw Tanswell punch Dilworth about the head a number of times with a clenched fist in the bar. She said that they then moved out of her sight through the doors, towards Rita's Restaurant, through which she could hear noises like the fight was continuing. In her statement she then said that after "a matter of minutes I think" Tanswell came back into the bar area with a small amount of blood on his shirt.²⁸⁰ She also gave details of conversations with various persons after the occurrence and provided a detailed description of the Hotel. The statement comprised 21 paragraphs and occupied six pages each of which was signed by Selby. As mentioned previously, on the following Monday Selby advised Lenon that she wanted to retract the statement. She said that Lenon would not allow her to do so but told her that she could make a further statement. She also said that Lenon would not give her a copy of the statement. On 5 March 1997 she instructed a solicitor to write a letter to Lenon on her behalf with what she now describes as a complaint, and which contained a request for a copy of the statement "so that Ms Selby can reconsider the contents of that statement and, where necessary, submit a further statement which more accurately reflects her recollection of the events about which you questioned her".²⁸¹

7.14 When Selby was interviewed by an officer from the DPP before the committal, she said she retracted her statement. As a result, she was not called as a witness at the committal proceedings.²⁸²

7.15 After appearing before the Crime Commission in 1999 Lisa Selby provided another statement in which she endorsed, in short form, the substance of

²⁷⁹ PIC Exhibit 25.

²⁸⁰ PIC Exhibit 25.

²⁸¹ PIC Exhibit 68.

²⁸² PIC Transcript, L van Woudenberg, 22 November 2000, pp. 219-220.

the allegations made in the original statement to Lenon.²⁸³ Selby gave the following evidence before the Commission:²⁸⁴

Q. Why did you complain? What was it that you complained about.
A. I felt I'd been pressured too much.

Q. In what way were you pressured?
A. Pressured into answering lots of different questions.

Q. By either of the two officers in particular?
A. No I won't really say either, but I was very pressured and I had very - I was finding it very difficult to remember - very difficult to remember things that happened so many years ago.

7.16 She was questioned further as follows:²⁸⁵

Q. No, I merely asked you to indicate what portions of the statement you say are untrue or inaccurate.
A. At the time when I did in fact first retract my statement, it was a gut feeling that I had. I didn't have a copy of my statement originally from which to make a complaint. I was given this particular document. I was given - it was given to me by Janis Watson-Wood [sic]. That is the first time I saw this document. I retracted it without even looking at it.

Q. Yes.
A. I knew the information that was contained - I knew that - I had a gut feeling that I - that, you know, the statement wasn't true and correct but I cannot sit here today and tell you every single thing that is untrue. That has been picked out already and I have sent my statement with the Crime Commission, which is the statement that I made in October of this year - sorry on 7 October last year.

7.17 Lenon denied putting pressure upon Selby or putting words into her mouth. He gave the following evidence to the Commission:²⁸⁶

Q. Did she have an instant recall of the incident?
A. I wouldn't say instant, no. She remembered certain things, yes, straightaway, but there was - there was a lot of discussion about it as I say, because it had happened so long ago. There'd had been a considerable amount of time that had passed and it was a matter of trying to jog her recollection in relation to it.

²⁸³ PIC Exhibit 26.

²⁸⁴ PIC Transcript, L van Woudenberg, 22 November 2000, p. 221.

²⁸⁵ PIC Transcript, L van Woudenberg, 22 November 2000, p. 226.

²⁸⁶ PIC Transcript, M R Lenon, 14 June 2001, p. 1057.

- Q. When it came to the words put in her statement, did you take any steps to ensure that she adopted those words?
- A. Oh, yes. Look, I mean, I think I lost - I would have lost count at the amount of times that I said to her words to the effect - I can't remember exactly what I said to her - but it was "Are you sure? Can you remember this happening? Can we put this in your statement?" and things along that line. That was adopted with basically each issue that appeared in her statement.

- 7.18 Lenon said that he had planned to have Selby adopt the statement on Monday in a recorded interview. However, Selby rang on Monday, quite upset and indicated that she wanted her statement back prior to her attending the Parramatta office that afternoon. Lenon spoke to Superintendent Morgan and Inspector Howe to alert them to the fact that she was hostile.²⁸⁷
- 7.19 Prior to speaking to Lenon and Bostock, Selby had never been interviewed by police about the Dilworth incident. Lenon said that it was a matter of luck that he had been able to locate her and arrange for her to attend for the interview. Lenon explained in evidence to the Commission that he declined to provide Selby with a copy of the statement because the search of Tanswell's home prior to his arrest had revealed that he was already in possession of police documents, including, in particular a copy of the interview between Lenon and Czyniewski from Marrickville Council. As a result a policy was adopted that copies of statements would not be given to the witnesses.²⁸⁸
- 7.20 The circumstances surrounding the statement given by Selby and her subsequent retraction of it were unfortunate. The subsequent statement to the Crime Commission in 1999 repeated the substance of her first statement to Lenon and Bostock and would have been a valuable addition to the prosecution case at the committal proceedings. However, the Commission is of the opinion that the conduct of Lenon and Bostock should not be assessed as misconduct. Selby seems to have overreacted perhaps after the full significance of the making of the statement implicating Tanswell became apparent to her. Her wish to retract her statement without even seeing it, and then eventually providing a statement consistent in substance with the original statement, are at odds with misconduct by the investigators. Similarly, withholding a copy of her original statement was reasonable in the circumstances of the earlier experience in relation to Tanswell having obtained copies of records being created by the investigators. Nevertheless, it is regrettable that Lenon did not apply sufficient tact to preserve the probity of a valuable addition to the prosecution case.

²⁸⁷ PIC Transcript, M R Lenon, 14 June 2001, p. 1058.

²⁸⁸ PIC Transcript, M R Lenon, 14 June 2001, p. 1060.

7.21 On 6 September 1996, in the course of their investigation, Lenon and James attended the home of Joachim who had been involved in the investigation into the shooting of Mitchell. Using a computer in Joachim's home a statement was taken from him setting out his participation in the investigation. Joachim's account of his dealings with Mitchell was significant in light of Mitchell's claim that he had told Joachim, much earlier than his statement of 6 December 1989, that Tanswell was responsible for his shooting. In his statement Joachim stated:²⁸⁹

... I can only say that I never saw the person Mitchell after I saw him at the hospital the time I have mentioned and I certainly don't remember meeting him at a Hotel and him telling me the person's name ...

7.22 In his statement Joachim said that he had been informed by the officer in charge of Burwood, Chief Inspector Melrose, that all his official diaries and records had been inadvertently destroyed. Prior to the committal Joachim's duty book was located and it was found to contain an entry for 17 October 1988 relating to a meeting with Gary Mitchell at the Royal Sheaf Hotel.²⁹⁰ After consultation with Janis Watson-Woods of the Office of the DPP, Lenon and James interviewed Joachim again on 29 July 1999 regarding the entry in his duty book. In the interview Joachim said that he was able to recall the meeting at the Royal Sheaf Hotel but that Mitchell had not been able to offer any further information and it had been a waste of time.²⁹¹

7.23 Lenon and James both admitted in evidence that prior to making the statement on 6 September 1996, Joachim had told James (who in turn told Lenon) that he had a further meeting with Mitchell but refused to include it in his statement. Both officers admitted that the version Joachim included in his statement was misleading.²⁹² Lenon stated that he allowed the statement to be in that form because "that was the statement that he was prepared to make".²⁹³ James claimed in evidence that he did not accept that Joachim's duty book had been destroyed. He said that he had eventually located it and brought the entry recording the further meeting on 17 October 1988 to the attention of the DPP. He said that following his disclosure to the DPP, it was agreed that he and Lenon should reinterview Joachim, which they did on 29 July 1999.²⁹⁴

²⁸⁹ PIC Exhibit 88.

²⁹⁰ PIC Exhibit 41.

²⁹¹ PIC Exhibit 89.

²⁹² PIC Transcript, M R Lenon, 14 June 2001, p. 1069; G J James, 14 June 2001, p. 1106.

²⁹³ PIC Transcript, M R Lenon, 14 June 2001, p. 1070.

²⁹⁴ PIC Transcript, G J James, 14 June 2001, pp. 1108-1109.

- 7.24 Lenon and James provided a brief to the DPP containing the statement of Joachim of 6 September 1996. On the advice of the DPP Tanswell and Semenak were arrested on 13 September 1997.
- 7.25 Submissions on behalf of Lenon accept that Joachim's statement dated 6 September 1996 should have been accompanied by a briefing note or memo to the effect that other evidence may be forthcoming from Joachim. Lenon's legal advisors suggest that this was not misconduct, but an oversight due to 'human error'.²⁹⁵
- 7.26 The Commission is of the view that the failure to bring to the attention of the DPP the matter mentioned by Joachim to James until mid-1999 was unsatisfactory. It is clear that the matter should have been the subject of a covering report so that the DPP were aware of what was a significant matter in the context of the credibility of Mitchell's statements.
- 7.27 The Commission is therefore of the view that the conduct of Lenon and James in this instance amounts to misconduct.

²⁹⁵ PIC Exhibit 101.

8. TANSWELL'S INFLUENCE WITH NSW POLICE OFFICERS

8.1 There is an obvious thread which links Tanswell to the death of Dilworth on 15 December 1986, the shooting of Gary Mitchell at Concord on 18 August 1988 and the murder of Gary Mitchell at Armidale on 24 March 1996. The following facts show Tanswell to be a common denominator throughout that activity:

- Dilworth was seen being ejected from the Oxford Tavern by Tanswell;
- The allegations of Tanswell concerning Mitchell's theft from the Hotel which were the alleged basis for the search of Mitchell's premises on 12 February 1988;
- At the time of the shooting of Mitchell, the limited information he then gave of the details of the shooting and the shooter included words connecting the shooting to the Oxford Tavern;
- The existence of the extortion letters, which threatened to expose Tanswell's role in Dilworth's death, and which Tanswell attributed to Mitchell; and
- Mitchell's death occurred two weeks after the service of a subpoena in proceedings brought against Tanswell, requiring the production of documents relating to the investigation into the shooting.

8.2 Those links become even more apparent when consideration is given to the direct allegations of Mitchell, Wiggins, Peterson and Selby concerning Tanswell's violence towards Dilworth before his death, and Mitchell's allegations that Tanswell shot him on 18 August 1988.

8.3 In view of that scenario, it is disturbing to note the following events and circumstances which emerged from the evidence given before the Commission in relation to the investigations carried out into those offences:

- The initial investigation into Dilworth's death:
 - a. the degree of association between Tanswell and police from Petersham Police Station, including the provision of free alcohol; and
 - b. the development of the friendship between Tanswell and Doyle from the commencement of the investigation and throughout the period when the inquest had not concluded, and thereafter;

- The search of Mitchell's premises:
 - a. the lack of adequate justification for the search by the police; and
 - b. the inference that the search by the police was instigated by Tanswell to intimidate or harass Mitchell;
- The initial investigation of the shooting of Mitchell:
 - a. Detective Sergeant Harborne was a friend of Tanswell's;
 - b. Tanswell was a friend of McLachlan who visited Mitchell in hospital;
 - c. the friendly attitude immediately adopted by Harborne and Joachim towards Tanswell, including drinking beer with him, shortly after the investigation commenced; and
 - d. the claim by Mitchell that he told Joachim on 17 October 1988 that Tanswell was responsible for the shooting, and the failure by Burwood Police to take any action until Mitchell attended Burwood Police Station on 24 November 1989;
- The second investigation of the shooting of Mitchell:
 - a. the failure of Hollis and McLennan to take any active steps to investigate the allegations against Tanswell for nearly two years;
 - b. almost the first active step taken was to speak to Tanswell;
 - c. after speaking with Tanswell, McLennan and Hollis then spoke with Doyle;
 - d. the inappropriate lunches with Tanswell;
 - e. the provision of documents to Tanswell; and
 - f. the fax to Hosi of the alibi statements of Tanswell;
- The investigation of Mitchell's death:
 - a. the contact with Tanswell when the subpoena was served; and
 - b. Tanswell's possession of police documentation.

8.4 In evidence before the Commission, Tanswell made no secret of his technique of cultivating police. In that regard he gave the following evidence:²⁹⁶

Q. Do you agree with this proposition, that your cultivation of Officers Hollis and McLennan, on what you've told us, led to their provision to you of an internal police document, that being the report of 21 January '92?

A. Well, the cultivation of one lunch, as I recall. I don't accept that's cultivation. I think that's a business lunch that put me in a better position to communicate with these people and perhaps get me a better result, but that's how I did business. That's how I had my meetings, not just with the police but with everybody.

Q. Yes. You treated police who were investigating you in no different way to the way you treated other business people - council workers, people you had business dealings with?

A. Treated them pretty much the same way, yes. I treated them as human beings that had a particular job to do and I had a job to do and my way of bringing the two parties together is over a luncheon table.

Q. Your aim being, in such circumstances, that hopefully there would be some result advantageous to yourself as a result of the meeting?

A. Yes, I would have a meeting to try to get the best possible result. On the downside, of course, having a meeting with these people is always difficult because there's a good chance it's not all one-sided. I was very conscious of my conversation with these people and I came to them with what I felt was a legitimate request.

8.5 This evidence must be understood in the context of Tanswell's earlier evidence that he had deliberately endeavoured to cultivate the custom of officers from Petersham Police Station.

ASSESSMENT OF TANSWELL'S EVIDENCE IN RELATION TO HIS RELATIONSHIP WITH POLICE

8.6 Tanswell admitted that it was his policy to encourage Petersham Police to attend the Oxford Tavern, partly to profit from their trade, and partly to establish a presence of police in the Hotel. The Commission accepts the evidence of Wiggins, McLachlan and others that police were provided with free or cheap beer. No doubt such a practice enabled Tanswell to entice police to attend the Hotel and also to maintain the goodwill of police at Petersham in relation to requests for assistance at the Hotel. In 1986, such practices were perhaps not uncommon and were acceptable. However, by current standards the practice of providing police with free or cheap liquor is not acceptable. There is no specific evidence in this matter that

²⁹⁶ PIC Transcript, M C Tanswell, 30 November 2000, p. 887.

Tanswell exploited his relationship with police when issues of the investigation of offences involving the Hotel arose. However, his close personal relationship with police officers had that potential and can, and in this case did, give the appearance that police were deflected from a full investigation of Dilworth's death due to cultivated feelings of goodwill towards the licensee.

- 8.7 The evidence shows that in one form or another Tanswell maintained a sphere of influence within the NSW Police Service. The extraordinary extent of his personal associations with police officers cannot be attributed solely to the business he conducted as the licensee of the Oxford Tavern.
- 8.8 The situation must be understood against the background that from 15 December 1988, according to the evidence later given by Mitchell, Wiggins, Peterson and Selby, Tanswell had cause to be very concerned about the prospect of a vigorous police investigation revealing his connection with the Dilworth death. It would be naive to believe that the growth of his friendship with Doyle and other police from that point was a natural occurrence.
- 8.9 The Commission is of the opinion that Tanswell's evidence explaining his association with police officers is not credible. However, there is insufficient evidence for the Commission to conclude that the actions of any particular police officer constituted misconduct (other than such actions identified earlier). Furthermore there is insufficient evidence for the Commission to conclude that any officer was engaged in a conspiracy to pervert the course of justice or otherwise conceal Tanswell's involvement in any of the offences as a result of their friendship.

ASSESSMENT OF CONDUCT OF TANSWELL'S POLICE ACQUAINTANCES

- 8.10 It is fortunate for many of the police who dealt with Tanswell that they are no longer members of the NSW Police Service. Otherwise it would be recommended that consideration be given to administrative or disciplinary action against them with respect to their dealings with Tanswell.
- 8.11 The woeful history of the initial investigations is a salutary lesson on the need for investigating police to be circumspect in their social dealings and relationships with persons connected with the subject matter of their enquiries. Even if there was not an actual subversion of the investigation process, there is certainly the distinct appearance of the possibility of such corruption having occurred. That in itself is unacceptable in terms of maintaining public confidence in the NSW Police Service and the criminal justice system.

- 8.12 In their submissions, the NSW Police Service note that the Code of Conduct and Ethics published in August 1999 sets out standards of behaviour in relation to the acceptance of gifts or benefits, which may prevent a similar situation arising. The NSW Police Service further notes that the introduction of breath testing of police on duty has reduced the incidence of police drinking on duty, “such that the ‘six-pack for the night shift’ type of largesse described in the evidence has been significantly eroded”.²⁹⁷
- 8.13 Submissions on behalf of the NSW Police Service note that present procedures would “mitigate against the possibility of partiality by local police in the investigation of a suspicious death such as Dilworth”, as it is now policy that all suspicious deaths are to be considered as potential homicides and are to be referred to Crime Agencies Command for initial investigation.²⁹⁸
- 8.14 The final phase of the investigation represents the opposite end of the spectrum and is a lesson on the need for investigators to maintain tact and integrity, even where the investigation is being pursued with initiative and vigour. Excessive enthusiasm in the form of pressure on witnesses ultimately can be as counter-productive to the pursuit of justice as inaction. Similarly, acquiescence in the provision of misleading statements as an indulgence to colleagues can negate the benefits of an otherwise effective investigation.
- 8.15 It should be acknowledged that the internal investigation under the direction of Detective Inspector Leonard, with the assistance of the Crime Commission, had addressed many of the failures referred to above and has provided the basis for much of the evidence led before the Commission.

²⁹⁷ PIC Exhibit 102.

²⁹⁸ PIC Exhibit 102.

9. AFFECTED PERSONS

- 9.1 Persons against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation, are 'affected' persons for the purposes of a Report to Parliament by the Commission.
- 9.2 The Report to Parliament must comply with section 97(2) of the *Police Integrity Commission Act 1996*. That section provides that:
- (2) The report must include, in respect of each 'affected person', a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:
 - (a) the prosecution of a person for a specified criminal offence;
 - (b) the taking of action against the person for a specified disciplinary offence;
 - (c) the taking of action (including the making of an order under section 181D of the *Police Service Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer;
 - (d) the taking of reviewable action within the meaning of section 173 of the *Police Service Act 1990* against the person as a police officer.
- 9.3 In discharging its functions under section 97(2) the Commission is mindful of the provision of section 40 of the *Police Integrity Commission Act 1996*. In particular, answers made and documents and other things produced on objection by a witness at a hearing before the Commission are not admissible against the witness in subsequent criminal or civil proceedings, except for proceedings for an offence against the *Police Integrity Commission Act 1996* or proceedings for contempt under that Act; section 40(3). Even if the objection is taken, however, such material is available to the Commissioner of Police in considering whether to make an order under section 173 or section 181D of the *Police Service Act 1990*. Such material is also admissible in proceedings under Division 1A or 1C of Part 9 of the *Police Service Act 1990* and any disciplinary proceedings; section 40(3).
- 9.4 Accordingly, the Commission must give due attention to the admissibility of evidence in considering what statements ought to be made in the Report to Parliament pursuant to section 97(2) of the *Police Integrity Commission Act 1996*.

9.5 The following persons are or were ‘affected’ persons for the purposes of section 97(3) of the *Police Integrity Commission Act 1996*:

- Former Sergeant Brian Laurence Hanrahan;
- Former Detective Inspector Allan Robert Doyle;
- Sergeant Ulrich Bramann;
- Former Detective Sergeant John Stuart Davidson;
- Former Detective Constable Alan Ronald Conwell;
- Former Detective Sergeant Roger Arthur Harborne;
- Former Detective Constable David Leslie Joachim;
- Detective Sergeant Stephen Francis McLennan;
- Former Detective Sergeant Geoffrey Alan Hollis;
- Detective Sergeant Michael Robert Lenon;
- Detective Senior Constable Garry John James; and
- Mr Malcolm Carlisle Tanswell.

FORMER SERGEANT BRIAN LAURENCE HANRAHAN

9.6 Hanrahan is an ‘affected person’ because he is the subject of the following substantial allegation:

- As the officer in charge of the general duties officers involved in the initial phase of the investigation into the death of Dilworth, and as the officer jointly responsible for the continuing investigation and the presentation of evidence to the Coroner, Hanrahan is jointly responsible for the failures of that investigation.

9.7 Hanrahan has retired from the NSW Police Service. In respect of subsections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Hanrahan is no longer a police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against him for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the

taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.

- 9.8 There is no evidence that Hanrahan was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Hanrahan for any criminal offence.

FORMER DETECTIVE INSPECTOR ALLAN ROBERT DOYLE

- 9.9 Doyle is an ‘affected person’ because he is the subject of the following substantial allegations:

- As the officer most responsible for the investigation into Dilworth’s death and the presentation of the evidence to the Coroner, Doyle is primarily responsible for its failings.
- Doyle maintained an inappropriate association with Tanswell at times when Tanswell was a person connected with Dilworth’s murder which was being investigated by Doyle.

- 9.10 Doyle has retired from the NSW Police Service. In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Doyle is no longer a police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against him for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.

- 9.11 Despite the concern generated by his association with Tanswell and the failure to properly investigate Dilworth’s death, there is no evidence of his involvement in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Doyle for any criminal offences.

SERGEANT ULRICH BRAMANN

- 9.12 Bramann is an ‘affected person’ because he is the subject of the following substantial allegation:

- When Pamela Dilworth attended Petersham Police Station on 19 December 1986 to discuss the investigation, Bramann was abusive and failed to investigate the allegation that the matter was not being properly investigated.

- 9.13 There is a conflict in the versions of the incident given by Pamela Dilworth and Bramann. On Bramann's version, it was Robert Cason who became agitated and left first, not Pamela Dilworth. Neither Pamela Dilworth nor Cason had any direct evidence or tangible basis for an allegation of impropriety and it was not unreasonable of Bramann to have taken no further action.
- 9.14 In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should not** be given to the taking of action against Bramann for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.
- 9.15 There is no evidence that Bramann was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Bramann for any criminal offences.

FORMER DETECTIVE SERGEANT JOHN STUART DAVIDSON

- 9.16 Davidson is an 'affected person' because he is the subject of the following substantial allegation:
- He acted improperly in carrying out a search of Mitchell's premises on 10 February 1988 without proper cause and at the behest of Tanswell.
- 9.17 Davidson is no longer a member of the NSW Police Service. In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Davidson is no longer a police officer, The Commission is of the opinion that consideration **should not** be given to the taking of action against Davidson for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.
- 9.18 There is no evidence that Davidson was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Davidson for any criminal offence.

FORMER DETECTIVE CONSTABLE ALAN RONALD CONWELL

9.19 Conwell is an ‘affected persons’ because he is the subject of the following substantial allegation:

- He acted improperly in carrying out a search of Mitchell’s premises on 10 February 1988 without proper cause and at the behest of Tanswell.

9.20 Conwell is no longer a member of the NSW Police Service. In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Conwell is no longer a police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against Conwell for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.

9.21 There is no evidence that Conwell was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Conwell for any criminal offences.

FORMER DETECTIVE SERGEANT ROGER ARTHUR HARBORNE

9.22 Harborne is an ‘affected person’ as he is subject to the following substantial allegation:

- In investigating the shooting of Mitchell he failed to keep proper records, made a false entry in his duty book and improperly associated with Tanswell.

9.23 Harborne is no longer a member of the NSW Police Service. In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Harborne is no longer a police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against Harborne for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.

9.24 There is no evidence that Harborne was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Harborne for any criminal offences.

FORMER DETECTIVE CONSTABLE DAVID LESLIE JOACHIM

9.25 Joachim is an ‘affected person’ as he is subject to the following substantial allegations:

- In the course of the investigation into the shooting of Mitchell he failed to keep proper records and improperly associated with Tanswell.
- In the course of the investigation into the shooting of Mitchell by Lenon and James he made a misleading statement in his statement of 6 September 1996.

9.26 Joachim is no longer a member of the NSW Police Service. In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Joachim is no longer a police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against Joachim for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.

9.27 There is no evidence that Joachim was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Joachim for any criminal offences.

DETECTIVE SERGEANT STEPHEN FRANCIS McLENNAN

9.28 Detective Stephen McLennan is an ‘affected person’ as he is the subject of the following substantial allegation:

- He failed to promptly and properly investigate the allegations made by Mitchell on 24 November, and 5 and 6 December 1989 against Tanswell.

9.29 In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should** be given to taking reviewable action against Detective McLennan within the meaning of section 173 of *The Police Service Act 1990*.

9.30 There is no evidence that McLennan was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of McLennan for any criminal offence.

FORMER DETECTIVE SERGEANT GEOFFREY ALAN HOLLIS

- 9.31 Hollis is an ‘affected person’ because he is the subject of the following substantial allegation:
- As the officer most responsible for the investigation into the allegations made by Mitchell on 24 November 1989 and 5 and 6 December 1989, he should accept primary responsibility for the delay and improper conduct of the investigation.
- 9.32 Hollis is no longer a serving police officer having retired on health grounds in 1996. In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and in view of the fact that Hollis is no longer a police officer, the Commission is of the opinion that consideration **should not** be given to the taking of action against Hollis for a specified disciplinary offence, the taking of action against him as a police officer with a view to dismissing, dispensing with the services or otherwise terminating his services, or the taking of reviewable action against him within the meaning of section 173 of the *Police Service Act 1990*.
- 9.33 Although there are a number of concerns about his dealings with Tanswell during the course of the investigation, there is no evidence of any involvement in a criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to prosecution of Hollis for any criminal offence.

DETECTIVE SERGEANT MICHAEL ROBERT LENON

- 9.34 Lenon is an ‘affected person’ because he is the subject of the following substantial allegation:
- Having been advised by Detective Senior Constable James that he had been informed by Joachim prior to taking the statement on 9 June 1996 that Joachim had a further meeting with Mitchell after seeing him in hospital, he allowed Joachim to make a misleading statement without submitting a report on the additional information provided by Joachim.
- 9.35 The actions of Lenon constitute neglect of duty, but need to be examined in the context of his conduct of the investigation into Mitchell’s death and the re-investigation of Dilworth’s death and Mitchell’s shooting, which were in stark contrast to the inadequate and inept earlier investigations. Lenon and James pursued their investigation with vigour and initiative and used their best endeavours to gather evidence to enable prosecution proceedings to be instituted. The omission to advise of Joachim’s additional information was eventually remedied when James located Joachim’s duty

book and brought the relevant entry to the attention of the DPP with the consequence that Joachim was re-interviewed and the additional information placed on the record. Lenon's conduct does not appear to constitute an offence, nor does it warrant his dismissal, although appropriate administrative action should be taken to reflect disapproval of his actions.

9.36 In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, the Commission is of the opinion that consideration **should** be given to taking reviewable action against Lenon within the meaning of section 173 of the *Police Service Act 1990*.

9.37 There is no evidence that Lenon was involved in any criminal offence. The Commission is of the opinion that consideration **should not** be given to the prosecution of Lenon for any criminal offence.

DETECTIVE SENIOR CONSTABLE GARRY JOHN JAMES

9.38 James is an 'affected person' because he is the subject of the following substantial allegation:

- Having been informed by Joachim prior to taking his statement on 9 September 1996 that he had a further meeting with Mitchell after seeing him in hospital, he allowed Joachim to make a misleading statement without submitting a report on the additional information provided by Joachim.

9.39 In respect of sub-sections 97(2)(b), (c) and (d) of the *Police Integrity Commission Act 1996*, and for the reasons noted above in relation to Lenon, the Commission is of the opinion that consideration **should** be given to taking reviewable action against James within the meaning of section 173 of the *Police Service Act 1990*.

9.40 There is no evidence that James was involved in any criminal offence. The Commission is therefore of the opinion that consideration **should not** be given to the prosecution of James for any criminal offence.

MALCOLM CARLISLE TANSWELL

9.41 Tanswell is an 'affected person' because he is the subject of the following substantial allegations:

- He was responsible for the death of Dilworth.
- He either shot Mitchell or was responsible for his shooting.
- He either caused the death of Mitchell or arranged for him to be killed.

- He conspired to pervert the course of justice by causing witnesses to give false statements and evidence for the Coroner's Inquest into the death of Dilworth.

9.36 In relation to the matters listed above, these issues have already been the subject of investigation, and to some extent prosecution. The Commission has not set out to re-investigate or gather further evidence in relation to the offences involved. Accordingly the Commission recommends that consideration **should not** be given by the DPP to the prosecution of Tanswell for any criminal offences relating to those matters.

9.37 Tanswell is also subject to the following substantial allegations:

- He caused Davidson and Conwell to search Mitchell's premises without proper cause and for an improper purpose.
- His possession of police documentation relating to the investigation of the death of Mitchell.
- He developed associations with police investigating offences with which he was connected, in order to prevent a full investigation.

9.42 In relation to these matters, there is insufficient evidence of any criminal offences relating to those matters and the Commission recommends that consideration **should not** be given by the DPP for the prosecution of Tanswell for any criminal offences involved.

