

REPORT TO PARLIAMENT

OPERATION JETZ



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JANUARY 2003

OPERATION JETZ

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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 Jetz, 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 *Police Integrity Commission Act 1996*, pursuant to which I recommend that this Report be made public forthwith.

Yours faithfully

A handwritten signature in black ink, appearing to read "T P Griffin", followed by a horizontal line.

T P Griffin
Commissioner

January 2003

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GLOSSARY

Assessment Centre	Assessment Centres use full day exercises to measure the suitability of applicants for a particular category of position by examining them using role plays, written exercises and discussions. Assessment Centres had been used by the NSW Police Service in relation to executive appointments for some time before their further use was encouraged by the Royal Commission into the NSW Police Service. Since 1996, Assessment Centres have been conducted for commissioned officer positions.
behavioural questions	Also referred to as competency questions, these questions are designed to elicit an example demonstrating how an officer satisfies a competency required for a particular position, for example, an experience from their policing career which illustrates their leadership skills.
commissioned and non commissioned	<p>The non commissioned ranks in the Service are: Constable, Senior Constable, Sergeant and Senior Sergeant.</p> <p>The commissioned ranks are: Inspector, Chief Inspector, Superintendent, Chief Superintendent, Assistant Commissioner, Deputy Commissioner and Commissioner.</p> <p>Of these, the ranks below Superintendent are non executive commissioned officers, although some Superintendents are members of the executive service.</p>
competency	Shorthand used to describe one of the areas of skill and/or accomplishment identified as necessary to perform at a particular level. Competencies have been identified in respect of “behavioural” areas (see “behavioural questions” above).
GREAT	The Government and Related Employees Appeal Tribunal, the venue for appeals against the nomination for promotion of a particular officer. At the relevant time, GREAT panels hearing police matters were comprised of three members: a NSW Police representative; a Police Association representative; and an independent Chairperson.
key actions	Indicators of competencies which NSW police officers provide in support of their application. Selection panel members note key actions as they are raised by officers and use that information to rank candidates.

PQA	The “Pre Qualifying Assessment” was introduced as part of the amendments to the system effective from 1 January 2002. It is a computer-based assessment of technical knowledge generic to each rank, which consists of multiple choice questions randomly selected from a database. It does not apply above the rank of Superintendent. The PQA replaces the need for common selection criteria to be assessed at application stage.
rotating questions	See “technical questions”.
structured interview	An interview where all candidates are asked a pre-determined series of questions to enable the objective assessment of their relative merit for an advertised position.
technical questions	Also called “professional knowledge” or “rotating questions”, these are designed to elicit knowledge about the appropriate practices to perform tasks required in a particular position, for example, proper policing practice following a recent legislative change. Selection Committees would have a checklist of necessary elements that need to be covered in the applicant’s answer.
topic areas	The subject area of policing knowledge or practice from which an interview question is drawn.

EXECUTIVE SUMMARY

BACKGROUND TO OPERATION JETZ

In January 2001, an investigation by the NSW Police Special Crime and Internal Affairs Command (SCIA), codenamed Operation Orwell, was established to investigate suspicions that a number of serving police officers were involved in corrupt manipulation of the NSW Police Service (“the Service”) promotion system.

The Service sought the assistance of the Police Integrity Commission (“the Commission”) to pursue investigation of these matters using the Commission’s special investigative powers.

On 26 June 2001, the Commission declared an investigation, codenaming it Operation Jetz. A taskforce, comprised of officers from SCIA and the Commission, was established to undertake enquiries.

(It should be emphasised that Operation Jetz was not a review of the promotion system of the NSW Police Service. It was and was always intended to be a limited investigation into the activities of individual police officers.)

PUBLIC HEARINGS

Public hearings were held over 13 days between 20 August 2001 and 29 November 2001, the scope and purpose of which was to investigate:

... whether or not certain members of the New South Wales Police Service have been, or are currently, involved in misconduct with respect to the New South Wales Police Service promotional system.

THE EVIDENCE HEARD DURING OPERATION JETZ

The conduct examined during the Jetz inquiry may be summarised as the sharing of confidential information between police officers for the purpose of assisting themselves or colleagues in interviews for promotion. The Commission heard evidence from 13 witnesses, all of whom were serving police officers at the time of the hearings.

The evidence given by these officers revealed that they had been participating in all or some of the following activities:

- seeking or receiving information regarding questions to be asked during interviews from colleagues, with a view to obtaining an unfair advantage for themselves or their colleagues;
- conveying information to colleagues regarding questions to be asked at interview, with a view to providing an unfair advantage to those colleagues;

- failing to comply with clearly stated confidentiality requirements relating to questions asked at interview; and
- failing to report misconduct.

The instances of such behaviour identified during the course of the Jetz hearings ranged from isolated occasions where one police officer shared information with one of his friends, to others where there was an apparent “network” of officers who were clearly attempting to bolster the chances of the members of that group over other applicants.

All witnesses agreed that they had viewed or signed confidentiality agreements and they had understood their contents. They also all accepted that general principles of fairness and equity required participants in the promotion system to maintain confidentiality in relation to the interview questions. However, many of the witnesses were reluctant to classify the dissemination of confidential interview material to others as “misconduct”. One officer stated that “misconduct” was at the serious end of the scale, while the activities he and his colleagues were involved in were merely “inappropriate” and not very serious.

The Commission views the improper dissemination of confidential material as serious police misconduct. It is concerned by the fact that most, if not all of the officers who gave evidence in Operation Jetz apparently failed to accept that proposition. Given the limited nature of Operation Jetz, the Commission cannot and does not extrapolate from its findings to comment on whether or not such views are widespread throughout the service.

However, the Commission considers it important that all police officers embrace the high ethical standards that apply to them as professional law enforcement officers, together with accepting the strictures of the legislation and internal procedures that apply.

The police officers who gave evidence before the Commission were all, in some way, associates of Inspector Robert Gordon Menzies, who was a Vice President of the Police Association when the Jetz hearings commenced. The relevance to the inquiry of Menzies’ position within the Association was that, at the beginning of the hearings, there was some suspicion that he may have been assisting his colleagues with a view to advancing his interests within the Association. In evidence, Menzies stated that, even though it was not a consideration at the time of providing the information to his colleagues, it could have been of political benefit to him within the Police Association. He qualified this by saying that it would depend on the location at which the officers had won their nomination. The Commission found nothing to indicate that there was anything untoward occurring in relation to the Association, or its members.

The Commission had access to extensive electronic surveillance material during the hearings. It is the Commission’s view that in the absence of the covert material, gathered by the Service during Operation Orwell, it would not have been able to obtain the concessions made by the witnesses in evidence.

EVIDENCE REGARDING THE NSW POLICE SERVICE PROMOTION SYSTEM

The Service is subject to Equal Employment Opportunity principles, including the fundamental requirement that all applicants have an equal opportunity to compete for positions. The system operating within the Service at the time of the Jetz investigation was intended to create a fair and objective regime that would allow candidates of the greatest merit to be identified and appointed. As part of the process, candidates were to be asked uniform questions at interview. Such questions were meant to provide an unbiased means of comparing the interview performance of candidates.

There was significant evidence before the Commission that officers generally understood and agreed that the purpose of maintaining confidentiality was to preserve the fair and equitable operation of the system. Despite this understanding, the evidence before the Commission indicated that a number of serving police officers participated in conduct intended to thwart those fundamental principles. This conduct included obtaining information concerning the questions to be asked during the interview process and then conveying that information to colleagues in order for them to obtain an unfair advantage in interviews. They were, as some agreed in evidence, essentially “cheating”.

Improper disclosure of information relevant to the interview process undermines the equity and fairness of the promotion system. Clearly, the unauthorised disclosure of confidential information, particularly about questions that will be asked in interviews, may result in the best person for a position failing to be appointed. When such appointments become known, public and internal confidence in the promotion process must be reduced.

It is possible that individuals appointed to positions by circumventing the proper promotion procedures may not have adequate skills to undertake their duties. This is of particular concern to the Commission where supervisory or management positions are involved. The Commission has noted, and it is commonly accepted, that effective supervision and management are critical in reducing opportunities for misconduct.

No attempt has been made to deal with the wider implications of the type of behaviour examined in this Report on the overall efficacy of the Service promotion system. Evidence was not taken in relation to the promotion system in general and the Commission is not in a position to make comments of general application.

The Honourable Michael Costa, Minister for Police, announced on 27 June 2002 that there will be a 12 month long Ministerial Inquiry into the promotion system, to be chaired by former Assistant Commissioner Geoffrey Schuberg. The Ministerial Inquiry will consider legislation and practice in NSW and other Australian jurisdictions and will develop plans to ensure the integrity of the promotion system. The Commission acknowledges the many areas of concern about the promotion system, which, while beyond the scope and purpose of Operation Jetz, are significant in terms of the satisfaction and acceptance of the promotion system by police officers and the broader community. The Commission welcomes the Ministerial Inquiry and will await its report with interest.

RESPONSE BY THE NSW POLICE SERVICE

Operation Jetz exposed some problems with the fairness and effectiveness of the promotion system. As a result, a number of substantial procedural and legislative changes have been made. These changes are intended to streamline the promotion process and increase its corruption resistance. One of the most significant changes is that the structured interview has become part of the consideration of merit, rather than its chief determinant. This should diminish any opportunities for the system to be hampered by abuse of the interview process.

A further significant change is the introduction of a requirement that all candidates submit a Statutory Declaration that they have not engaged in any misconduct that would disqualify them from consideration. Any false Declaration would provide a means to take disciplinary or other action against an officer.

The Commission commends the efforts by the Service to modify the promotion system. However, the Commission cannot comment further on the effectiveness of the modified system, which was implemented on 1 January 2002.

RECOMMENDATIONS FOR CONSIDERATION OF DISCIPLINARY ACTION

This Report recommends that the Service give consideration to taking reviewable action against the following officers within the meaning of section 173 of the *Police Act 1990*:

- Detective Senior Constable Kel Stanley **Graham**;
- Senior Constable Scott Andrew **Whyte**;
- Detective Senior Constable Sean Edward **Hampstead**;
- Detective Senior Constable Simon Geoffrey **Jones**;
- Sergeant Anthony Francis **Long**;
- Detective Senior Constable Andrew Paul **Marks**;
- Senior Constable Peter Michael **Moss**;
- Sergeant Bradley Richard **Nuttall**; and
- Senior Constable Todd Munro **Scott**.

As a result of the Jetz investigation, the Service has already taken action under section 181D of the *Police Service Act 1990* (the loss of Commissioner's confidence provision) against the following officers:

- Inspector Robert Gordon Menzies was served with a section 181D Notice, but tendered his resignation effective from 19 January 2002 and is no longer a serving police officer.
- Senior Constable Paul Francis Museth was terminated from the Service on 7 May 2002 under section 181D. Museth is currently appealing his dismissal. If his appeal is successful and he is reinstated, the Commission recommends that the Service give consideration to taking reviewable action against Museth within the meaning of section 173 of the *Police Act 1990*.
- Detective Sergeant Mark William Messenger was served with a section 181D Notice on 12 April 2002. However, Messenger resigned from the Service on 18 September 2002 and is no longer a serving police officer.

1. INTRODUCTION

BACKGROUND

- 1.1 In early 2001, an investigation by the NSW Police Special Crime and Internal Affairs Command (SCIA), codenamed Operation Orwell, was established to investigate suspicions that a number of serving police officers were involved in corrupt manipulation of the NSW Police Service (the Service) promotion system. The information giving rise to those suspicions came to the attention of the Service through lawfully authorised telecommunications interception. The nature of the conduct suspected included the pursuit, collation and exchange of confidential information concerning promotion interviews.
- 1.2 The Service sought the assistance of the Police Integrity Commission (the Commission) to pursue the further investigation of these matters using the Commission's special investigative powers.
- 1.3 The Commission declared a preliminary investigation on 29 March 2001 with the purpose of determining whether a more complete investigation was warranted. Those preliminary inquiries led to the declaration of a full investigation under the codename Operation Jetz on 26 June 2001.

PUBLIC HEARINGS

- 1.4 Between 20 August 2001 and 29 November 2001 the Commission held a series of public hearings for the purpose of furthering the investigation of Operation Jetz.
- 1.5 Pursuant to section 10 of the *Police Integrity Commission Act 1996* (the Act), Mr Brian H K Donovan QC was appointed an Assistant Commissioner on 16 August 2001, for the purpose of presiding over the complete series of hearings.¹
- 1.6 The scope and purpose of the Operation Jetz investigation was announced at the commencement of the hearings by Assistant Commissioner Donovan:

Pursuant to section 32(3) of the Police Integrity Commission Act, I announce that the general scope and purpose of this hearing is to investigate whether or not certain members of the New South Wales Police Service have been, or are currently, involved in misconduct with respect to the New South Wales Police Service promotional system.

¹ Please see Appendix 2 for the Instrument of Appointment, Direction and Delegation for Assistant Commissioner Donovan.

THE NSW POLICE SERVICE PROMOTION SYSTEM

- 1.7 Operation Jetz was not intended to be a general examination of the Service's merit based promotion system. However, for the alleged misconduct in relation to the promotion system to be understood, it is necessary to provide some background information on the promotion system and how the system operated as a whole at the time of the Jetz investigation.

BACKGROUND OF THE NSW POLICE SERVICE PROMOTION SYSTEM

- 1.8 In 1984, a merit based promotion system replaced the existing seniority based promotion system within the Service for commissioned officers. By 1989 this merit based promotion system had incorporated non-commissioned officer positions.
- 1.9 Concerns about the adequacy of the then existing police promotion system led to its inclusion as one of the initial terms of reference of the Royal Commission into the NSW Police Service ("the Royal Commission") in May 1994.
- 1.10 The Royal Commission Final Report noted "widespread dissatisfaction with the promotional process"² and recorded a number of significant reforms to the promotion system that had been, or were being undertaken in response to the Royal Commission. These reforms included the use of Assessment Centres, the revision of Statements of Duties and Accountabilities and the development of competencies.³

THE NSW POLICE SERVICE PROMOTION SYSTEM AT THE TIME OF THE JETZ INVESTIGATION

- 1.11 As part of a merit based system, the Commissioner of Police was required to form an opinion as to the most meritorious of the eligible applicants for a non executive commissioned rank and appoint that person.⁴ The definition of merit in relation to appointment decisions included that the person must possess appropriate qualifications and aptitude for the position, and they must also exhibit "integrity, diligence and good conduct".⁵
- 1.12 At the time relevant to the matters under consideration in Operation Jetz, the promotion process for positions at the level of Sergeant/Senior Sergeant (non commissioned officers) and Inspector (commissioned officers) was very similar. In the case of both categories, advertisements sought written applications

² Royal Commission into the NSW Police Service, *Final Report Volume II: Reform*, para. 1.18.

³ Royal Commission into the NSW Police Service, *Final Report Volume I: Corruption*, para. 1.19.

⁴ Section 71, *Police Service Act 1990*.

⁵ Sub-section 3(1), *Police Service Act 1990*.

addressing specified qualifications and competencies. A Selection Committee would then rate the applications in respect of specified key actions that demonstrated the required competencies. The function of the key actions was to support unbiased decision making within the system and these key actions were not published to officers.

- 1.13 In respect of the Sergeant/Senior Sergeant positions, the Committee's rating was used to cull the less qualified candidates. In the case of some Inspector positions (Duty Officers and Crime Managers), no cull was conducted on the written application, but a rating was awarded which became part of the overall assessment of the applicant. Applicants for Inspector positions needed to have completed an Assessment Centre to be eligible for an interview.
- 1.14 A Selection Committee would then interview candidates. The interview followed a predetermined format, including: behaviourally based questions, which were those questions relating to the advertised competencies; and technical questions, which were questions relating to the specific position that had been advertised. The format was commonly referred to as a "Structured Interview". Applicants for a position were asked the same series of behavioural questions and a number of additional technical or "rotating" questions, drawn from a pool of available questions and selected on a random basis. Each member of the selection panel rated the responses before an overall rating was awarded.
- 1.15 The applicants with the highest overall ratings would be nominated for vacant positions or placed on an eligibility list. Following satisfactory integrity checks, the nominations were published. Unsuccessful applicants had a right of appeal to the Government and Related Employees Appeals Tribunal (GREAT).
- 1.16 A GREAT panel consisted of an independent Chairperson, a representative of the Service and a representative of the Police Association.

THIS REPORT

- 1.17 In this Report, prepared and furnished pursuant to sub-section 96(2) of the Act, the Commission summarises the evidence heard relating to the scope and purpose of the hearings.
- 1.18 The Report includes assessments and opinions concerning matters examined during the course of the hearings and contains the Commission's recommendations in respect of a number of people it considers to be "affected persons" within the meaning of sub-section 97(3) of the Act.
- 1.19 Throughout this Report the NSW Police Service has been referred to as "the Service". This was done to reflect its name at the time of the Commission hearings. Since 12 July 2002, the Service has been officially known as NSW Police.

1. INTRODUCTION

- 1.20 On 12 July 2002, the title of the *Police Service Act 1990* was changed to *Police Act 1990*. Both titles are used in this Report, depending upon which act was in force at the relevant time.
- 1.21 Generally, persons are referred to in this Report by surname only. This is done in the interests of economy and no discourtesy is intended.

WITNESSES

- 1.22 The Commission heard evidence from the following witnesses who, at the time they gave evidence, were all serving police officers:
- Detective Senior Constable Kel Stanley **Graham**;
 - Detective Senior Constable Sean Edward **Hampstead**;
 - Detective Senior Constable Simon Geoffrey **Jones**;
 - Sergeant Anthony Francis **Long**;
 - Detective Senior Constable Andrew Paul **Marks**;
 - Inspector Stephen John **Martlew**;
 - Inspector Robert Gordon **Menzies**;
 - Detective Sergeant Mark William **Messenger**;
 - Senior Constable Peter Michael **Moss**;
 - Senior Constable Paul Francis **Museth**;
 - Sergeant Bradley Richard **Nuttall**;
 - Senior Constable Todd Munro **Scott**; and
 - Senior Constable Scott Andrew **Whyte**.

It should be noted that all of the above witnesses gave their evidence under objection, with the Assistant Commissioner making declarations pursuant to section 41 of the Act.

2. EVIDENCE HEARD DURING OPERATION JETZ

INSPECTOR ROBERT GORDON MENZIES

- 2.1 The Commission's possession of intercepted material was disclosed during the evidence of the first witness, Inspector Robert Gordon Menzies.
- 2.2 Menzies was the central figure examined during the Operation Jetz hearings. Menzies became a police officer in 1988 and at the time of the hearings he was an Inspector attached to the Gladesville Local Area Command. Menzies was appointed as a Team Leader/Sergeant at Manly in April 2000, and a Duty Officer/Inspector at Gladesville in August 2000.⁶ In April 2001, Menzies applied for another Duty Officer position at the rank of Inspector. He was interviewed for that position on 26 June 2001.⁷ When the Jetz hearings commenced, Menzies was the Vice President of the Police Association of NSW.
- 2.3 Menzies stated in evidence that he obtained his knowledge of the promotions and interview process through his own experience of interviews, from information others provided to him and from his experience as the NSW Police Association nominee on GREAT appeals.⁸
- 2.4 Menzies agreed that the promotion system was based on merit⁹ and that it relied on the confidentiality of the questions.¹⁰ He also agreed that for the system to be fair and equitable, those participating ought to maintain confidentiality as to specific questions falling within the interview process.¹¹ During evidence Menzies agreed that there were procedures incorporated within the promotion system to warn or advise applicants of the requirement of confidentiality.¹²
- 2.5 Menzies was stood down from the witness box during his evidence for the Commission to hear evidence from other witnesses. It was intended that he would be recalled following the evidence of other witnesses. During that intervening period, Menzies co-operated with Commission investigators by participating in interviews and making a statement dated 29 August 2001.¹³ In his statement he made admissions as to his involvement in instances of misconduct in relation to the Service promotion system and provided information regarding the participation of other officers in the same activities.¹⁴

⁶ PIC Transcript, R G Menzies, 20 August 2001, pp. 22-23.

⁷ *ibid.*, pp. 30 & 45.

⁸ *ibid.*, pp. 39-41 & 43.

⁹ *ibid.*, p. 39.

¹⁰ *ibid.*, pp. 42 & 46.

¹¹ *ibid.*, p. 49.

¹² *ibid.*, p. 42.

¹³ PIC Exhibit 96B.

¹⁴ PIC Exhibit 96B. The statement was adopted in evidence - PIC Transcript, R G Menzies, 19 November 2001, p. 433.

- 2.6 In his evidence, Menzies described the benefit of having access to the key actions as they applied to various competencies.¹⁵ He was given a sheet identifying the key actions for eleven or twelve competencies relevant to Operational Supervisor positions by a Senior Sergeant identified as J75, who has since left the Service.¹⁶ Menzies addressed the relevant key actions in his job applications and admitted sharing those applications with a number of officers.¹⁷ He also incorporated the key actions within his report for the Assessment Centre.¹⁸
- 2.7 Menzies also confirmed that he had created, initially for his own use, a “study book”¹⁹ which he subsequently made available to other officers.²⁰ Menzies explained that there were three versions of the “study book”. The first two versions related to different job specifications. The third version included the same material as the first two versions, as well as information obtained by Menzies through his role as a GREAT panel member.²¹ The study books incorporated topic areas, specific questions, information sourced from other officers and the results of additional research performed by Menzies, including relevant departmental and policy material.²²
- 2.8 Menzies stated that he distributed the “study books” to various officers and over time included further information that he had improperly obtained, including specific questions, answers and research material.²³ He provided copies of the updated “study book” to Senior Constable Paul Francis Museth, Detective Senior Constable Kel Stanley Graham, Detective Sergeant Mark William Messenger, Detective Senior Constable Sean Edward Hampstead, Senior Constable Scott Andrew Whyte and a witness codenamed J8 for the purpose of the hearings.²⁴
- 2.9 Menzies admitted conveying and/or receiving information relating to specific questions for the Duty Officer interview with Senior Constable Todd Munro Scott, Detective Senior Constable Simon Geoffrey Jones and Sergeant Anthony Francis Long.²⁵ Menzies also admitted to discussing topics directly or through the means of the “study book” with Graham and Messenger.²⁶ With respect to the Team Leader/Sergeant and Investigation Manager/Sergeant positions, Menzies said that he obtained and conveyed information in respect of the relevant questions to Senior Constable Peter Michael Moss, Museth, Graham, Jones and Scott.²⁷

¹⁵ PIC Exhibit 96B, barcodes 5999390 – 5999391; PIC Transcript, R G Menzies, 19 November 2001, pp. 435-436.

¹⁶ PIC Exhibit 96B, barcode 5999391; PIC Transcript, R G Menzies, 19 November 2001, p. 436.

¹⁷ PIC Transcript, RG Menzies, 19 November 2001, pp. 437-438.

¹⁸ PIC Exhibit 96B, barcodes 5999391 – 5999392; PIC Transcript, R G Menzies, 19 November 2001, pp.435-436 & 439-440.

¹⁹ PIC Exhibit 96B, barcode 5999393.

²⁰ PIC Transcript, R G Menzies, 20 August 2001, pp. 73-74; 19 November 2001, pp. 443-444.

²¹ PIC Exhibit 96B, barcodes 5999393 – 5999394; PIC Transcript, R G Menzies, 19 November 2001, pp. 443-444.

²² PIC Transcript, R G Menzies, 20 August 2001, pp. 60 & 69; PIC Exhibit 96B, barcodes 5999393 – 5999394.

²³ PIC Transcript, R G Menzies, 19 November 2001, p. 444.

²⁴ PIC Exhibit 96B, barcodes 5999393 & 5999406 – 5999407; PIC Transcript, R G Menzies 20 August 2001, p. 74; 21 August 2001, p. 142; 19 November 2001, pp. 444-445.

²⁵ PIC Transcript, R G Menzies, 20 August 2001, pp.56-58; PIC Exhibit 96B, barcodes 5999395 - 5999398.

²⁶ PIC Transcript, R G Menzies, 19 November 2001, p. 444.

²⁷ PIC Exhibit 96B, barcodes 5999396, 5999400, 5999404 - 5999406.

- 2.10 There was some speculation that Menzies may have participated in the above mentioned behaviour in order to improve his political influence within the Police Association. During his opening address on 20 August 2001, Counsel Assisting the Commission stated that the evidence to be heard during the hearings may indicate that one individual was “endeavouring to assist his colleagues in their promotional applications for the purposes of ensuring that he had officers associated with him in key positions to improve his influence within the Police Association of New South Wales”.²⁸ That officer was Menzies. When this supposition was put to Menzies during the hearings by Counsel Assisting, he stated that it was not his motivation at the time of providing the assistance, but that it occurred to him later that it would be useful to have their support.²⁹ When Menzies was asked whether one of his motivations for disseminating information to colleagues was to advance his political interests within the Police Association, he replied:³⁰

I don’t believe it was a motivation initially, but after people won positions within certain regions, then it was of interest to me, yes.

- 2.11 Menzies stated that, even though it was not a consideration at the time of providing the information to his colleagues, agreed that it could have been of political benefit to him within the Police Association. He qualified this by saying that it would depend on the location at which the officers had won their nomination.³¹ Menzies described it as a “belated motivation”, but denied that it was a motivation at the time he was providing the information to his colleagues.³²
- 2.12 Menzies also admitted in evidence that he had been in breach of the confidentiality requirements attached to the questions asked at interview.³³

ASSESSMENT OF THE EVIDENCE OF MENZIES

- 2.13 Menzies co-operated with the Commission and his evidence is considered to have been candid and truthful. He unequivocally accepted his responsibility in a number of instances of misconduct. The Commission accepts the evidence of Menzies in relation to his misconduct.
- 2.14 Menzies not only gave evidence concerning the officers who were called as witnesses before this investigation but also nominated various police officers who had participated in similar misconduct. The information provided by Menzies assisted the Commission with its investigation.

²⁸ PIC Transcript, C P Hoy, 20 August 2001, pp. 5-6

²⁹ PIC Transcript, R G Menzies, 19 November 2001, pp. 461-462.

³⁰ *ibid.*, pp. 485-486.

³¹ *ibid.*, p. 488.

³² *ibid.*, pp. 489-490.

³³ PIC Transcript, R G Menzies, 20 August 2001, p. 80; 19 November 2001, p. 498.

SENIOR CONSTABLE PAUL FRANCIS MUSETH

- 2.15 Museth was a Senior Constable at Eastwood Police Station at the time of the Jetz investigation and was a member of the Police Association executive.³⁴ During evidence Menzies confirmed that his relationship with Museth was that of friendship and that he knew him through the Police Association.³⁵
- 2.16 Museth agreed in evidence that the Service's promotion system was merit based and that it was an essential element of providing each applicant with a fair chance that confidentiality of the interview process and questions be maintained.³⁶
- 2.17 Museth was interviewed on 5 April 2001 for Team Leader/Sergeant positions in the areas of General Duties and Transit Police.³⁷ In evidence, Museth recollected being given a document about confidentiality at his interview, similar to the "Content of Interview Process" document.³⁸ Museth was also interviewed on 9 July 2001 for a Team Leader/Sergeant position in the Water Police, at which he signed a copy of a document titled "Confidentiality of Structured Interview Questions".³⁹
- 2.18 During the hearings Museth confirmed that he had received information from Menzies about the specific competencies and technical professional questions to be asked at the General Duties interview. He also admitted receiving the additional technical professional questions relating to the Transit Police position.⁴⁰ Included in telecommunication intercept material played during the hearings was a telephone conversation between Museth and Menzies, during which Menzies reinforced to Museth that he should not share information about the questions.⁴¹
- 2.19 In evidence, Museth admitted:⁴²
- seeking and/or obtaining information from Menzies, Graham, Scott, Whyte, Jones and Hampstead about specific questions he would be asked before attending an interview;
 - seeking and obtaining for Menzies information about the Duty Officer/Inspector positions for which he was not an applicant, and also conveying this information to Scott and to a witness known as J11 for the purpose of the hearings;

³⁴ PIC Transcript, R F Museth, 22 August 2001, pp. 195 & 231.

³⁵ PIC Transcript, R G Menzies, 20 August 2001, p. 73.

³⁶ PIC Transcript, P F Museth, 22 August 2001, pp. 204 & 206.

³⁷ *ibid.*, p. 198.

³⁸ *ibid.*, p. 209.

³⁹ *ibid.*, pp. 208-211.

⁴⁰ *ibid.*, p. 228.

⁴¹ PIC Transcript, P F Museth, 22 August 2001, pp. 228-229; PIC Exhibit 21.

⁴² PIC Transcript, P F Museth, 22 August 2001, pp. 213-215, 224 & 233-234; 29 August 2001, pp. 300-302 & 322-323; 30 August 2001, pp. 380-381.

- breaching the confidentiality requirements attached to questions asked at interviews;
- sharing that information with a group of colleagues and attempting to confine the information to that group;
- agreeing to attend the Water Police interview for the purpose of obtaining the questions for the assistance of another officer (in fact, that officer was interviewed first and provided information to Museth);
- knowing that doing so was “cheating” and improper because it undermined the fairness of the system; and
- not reporting his own misconduct, or that of others, despite his obligation to do so.

2.20 During the hearings Menzies confirmed that he provided Museth with his “study book” and other information, and indeed that Museth was the “prime person” to whom he would have provided information.⁴³ Menzies advised Museth to maintain confidence about their activities to maximise the advantage that flowed from possessing the inside information.⁴⁴

ASSESSMENT OF THE EVIDENCE OF MUSETH

2.21 It was submitted on behalf of Museth that, while he now understands that his conduct was improper, he did not realise so at the time. It was submitted that as the Service has in effect acknowledged flaws in the system by amending it, it is not reasonable to take severe action against Museth.⁴⁵ The Commission rejects both of these submissions.

2.22 Museth provided assistance to the Commission by giving evidence of his own misconduct. However, the Commission is of the opinion that the evidence shows Museth to have been a central player in the misconduct examined and that he was aware of the involvement of a number of officers in that misconduct.

DETECTIVE SENIOR CONSTABLE KEL STANLEY GRAHAM

2.23 At the time of the Jetz hearings, Graham was a Detective Senior Constable attached to the Hunter Region Anti Theft Squad at Newcastle Police Station.⁴⁶ He had been a member of the executive of the Police Association for approximately 12 months prior to his secondment as an organiser for the

⁴³ PIC Transcript, R G Menzies, 21 August 2001, pp. 92-93.

⁴⁴ *ibid.*, pp. 115-116.

⁴⁵ PIC Exhibit 229.

⁴⁶ PIC Transcript, K S Graham, 30 August 2001, pp. 418-419; 21 November 2001, p. 522.

Association in July 1999.⁴⁷ He had sat on GREAT appeals as the Association representative.⁴⁸

- 2.24 Graham was interviewed for a Team Leader/Sergeant (General Duties) position on 9 March 2001 and a Duty Officer/Inspector position on 30 May 2001. He was also interviewed on 1 June 2001 for the position of Team Leader (Investigations Manager), at both Senior Sergeant and Sergeant ranks.⁴⁹
- 2.25 In his evidence before the Commission, Graham accepted that confidentiality is designed to ensure equity in a merit system. Although he agreed it was inappropriate to discuss interview questions, he was somewhat reluctant to attach a great deal of significance to the need for confidentiality.⁵⁰
- 2.26 Graham gave evidence that he had improperly sought information about interview questions from Menzies and he agreed that delaying one's interview might provide further opportunity to seek information from other applicants.⁵¹
- 2.27 In a telephone conversation between Menzies and Museth on 7 March 2001, two days before Graham's General Duties interview, Museth was told that Graham had promised to provide Menzies with all the interview questions and a case of beer.⁵² Other telecommunications intercept material presented in evidence showed that Graham called Menzies within half an hour of his interview on 9 March 2001 to discuss the questions he was asked.⁵³ During evidence Graham reluctantly accepted that his comments in that recorded conversation demonstrated that he knew Menzies intended to disseminate the information further.⁵⁴
- 2.28 During the Commission hearings, Menzies admitted giving information about questions and his "study book" to Graham.⁵⁵ Menzies acknowledged during his evidence that he and Graham shared information about the Duty Officer interview, and that Graham knew that the specific information he had disclosed to Menzies would be disseminated to others.⁵⁶
- 2.29 During his evidence, Graham acknowledged that he intended to convey the questions he was asked to Menzies.⁵⁷ Telecommunication intercept material

⁴⁷ PIC Transcript, K S Graham, 21 November 2001, p. 528.

⁴⁸ *ibid.*, pp. 527-528.

⁴⁹ *ibid.*, p. 523.

⁵⁰ *ibid.*, pp. 524-525.

⁵¹ *ibid.*, pp. 528-530 & 537.

⁵² PIC Exhibits 52B & 53B.

⁵³ PIC Exhibits 14 and 16.

⁵⁴ PIC Transcript, K S Graham, 21 November 2001, pp. 557-558.

⁵⁵ PIC Transcript, R G Menzies, 19 November 2001, p. 444.

⁵⁶ *ibid.*, pp. 451-452.

⁵⁷ PIC Transcript, K S Graham, 21 November 2001, pp. 550-551 & 556.

recorded Graham discussing the types of questions with Menzies the day after his interview.⁵⁸ Graham conceded during evidence that he believed the information he had provided to Menzies would be disseminated to other candidates. But, he said that, he did not know the identity of those persons or whether they had actually received any of the information. He also acknowledged that he did not admonish Menzies when he was informed that the information would be passed on, but would not accept that he was comfortable with the suggestion that it was being done.⁵⁹ Graham appeared to draw a distinction between being aware that the information was to be passed on and knowing the identities of those who received it and whether they actually received it. This is a distinction that the Commission finds irrelevant in the circumstances.

- 2.30 Further recorded telephone conversations between Graham and Whyte on 31 May 2001 and 1 June 2001, indicated that Graham sought information relevant to his Investigations Manager interview.⁶⁰ In evidence, Graham said he did not recall whether he had been told specific questions and claimed that he did not think he would be asked the same questions at interview.⁶¹
- 2.31 Graham conceded during evidence that the disclosure of confidential information was reportable misconduct, and that he never made such a report.⁶²

ASSESSMENT OF THE EVIDENCE OF GRAHAM

- 2.32 There is significant evidence before the Commission that Graham was a key participant in the misconduct examined during Operation Jetz. He actively sought to have others disclose confidential information to him and arranged to provide information in return.
- 2.33 It was submitted on behalf of Graham that he was a credible witness who made admissions against his own interest, acknowledged his wrongs and was remorseful. It was also submitted that Graham co-operated with the Commission to the “best of his ability”.⁶³
- 2.34 Even though Graham did provide assistance to the Commission’s investigators, it is the Commission’s belief that Graham’s evidence did not support the claim that he acknowledged his wrongs and was remorseful.

⁵⁸ PIC Exhibit 103.

⁵⁹ PIC Transcript, K S Graham, 21 November 2001, pp. 549-550, 557-558 & 586.

⁶⁰ PIC Exhibits 160 & 162.

⁶¹ PIC Transcript, K S Graham, 21 November 2001, pp. 578-580.

⁶² PIC Transcript, K S Graham, 22 November 2001, pp. 613-614.

⁶³ PIC Exhibit 233, barcode 6120063.

SENIOR CONSTABLE SCOTT ANDREW WHYTE

2.35 At the time of the Jetz investigation, Whyte was a Senior Constable stationed at Miranda Police Station.⁶⁴ Whyte confirmed in evidence that he was a good friend of Menzies and had spent two and a half years seconded to the Police Association as a full time organiser.⁶⁵

2.36 Whyte applied for Team Leader/Sergeant positions in the areas of General Duties and Transit Police. He was interviewed for both positions jointly on 16 March 2001.⁶⁶ At this interview he received a document titled “Confidentiality of Interview Process”, which explained that the confidentiality of interview questions was of paramount importance to ensure the fairness of the promotion system.⁶⁷

2.37 During the Commission hearings, Whyte admitted that:⁶⁸

- Menzies had provided him with information about specific questions before his interview took place;
- he sought information from Menzies because he had an “enormous network”;
- on the afternoon of his own interview, Graham provided him with specific information about the interview questions. He had called Graham, a good friend, to seek the information; and
- his conduct was improper and would give him an unfair advantage.

2.38 Telecommunication intercept material presented in evidence disclosed that Whyte received further information from Menzies during a telephone conversation on 12 March 2001. At the time of the telephone conversation Menzies was in the process of posting written information to Whyte.⁶⁹ Whyte was instructed not to share the material, and the following exchange took place:⁷⁰

SW: I’m re-writing it all into my own handwriting in my own little book.

RM: Oh goodo.

SW: And destroying any evidence of anything else.

RM: Goodo mate.

2.39 A recording of a further telephone conversation between Menzies and Whyte on 20 March 2001 revealed Whyte telling Menzies of a number of questions relevant

⁶⁴ PIC Transcript, S A Whyte, 28 November 2001, p. 965.

⁶⁵ *ibid.*, p. 975.

⁶⁶ *ibid.*, p. 967.

⁶⁷ PIC Transcript, S A Whyte, 30 August 2001, pp. 415-416; 28 November 2001, p. 967; PIC Exhibit 87.

⁶⁸ PIC Transcript, S A Whyte, 28 November 2001, pp. 969-974.

⁶⁹ PIC Exhibit 26B.

⁷⁰ PIC Exhibit 26B, barcode 5914961.

to the Transit Police position.⁷¹ Whyte understood this was for the benefit of another applicant and accepted this was improper and breached confidentiality attaching to interview questions.⁷²

2.40 Whyte also applied for positions as a Team Leader/Sergeant (Criminal Investigations) and Team Leader/Senior Sergeant (Investigations Manager), for which he attended a joint interview on 31 May 2001. At that interview he received and signed the document titled “Confidentiality of Structured Interview Questions”.⁷³

2.41 With the benefit of the telecommunication intercept material available to the Commission, Whyte gave further evidence that:⁷⁴

- he conveyed information about specific questions to Menzies and they held numerous discussions regarding his interview;
- he had a conversation with Graham disclosing the information on the afternoon of his interview;
- he also disclosed the information to another friend who was an applicant for the Senior Sergeant position;
- he understood those disclosures breached the direction to maintain confidentiality contained in the document he signed at interview; and
- he had engaged in misconduct, and failed to report that misconduct.

ASSESSMENT OF THE EVIDENCE OF WHYTE

2.42 While on occasions, the disclosure of telecommunication intercept material made Whyte more forthcoming with his evidence, he was generally a co-operative witness who did not protest to his actions being characterised as misconduct.

DETECTIVE SERGEANT MARK WILLIAM MESSENGER

2.43 At the time of the Commission’s Investigation, Messenger was a Detective Sergeant at Dee Why station.⁷⁵ He had been acting as a Duty Officer/Inspector periodically for a period of eight to twelve months at Dee Why. He considered that he and Menzies were good friends.⁷⁶ Messenger had been a member of the Police Association Executive for three years, and the Assistant Treasurer of the organisation until a month before the commencement of the public hearings. He had also been the Association nominee on GREAT panels.⁷⁷

⁷¹ PIC Exhibit 158.

⁷² PIC Transcript, S A Whyte, 28 November 2001, pp. 985-986.

⁷³ PIC Transcript, S A Whyte, 30 August 2001, pp. 416-417.

⁷⁴ PIC Transcript, S A Whyte, 28 November 2001, pp. 994-995, 987, 989 & 1016; PIC Exhibits 88 & 160.

⁷⁵ PIC Transcript, M W Messenger, 26 November 2001, p. 760.

⁷⁶ PIC Transcript, M W Messenger, 26 November 2001, p. 769.

⁷⁷ PIC Transcript, M W Messenger, 26 November 2001, pp. 769-770.

- 2.44 Messenger attended two separate interviews on 26 June 2001. One interview was for a Duty Officer/Inspector position and the other was for the positions of Investigations Supervisor/Chief Inspector and Crime Manager/Inspector.⁷⁸ In evidence he confirmed that at each interview he had signed a copy of the document titled “Confidentiality of Structured Interview Questions”.⁷⁹
- 2.45 Messenger admitted that Menzies assisted him with his application and that he looked at Menzies’ “study book” in respect of the Duty Officer position. He said that Menzies gave him a copy of his application and that he used it for both his applications. He was aware Menzies was also an applicant for the position of Duty Officer.⁸⁰
- 2.46 Messenger was asked if he had an arrangement with Menzies for whoever attended the interview first to tell the other what questions were asked. He initially said he could not recall, but later admitted he and Menzies “would have” exchanged information about specific questions. He was reluctant to admit that such conduct was inappropriate, minimizing the gravity of such disclosures by claiming, “It would have been inappropriate to do that, but to be quite honest, it’s been going on for years.”⁸¹
- 2.47 In other evidence, Messenger said:⁸²
- he was aware that Menzies was speaking to other officers about obtaining or giving out the questions, including Marks, Graham, and an officer codenamed J60;
 - he was aware that Menzies was attempting to obtain information for Jones about interview questions;
 - he intended to write down the questions after his interview;
 - he agreed that information about an early interview from a country applicant would provide an unfair advantage, but claimed that any information he did receive was not useful; and
 - it would still be improper to seek information about questions if those particular questions were not asked.
- 2.48 Messenger was taken to an extract of an intercepted telephone conversation that he had with Museth on 26 March 2001. During that conversation Messenger said to Museth, “Mm oh mate, we’ll get you through the appeal if something happens anyway”.⁸³ Messenger stated that this comment was merely “a joke”.⁸⁴

⁷⁸ PIC Transcript, M W Messenger, 26 November 2001, pp. 763-764.

⁷⁹ *ibid.*, p. 764.

⁸⁰ *ibid.*, pp. 782 & 794.

⁸¹ *ibid.*, pp. 796 & 807-808.

⁸² PIC Exhibit 130B; PIC Transcript, M W Messenger, 26 November 2001, pp. 780-781, 816, 809 & 829-830.

⁸³ PIC Exhibits 133 & 134.

⁸⁴ PIC Transcript, M W Messenger, 26 November 2001, p. 836.

He agreed that as a member of a GREAT panel he would have some input into decisions made by the panel, but he added that the other members would not necessarily have to accept his input.⁸⁵

2.49 Menzies stated in evidence that he gave Messenger a copy of his application and “study book” and discussed with him the three topic areas covering specific questions.⁸⁶ Menzies also gave evidence that he had an understanding with Messenger that the first to be interviewed would “exchange” particular questions and/or topic areas.⁸⁷

2.50 Messenger was most reluctant to characterise receiving information concerning the interview questions from Menzies as improper. Ultimately he agreed that “... to a relatively minor nature I thought I misconducted myself”.⁸⁸ Messenger also conceded in evidence that it was inappropriate to swap interview questions.⁸⁹ Messenger stated that he did not report any of the “inappropriate conduct” of Menzies, Marks, Graham, Museth or J60, adding that he did not do so because he “didn’t know whether he [Menzies] had sourced any information from them or not”.⁹⁰

ASSESSMENT OF THE EVIDENCE OF MESSENGER

2.51 The Commission is of the opinion that the evidence demonstrates that Messenger knew more about the nature and extent of the misconduct being engaged in by Menzies than he was prepared to admit. His admissions that information had been exchanged about interviews “for years” and his characterisation about that as part of “Australian culture” does not sit well with his early denials that he had engaged in such practices. It is the opinion of the Commission that Messenger appeared to be attempting to distance himself from any direct involvement in misconduct and the misconduct of others.

DETECTIVE SENIOR CONSTABLE SIMON GEOFFREY JONES

2.52 Detective Senior Constable Jones was stationed at Dee Why Police Station at the time of the Jetz investigation.⁹¹ At the time of the hearings he was the Branch Administrator/Secretary of the Dee Why branch of the Police Association.⁹² He regarded Menzies as a good friend.⁹³

⁸⁵ PIC Transcript, M W Messenger, 26 November 2001, pp. 836-837.

⁸⁶ PIC Transcript, R G Menzies, 19 November 2001, pp. 453-456.

⁸⁷ *ibid.*, p. 458.

⁸⁸ PIC Transcript, M W Messenger, 26 November 2001, p. 840.

⁸⁹ *ibid.*, pp. 807-808.

⁹⁰ *ibid.*, p. 843.

⁹¹ PIC Transcript, S G Jones, 29 August 2001, p. 337; 22 November 2001, p. 624.

⁹² PIC Transcript, S G Jones, 22 November 2001, p. 666.

⁹³ *ibid.*, p. 631.

- 2.53 Jones was interviewed for a Team Leader/Sergeant (General Duties) position on 4 April 2001.⁹⁴ He applied, but was not interviewed, for a similar position in the Transit Police area. Jones gave evidence that he was told by the General Duties selection panel not to disclose the questions he had been asked during the interview.⁹⁵
- 2.54 On 8 June 2001, Jones underwent a single interview for Team Leader/Sergeant positions in the areas of Criminal Investigations and Investigations Management, and a Team Leader/Senior Sergeant position (Investigations Manager). At that interview he received and signed a copy of the document titled “Confidentiality of Structured Interview Questions”.⁹⁶
- 2.55 Jones initially told the Commission that:⁹⁷
- in 2000 Menzies arranged for him to receive a copy of his “study book”;⁹⁸
 - at a later date he again approached Menzies and was advised by him of a number of areas to study;⁹⁹
 - he had not sought or received information to be passed on to others, but had overheard a discussion about Duty Officer interviews from officers who appeared to have recently been interviewed. He noted the details of that discussion and relayed the information to Menzies for his benefit;¹⁰⁰ and
 - he recalled that there was discussion of the need for confidentiality after the interview.
- 2.56 However, when further questioned, Jones admitted that he had sought information in relation to Team Leader (Criminal Investigations), Investigations Manager, Sergeant and Senior Sergeant positions.¹⁰¹ He claimed he had not intended to mislead the Commission, but had simply forgotten this relevant information.¹⁰²
- 2.57 Jones’ own interview for Team Leader (General Duties) was on 4 April 2001. He said that at Menzies request, he had spoken to Museth on 26 March 2001 to compare what they had done by way of study preparation. Jones stated in evidence that he could not recall ringing Menzies after his interview on 4 April 2001.¹⁰³ However, a telephone call between Jones and Menzies on 4 April 2001 was intercepted,¹⁰⁴ and was played to Jones during the hearings.¹⁰⁵ Jones agreed

⁹⁴ PIC Transcript, S G Jones, 22 November 2001, p. 640.

⁹⁵ *ibid.*, pp. 643-644.

⁹⁶ PIC Exhibit 73.

⁹⁷ PIC Transcript, S G Jones, 22 November 2001, pp. 629-635.

⁹⁸ *ibid.*, p. 627.

⁹⁹ *ibid.*, p. 630.

¹⁰⁰ *ibid.*, p. 632.

¹⁰¹ *ibid.*, pp 650-652.

¹⁰² *ibid.*, p. 652.

¹⁰³ *ibid.*, p. 656.

¹⁰⁴ PIC Exhibits 107 & 108.

¹⁰⁵ PIC Transcript, S G Jones, 22 November 2001, p. 657.

that the call was made shortly after his interview and that it revealed Menzies asking him to call Museth. To this effect, Jones stated in evidence, “obviously he’s asked me to ring Museth to let him know what I had in the interview”.¹⁰⁶

2.58 Jones accepted that he agreed to call Museth, but did not recall doing so on 4 April 2001.¹⁰⁷ He agreed in evidence that he spoke to Museth on 5 April 2001, after Museth’s interview, to compare “my interview with his”.¹⁰⁸ Jones stated that his recollection of this phone call was prompted by his personal telephone records, which confirmed that the call was made on 5 April.¹⁰⁹ However, he said that he could not recall speaking to Museth after his own interview on 4 April and prior to Museth’s interview, and could recall no further discussions with Museth.¹¹⁰

2.59 Jones was played an intercepted telephone conversation between Museth and Menzies that took place on 4 April 2001, where Museth told Menzies, “Jonesy rang me and the drum’s good”.¹¹¹ In evidence on 29 August 2001, Museth said that this meant Jones had given him correct information about the questions at the interview.¹¹²

2.60 In another intercepted telephone conversation on 4 April 2001, Museth told Menzies at 17:08:¹¹³

... all the drum seems to be good. It’s just that there’s conflicting stuff about ... corruption indicators. That doesn’t seem to be a question the Sydney boys are getting ...

2.61 Jones agreed that he was not asked about corruption indicators, but the only explanation he could give as to why Museth would relay that information in this telephone conversation was that he may have received it from someone else.¹¹⁴ This conversation took place on the same day that Jones told Menzies he was going to telephone Museth.¹¹⁵

2.62 Jones maintained in evidence that he did not recall any telephone conversations with Museth other than those referred to in his written statement provided to the Commission under section 25 of the Act.¹¹⁶ Jones said the only conversation he had with Museth about the questions from the Team Leader interviews took place after both had completed their interviews on 5 April 2001, when they

¹⁰⁶ PIC Transcript, S G Jones, 22 November 2001, p. 658.

¹⁰⁷ *ibid.*, p. 661.

¹⁰⁸ *ibid.*, p. 656.

¹⁰⁹ *ibid.*, p. 658.

¹¹⁰ *ibid.*, pp. 654-658.

¹¹¹ PIC Exhibit 63; PIC Transcript, S G Jones, 22 November 2001, p. 659.

¹¹² PIC Transcript, P F Museth, 29 August 2001, pp. 304-305.

¹¹³ PIC Exhibit 65B.

¹¹⁴ PIC Transcript, S G Jones, 22 November 2001, p. 663.

¹¹⁵ PIC Exhibit 108.

¹¹⁶ PIC Exhibit 106B.

discussed the specific topic areas relating to both competencies and technical questions. Jones attempted to justify this discussion on the basis that the interviews were over. However, he acknowledged that he was warned not to discuss the questions that had been asked of him in the interview.¹¹⁷

- 2.63 Jones agreed that he had received and shared information about interview questions improperly, but did not regard it as misconduct. He said he simply did not consider reporting that conduct, because at the time he did not consider that it was something that had to be reported. He went on to say that he believed that most people did not consider it as serious misconduct or misconduct at all.¹¹⁸
- 2.64 Menzies said in his statement that Jones provided him with topic areas, which Jones had overheard officers discussing at a Task Force where he was working.¹¹⁹ The only assistance to Menzies that Jones recalled giving him was advice of the information he had overheard officers discussing at the conclusion of their interviews.¹²⁰ He agreed that passing on that information was improper.¹²¹ He stated he also intended to provide it to Messenger, whom he considered to be his good friend.¹²²
- 2.65 In an intercepted telephone conversation between Menzies and Jones on 1 June 2001, Jones advised Menzies that he had some additional information relating to the information provided previously to Menzies.¹²³ In evidence before the Commission, he said that he had “asked around” and said, “I’ve tried to resource [sic] those things that I’ve already heard in full or better detail.”¹²⁴ Jones further stated that he had spoken to two officers, one of whom was an applicant for the Duty Officer position.
- 2.66 During the recorded telephone conversation of 1 June 2001, Jones requested that Menzies speak with Whyte to obtain information about specific questions for his assistance.¹²⁵ Jones also said in that conversation that he was trying to persuade an officer codenamed J66 to divulge specific questions, but that J66 “was a bit funny on the phone”. J66 invited Jones to speak to him later.¹²⁶
- 2.67 In his evidence on 22 November 2001, Jones confirmed that in an intercepted telephone conversation on 7 June 2001,¹²⁷ he was still seeking information about the questions from Menzies, and that he asked Menzies whether he had obtained

¹¹⁷ PIC Transcript, S G Jones, 22 November 2001, pp. 643-644.

¹¹⁸ PIC Transcript, S G Jones, 23 November 2001, pp. 697-698.

¹¹⁹ PIC Exhibit 96B, barcodes 5999396 – 5999397.

¹²⁰ PIC Transcript, S G Jones, 22 November 2001, p. 676.

¹²¹ *ibid.*, p. 635.

¹²² *ibid.*, pp. 671-672.

¹²³ PIC Exhibit 110B.

¹²⁴ PIC Transcript, S G Jones, 22 November 2001, p. 680.

¹²⁵ PIC Exhibit 110B; PIC Transcript, S G Jones, 22 November 2001 p. 685.

¹²⁶ PIC Exhibit 110B.

¹²⁷ PIC Exhibit 114B.

any information from Whyte.¹²⁸ Also in that telephone conversation, Jones told Menzies that he had spoken to J66 and had been told that the panel was asking general supervision type questions, for which you could not study. Jones was told that there were no questions on corruption or informant management. He then said to Menzies “if you can get a chance to speak to Scotty Whyte and he give [sic] you the same sort of drum, mate well then I know where I stand.”¹²⁹

- 2.68 In a three-way conversation on 7 June 2001, between Jones, Menzies and Messenger, Jones prompted Messenger to ask Menzies whether he had spoken to Scott Whyte.¹³⁰ Menzies replied that he was “working on him (Whyte) and Kel Graham”.¹³¹ Jones said in evidence that he was not aware that Menzies was also seeking information from Graham, but agreed that the transcript of the intercepted telephone conversation indicated that was occurring.¹³²

ASSESSMENT OF THE EVIDENCE OF JONES

- 2.69 It is apparent from the evidence of witnesses who assisted the Commission, and the telecommunication intercept material, that Jones was more involved in, and knowledgeable about, promotions related misconduct than he wished the Commission to believe. Furthermore, he was only prepared to concede any instances of misconduct when presented with other evidence, including telecommunication intercept material.
- 2.70 The Commission is of the opinion that, despite Jones’ insistence that he did not recall speaking to Museth prior to his interview, Jones did speak to Museth prior to his interview and conveyed information regarding the interview questions to Museth. The Commission is of the view that Jones was not completely forthcoming in his evidence to the Commission.

SENIOR CONSTABLE ANDREW PAUL MARKS

- 2.71 At the time of the Jetz hearings, Marks was a Detective Senior Constable stationed at Kogarah.¹³³ He described Menzies as a mentor, and a person he would class as a friend, although he did not see him socially.¹³⁴
- 2.72 Marks applied for positions as a Team Leader/Sergeant (Criminal Investigations), Investigations Manager/Senior Sergeant and Investigations Manager/Sergeant and attended one interview for all three positions on 4 June 2001. The following day he was interviewed for a position as a Crime Manager (Detective Inspector),

¹²⁸ PIC Transcript, S G Jones, 22 November 2001, pp. 690-691.

¹²⁹ PIC Exhibit 112B.

¹³⁰ PIC Exhibit 114B.

¹³¹ *ibid.*

¹³² PIC Transcript, S G Jones, 22 November 2001, p. 691.

¹³³ PIC Transcript, A P Marks, 29 November 2001, p. 1071.

¹³⁴ *ibid.*, p. 1087.

and on 7 June 2001 for the position of Duty Officer/ Inspector. At each of those interviews, he signed an agreement titled “Confidentiality of Structured Interview Questions” that he understood directed him not to disclose the nature and content of the interview questions.¹³⁵

2.73 In evidence, Marks did not recall confidentiality formally attaching to previous interviews in which he had participated. However, he said that he had no doubt that he would have been told not to discuss the interview questions.¹³⁶ He could recall being advised that refraining from disclosing information about the interview protected the officer’s own position in the selection process. He considered it better not to disclose the questions, as that would diminish his own chances, but otherwise he could see no difficulty in disclosing the topics that were the subject of interview.¹³⁷

2.74 In evidence, Marks denied that he had received any documentation from Menzies in relation to the Assessment Centre.¹³⁸ He admitted seeking information about interview topics relating to behavioural and competency questions, but denied that he had ever sought information about specific interview questions.¹³⁹ Marks’ evidence was that he considered it acceptable to share information about topics, as opposed to questions, and that he had intended to tell Menzies what the topics were.¹⁴⁰

2.75 The following exchange was recorded in an intercepted telephone conversation between Marks and Menzies on 25 May 2001.¹⁴¹

AM: Um, could you do us a favour?

RM: Yep.

AM: Put your ear to the ground about the ah ...

RM: I will.

AM: Investigations Managers and (unintelligible) ...

RM: Yes yes.

AM: No dramas.

2.76 Marks’ evidence was that this exchange referred only to topics, and he was not asking Menzies to obtain information about questions from other applicants.¹⁴²

¹³⁵ PIC Transcript, A P Marks, 29 November 2001, pp. 1076-1078; PIC Exhibits 177, 178 & 179.

¹³⁶ PIC Transcript, A P Marks, 29 November 2001, pp. 1107-1108.

¹³⁷ *ibid.*

¹³⁸ *ibid.*, pp. 1089-1090.

¹³⁹ PIC Transcript, A P Marks, 29 November 2001, pp. 1082 & 1090; PIC Exhibit 181, barcode 5982091.

¹⁴⁰ PIC Transcript, A P Marks, 29 November 2001, pp. 1105-1106.

¹⁴¹ PIC Exhibit 183, barcode 5828829.

¹⁴² PIC Transcript, A P Marks, 29 November 2001, pp. 1109-1110.

- 2.77 Marks agreed that in a further intercepted telephone conversation between him and Menzies on 2 July 2001,¹⁴³ he appeared keen to provide information to Menzies about topics he had been asked in his interview.¹⁴⁴ In that conversation, he said he had not provided that information to Menzies because he simply “forgot”.¹⁴⁵ In his evidence to the Commission, he said:¹⁴⁶

Well, I – I remember getting the call and I don’t know whether he was ringing me to find out why I didn’t ring him or whatever, so I was – as I say, I forgot about him, that was it. I forgot about the interviews as a whole so it’s not a lie there. But I didn’t forget him because I didn’t want to ring him because I didn’t want to get in trouble.

- 2.78 Menzies’ evidence is that he provided Marks with a copy of his Assessment Centre report.¹⁴⁷ The report contained information about behavioural competencies and key actions that would be of assistance in preparing an application. Menzies also said that he had provided Marks with applications that included information obtained from “key action” documents.¹⁴⁸ Menzies understood that in return, Marks was intending to provide him with information about the topic areas and questions examined in the Duty Officer interview round, where they both were applicants. Menzies had a conversation to this effect with Marks.¹⁴⁹

ASSESSMENT OF THE EVIDENCE OF MARKS

- 2.79 It is the opinion of the Commission that Marks’ statement, that he was not aware of confidentiality requirements before signing agreements in early June 2001, defies common sense. It was submitted on behalf of Marks that once he had signed the confidentiality agreement, he did not breach its terms. Marks further submitted that by this action, his conduct is distinguishable from the unequivocal wrongdoing of other officers whose conduct is examined in this Report.¹⁵⁰
- 2.80 The evidence given by Marks does not appear credible in the context of the evidence of Menzies and the intercepted telephone conversations. The Commission is of the view that the distinction between topics and questions is not valid. It is improper to identify questions or topic areas to be examined at interview. The dissemination of information relating to either topics or questions provides an unfair advantage to those who have access to such information, therefore undermining the equity and fairness of the promotion system.

¹⁴³ PIC Exhibit 185.

¹⁴⁴ PIC Transcript, A P Marks, 29 November 2001, p. 1113.

¹⁴⁵ PIC Exhibit 185; PIC Transcript, A P Marks, 29 November 2001, pp. 1113-1114.

¹⁴⁶ PIC Transcript, A P Marks, 29 November 2001, p. 1115.

¹⁴⁷ PIC Transcript, R G Menzies, 19 November 2001, pp. 439-440; PIC Exhibit 96B, barcode 5999402.

¹⁴⁸ PIC Exhibit 96B, barcodes 5999390 & 5999392; PIC Transcript, R G Menzies, 19 November 2001, pp. 437-438 & 440.

¹⁴⁹ PIC Transcript, R G Menzies, 19 November 2001, pp. 440-441.

¹⁵⁰ PIC Exhibit 226, barcodes 6133583 - 6133588.

SERGEANT BRADLEY RICHARD NUTTALL

- 2.81 At the time of the Jetz hearings, Nuttall was stationed at Surry Hills Police Station and held the rank of Sergeant.¹⁵¹ Nuttall had a work related friendship with Menzies¹⁵² and held an elected position within the Police Association as a Local Branch Administrator.¹⁵³
- 2.82 Nuttall was awarded the position of Team Leader/Sergeant (General Duties) following an interview on 6 April 2000.¹⁵⁴ Before the interview, his understanding had been that there was some degree of confidentiality about the matters to be discussed during the interview.¹⁵⁵ He recalled that one of the selection committee members advised him that the questions were confidential at the time of the interview, but did not recall sighting a copy of the document “Content of Interview Process”.¹⁵⁶ However, he left the interview with no doubt that he was not to discuss the interview questions with anyone else.¹⁵⁷
- 2.83 Nuttall agreed that the purpose of confidentiality was to “preserve the integrity of the questioning process” and to ensure that there was no unfair advantage obtained from early access to the questions or topics that candidates were to be asked.¹⁵⁸
- 2.84 During evidence Nuttall said that he had never sought or received any information about questions for the purpose of assisting colleagues. He also denied having knowledge of such conduct by others.¹⁵⁹ Nuttall said that, before his interview, he had received notes from Menzies that Menzies had used in his own application for a Sergeant’s position. Nuttall said, however, that he had no reason to suspect that any of the material was improperly obtained.¹⁶⁰ He acknowledged that Menzies had provided him with a copy of his actual application. Nuttall also admitted referring to Menzies’ application in drafting his own application.¹⁶¹
- 2.85 Nuttall said he knew that Menzies provided assistance to other applicants. His evidence was that he assumed that assistance was in the same form provided to him.¹⁶² Nuttall said that this was what he was referring to when he asked Menzies “did you get the old network happening?” during the course of an intercepted telephone conversation between them on 6 March 2001.¹⁶³

¹⁵¹ PIC Transcript, B R Nuttall, 28 November 2001, p. 1029.

¹⁵² *ibid.*, p. 1039.

¹⁵³ *ibid.*, p. 1045.

¹⁵⁴ *ibid.*, p. 1031.

¹⁵⁵ *ibid.*, p. 1032.

¹⁵⁶ PIC Transcript, B R Nuttall, 28 November 2001, pp. 1031-1032; PIC Exhibit 165.

¹⁵⁷ PIC Transcript, B R Nuttall, 28 November 2001, p. 1032.

¹⁵⁸ *ibid.*, p. 1032.

¹⁵⁹ *ibid.*, p. 1036.

¹⁶⁰ *ibid.*, pp. 1037-1038.

¹⁶¹ PIC Transcript, B R Nuttall, 28 November 2001, pp. 1036-1037; 29 November 2001, p. 1061.

¹⁶² PIC Transcript, B R Nuttall, 28 November 2001, p. 1040.

¹⁶³ PIC Transcript, B R Nuttall, 28 November 2001, p. 1043; PIC Exhibit 169B.

2.86 Nuttall agreed during his evidence that the intercepted telephone conversation indicated that Menzies was attempting to gather information about interview topics and questions for the purpose of assisting Museth with his interview to obtain a promotion.¹⁶⁴ The following exchange took place during the hearings between Nuttall and Counsel Assisting the Commission:¹⁶⁵

Q. It was clear to you, then, that what Menzies was participating in, in respect of sourcing questions, was improper?

A. Yes.

Q. And you were aware of that?

A. Yes.

Q. And you didn't report that to anyone?

A. No.

Q. Did you understand that that information should be kept secret?

A. Yes.

Q. And that was because it would affect the chances of those that were nominated?

A. Yes.

Q. And also indicate that you had knowledge of some improper conduct being participated in; is that right?

A. Yes.

2.87 Nuttall's evidence was that he did not report this conduct to anyone. His reasons for not reporting the conduct included that to do so would expose himself as a person who had knowledge that improper conduct had taken place and it would affect the chances of those who were being assisted by Menzies.¹⁶⁶

2.88 In evidence, Menzies stated that he gave Nuttall a copy of his application that contained the key actions he had obtained from the Senior Sergeant identified as J75.¹⁶⁷ Menzies' recollection was that he had discussed the questions with Nuttall, but he believed Nuttall had knowledge of the questions before they spoke. Menzies thought that Nuttall was probably seeking clarification of the way in which the questions should be answered.¹⁶⁸

ASSESSMENT OF THE EVIDENCE OF NUTTALL

2.89 The Commission accepts the evidence of Nuttall, including his admission that he knew Menzies was providing assistance to a group of officers and that, in particular, Menzies was seeking information to provide specific assistance to Museth.

¹⁶⁴ PIC Transcript, B R Nuttall, 28 November 2001, pp. 1046-1048; 29 November 2001, pp. 1054-1055.

¹⁶⁵ PIC Transcript, B R Nuttall, 29 November 2001, pp. 1055-1056.

¹⁶⁶ *ibid.*, p. 1056.

¹⁶⁷ PIC Transcript, R G Menzies, 19 November 2001, p. 438.

¹⁶⁸ *ibid.*, p. 483.

- 2.90 With regard to the evidence of Menzies and the intercepted telephone conversation, the Commission is not persuaded by the submission made by Nuttall's legal representatives. It was submitted that Nuttall's admission that he knew Menzies was gathering information to assist Museth arose from confusion about matters known to him at the material time and at the time of giving his evidence.¹⁶⁹ The Commission is of the view that Nuttall was aware that this was Menzies' purpose at the time of the events under examination.

SENIOR CONSTABLE PETER MICHAEL MOSS

- 2.91 At the time of the Jetz investigation, Moss was a Senior Constable attached to Gladesville Police Station.¹⁷⁰ Menzies was a superior officer at the station and Moss considered Menzies to be a friend.¹⁷¹ In his evidence, Moss stated that he had never sought or received information to better prepare himself for interviews, nor done the same to assist colleagues. Moss also denied ever having conveyed information to colleagues to assist them.¹⁷²
- 2.92 Moss applied for a position as a Team Leader/Sergeant in the areas of General Duties and Transit Police. He was successful in obtaining an interview for the General Duties position. Moss recalled that at his interview on 14 March 2001, he was made aware of the document titled "Content of Interview Process". Moss' evidence was that he had not been for any interviews prior to his interview on 14 March 2001, and that he was not aware of any confidentiality requirement in relation to interview questions until his interview took place.¹⁷³
- 2.93 Moss was played an intercepted telephone conversation recorded on 11 March 2001 in which Menzies said to him that only he (Moss) and one other were to receive an advantage.¹⁷⁴ When questioned about this conversation, Moss could offer no alternative explanation other than that he was being offered an advantage in the form of confidential information regarding his upcoming interview.¹⁷⁵
- 2.94 Moss gave evidence that on a number of occasions before his interview Menzies had "quizzed" him, in the sense that he asked him questions and on some occasions provided the answers before Moss could respond himself.¹⁷⁶ He stated that the "quiz" questions were not identified as possible interview questions, and that:¹⁷⁷

The quiz questions I didn't really distinguish as him offering me questions for any reason but to answer them on that specific date.

¹⁶⁹ PIC Exhibit 231, barcodes 6130380 – 6130381.

¹⁷⁰ PIC Transcript, P M Moss, 27 November 2001, p. 922.

¹⁷¹ *ibid.*, p. 926.

¹⁷² *ibid.*, pp. 928-929.

¹⁷³ *ibid.*, pp. 925-926.

¹⁷⁴ PIC Exhibit 153.

¹⁷⁵ PIC Transcript, P M Moss, 27 November 2001, pp. 945-951.

¹⁷⁶ *ibid.*, pp. 930-931.

¹⁷⁷ *ibid.*, p. 935.

- 2.95 Moss' evidence was that he was asked three of the "quiz questions" at interview.¹⁷⁸ He later conceded that he had been quizzed on six of the questions he was asked at interview.¹⁷⁹ He conceded he may have discussed the interview with Menzies after it had occurred and that all that Menzies asked him was "How did you go during your interview".¹⁸⁰
- 2.96 In Menzies' written statement to the Commission, he said that Moss approached him and asked if Menzies had the details of the questions to be asked at Moss' upcoming Sergeant's interview. Menzies stated that over a couple of days he informed Moss of the questions, which had been supplied by Graham. Menzies also confirmed to Moss that they were the specific questions that were being asked in the interview.¹⁸¹ In evidence, Menzies said that he believed that Moss had a general understanding that he was to provide information concerning the interview questions.¹⁸² This accords with an intercepted telephone conversation between Menzies and Museth on 6 March 2001.¹⁸³ This was denied by Moss. He agreed that Menzies appeared to be of the belief that he would provide information, but he was unable to offer any explanation of why Menzies might convey such an idea to Museth.¹⁸⁴

ASSESSMENT OF THE EVIDENCE OF MOSS

- 2.97 Moss was an unconvincing witness who attempted to minimise his misconduct. His oral evidence conflicted with the evidence of witnesses assisting the Commission and the telecommunication intercept material.

SERGEANT ANTHONY FRANCIS LONG

- 2.98 Long was a Sergeant stationed at Kempsey Police at the time of the Jetz hearings.¹⁸⁵ He was Treasurer of the Police Association, but had stood down as a result of the Commission's investigation.¹⁸⁶ He was an applicant for the position of Duty Officer/Inspector in the General Duties area and was interviewed for that position on 30 May 2001. At the interview, he signed and dated a copy of the document "Confidentiality of Structured Interview Questions".¹⁸⁷ His evidence was that he understood the import of the direction contained in that document, and that he had understood from previous interviews that disclosure of interview questions was improper in the period before the interview round had concluded.¹⁸⁸

¹⁷⁸ PIC Transcript, P M Moss, 27 November 2001, p. 938.

¹⁷⁹ *ibid.*, p. 940.

¹⁸⁰ *ibid.*, p. 940.

¹⁸¹ PIC Exhibit 96B, barcode 5999405.

¹⁸² PIC Transcript, R G Menzies, 19 November 2001, p. 470.

¹⁸³ PIC Exhibit 155B, barcode 5903858.

¹⁸⁴ PIC Transcript, P M Moss, 27 November 2001, p. 961.

¹⁸⁵ PIC Transcript, A F Long, 30 August 2001, p. 345.

¹⁸⁶ PIC Transcript, A F Long, 26 November 2001, p. 859.

¹⁸⁷ PIC Exhibit 76; PIC Transcript, A F Long, 30 August 2001, p. 349; the text of the document is at Appendix 3.

¹⁸⁸ PIC Transcript, A F Long, 26 November 2001, pp. 856-857.

2.99 Long provided a statement of information in response to a notice under section 25 of the Act, which he later adopted in evidence.¹⁸⁹ In his response he:¹⁹⁰

- denied that he had sought or received information concerning interview questions to better prepare himself;
- denied that he had ever sought or received information concerning interview questions to better prepare his colleagues;
- admitted that he had conveyed information to Menzies to assist him;
- denied conveying information to other colleagues for their assistance; and
- admitted he breached confidentiality.

2.100 In his oral evidence, Long acknowledged receiving a copy of Menzies' application, which he used as a model for his own.¹⁹¹ When asked whether he had discussed the technical professional knowledge questions with Menzies, he responded "Probably yes".¹⁹² He qualified the answer by stating that their discussions were limited to competencies and technical and professional areas they might expect to be the subject of questions. He said that he had not disclosed this in his written response to the Commission pursuant to section 25 of the Act, because he had discussed such areas with a number of people and "didn't think that was an issue".¹⁹³

2.101 Long was shown a transcript of an intercepted telephone conversation he had with Menzies on 24 May 2001, several days before his interview.¹⁹⁴ Menzies provided advice during the conversation about the areas within his "study book" that Long should turn his attention to in preparing for his interview. At the conclusion of the conversation, Long agreed to take "copious notes" from his interview to assist Menzies.¹⁹⁵ In his oral evidence, Long denied that he agreed to assist Menzies in this manner.¹⁹⁶

2.102 Long accepted that Menzies had faxed him a list of questions and he had faxed back the sheet after marking which questions he was asked at interview and which questions he was not asked.¹⁹⁷ He further accepted that they had a cryptic conversation in which he explained his notes.¹⁹⁸ This accords with the information provided to the Commission by Menzies in his statement dated 29 August 2001.¹⁹⁹ Long agreed his conduct in this respect was improper and that

¹⁸⁹ PIC Exhibit 137B, barcodes 6209218 - 6209222; PIC Transcript, A F Long, 26 November 2001, p. 853.

¹⁹⁰ PIC Transcript, A F Long, 26 November 2001, pp. 854 & 858; PIC Exhibit 137B.

¹⁹¹ PIC Transcript, A F Long, 26 November 2001, p. 860.

¹⁹² *ibid.*

¹⁹³ *ibid.*, pp. 860-861.

¹⁹⁴ PIC Exhibit 139; PIC Transcript, 26 November 2001, pp. 864-865.

¹⁹⁵ PIC Exhibit 139, barcode 5901398.

¹⁹⁶ PIC Transcript, A F Long, 26 November 2001, p. 866; 27 November 2001, p. 872.

¹⁹⁷ PIC Transcript, A F Long, 26 November 2001, pp. 866-867; 27 November 2001, p. 872.

¹⁹⁸ PIC Transcript, A F Long, 27 November 2001, p. 872.

¹⁹⁹ PIC Exhibit 96B, barcode 5999398.

he breached the confidentiality direction to which he was subject. He agreed he did not report his own misconduct or that of Menzies.²⁰⁰

- 2.103 Long was also examined about another matter that he omitted to mention in his Section 25 response. This matter involved his request that a colleague, codenamed J55, attend an interview to find out the questions for Long's benefit, even though J55 was thinking of withdrawing from the interview process. Long said J55 had spoken to him about withdrawing from the process, but Long denied that he approached J55 for the purpose of obtaining information about the questions.²⁰¹ Long admitted that when he found out that J55 was withdrawing from the interview process, he said, "you can at least go along and get the questions for me".²⁰² Long insisted that this was said as a joke and that he did not mean for J55 to stay in the interview process for the purpose of assisting him with his interview.²⁰³ Long stated that his reason for asking Menzies to persuade J55 not to withdraw from the process was because he (J55) "has the ability to be a very good commander in the Police Service."²⁰⁴
- 2.104 Long's explanation for not mentioning this incident in his written response to the Commission was that he did not think about mentioning it because the purpose of speaking to J55 was not to obtain information but to encourage him to remain in the interview process.²⁰⁵ Menzies said in his statement that he had a discussion with Long about attempting to persuade J55 not to withdraw from the interview process and that J55's attendance may have been beneficial to both his and Long's preparation for the interview.²⁰⁶

ASSESSMENT OF THE EVIDENCE OF LONG

- 2.105 In addition to Long's evidence provided in his section 25 response, Long made further concessions in his oral evidence once telecommunication intercept material was brought to his attention. It is the Commission's view that it does not reflect well on Long that he attempted to minimise the benefit he accrued from Menzies' comments by stating that he had already studied those areas.

SENIOR CONSTABLE TODD MUNRO SCOTT

- 2.106 At the time of the Operation Jetz hearings, Scott was a Senior Constable stationed at Kempsey Police Station.²⁰⁷ He applied for the position of Team Leader/Sergeant (General Duties) and was interviewed on 21 March 2001. He agreed

²⁰⁰ PIC Transcript, A F Long, 27 November 2001, pp. 886-887.

²⁰¹ PIC Transcript, A F Long, 26 November 2001, pp. 862-863.

²⁰² PIC Transcript, A F Long, 26 November 2001, p. 862.

²⁰³ PIC Transcript, A F Long, 26 November 2001, pp. 862-863.

²⁰⁴ PIC Transcript, A F Long, 26 November 2001, pp. 863-864.

²⁰⁵ PIC Transcript, A F Long, 26 November 2001, p. 864.

²⁰⁶ PIC Exhibit 96B, barcode 5999399.

²⁰⁷ PIC Transcript, T M Scott, 23 November 2001, p. 702.

in evidence that at his interview he was advised of the information contained in the document “Confidentiality of Interview Process,” and that the contents of that document agreed with his understanding of the confidentiality requirements for interview questions. While he did not recall being directed not to disclose questions, he knew that he should not do so.²⁰⁸

2.107 Scott candidly conceded in evidence that he had sought and obtained information about interview questions for his own benefit from Menzies, Museth, Graham and three other officers.²⁰⁹ He agreed that he had breached confidentiality and that he should have reported his own conduct, but did not do so.²¹⁰ Scott said that a friend had given him information about Duty Officer interviews and that he had conveyed that information to Menzies.²¹¹

2.108 Menzies and Museth confirmed that they had provided information to Scott about specific questions, and received such information from him.²¹² Evidence of this was disclosed in two intercepted conversations on 12 March 2001. In the first conversation, at 11:55am, Scott sought interview questions from Menzies.

2.109 In the second conversation at 12:00pm on 12 March 2001, Menzies and Scott discussed the questions and Menzies provided specific details of the questions to be asked.²¹³

ASSESSMENT OF THE EVIDENCE OF SCOTT

2.110 Scott was forthcoming in his evidence and appears to have fully co-operated with the Commission’s investigation. He did not attempt to diminish the extent or nature of his misconduct.

SENIOR CONSTABLE SEAN EDWARD HAMPSTEAD

2.111 At the time of the Jetz hearings, Hampstead was a Detective Senior Constable at Gladesville Police Station.²¹⁴ He applied for a position as a Team Leader/Sergeant in the areas of General Duties and Transit Police, and was successful in obtaining an interview for the General Duties position, which was held on 22 March 2001.²¹⁵

2.112 Hampstead said in his evidence that he thought that a member of the Selection Committee read out the document “Confidentiality of Interview Process” at his

²⁰⁸ PIC Transcript, T M Scott, 23 November 2001, pp. 704 & 722. The text of the document “Content of Interview Process” appears in Appendix 3 to this Report.

²⁰⁹ PIC Transcript, T M Scott, 23 November 2001, pp. 709-714 & 722-724.

²¹⁰ *ibid.*, pp. 746-747.

²¹¹ *ibid.*, pp. 718-719.

²¹² PIC Transcript, R G Menzies, 21 August 2001, pp. 151-152; 22 August 2001, pp. 191-192; 19 November 2001, pp. 446-447 & 450; P M Museth, 29 August 2001, pp. 254-257 & 277-279.

²¹³ PIC Exhibit 32.

²¹⁴ PIC Transcript, S E Hampstead, 29 November 2001, pp. 1123-1124.

²¹⁵ *ibid.*, pp. 1125-1126.

interview, and that he was given a copy of the document.²¹⁶ He said in evidence that he knew before attending his interview, that interview questions were confidential, and he also understood that knowledge of the behavioural or technical questions could advantage an applicant.²¹⁷

- 2.113 Hampstead said he was not a friend of Menzies, whom he thought had started at Gladesville station only shortly before his interview took place.²¹⁸ Despite not knowing Menzies very well, Hampstead approached him for assistance because Menzies had been appointed an Inspector from a junior rank.²¹⁹ He received a copy of Menzies' "study book" and copied relevant parts of it.²²⁰ Hampstead also received assistance from a colleague codenamed J43, an applicant for the same position who was interviewed a week before him. His evidence is that J43 provided him with a copy of the questions he had been asked, and that he was asked the same questions. He agreed this gave him an unfair advantage.²²¹
- 2.114 Hampstead admitted showing a copy of the questions to Menzies and Museth, but only Museth took a copy.²²² Both Menzies and Museth agreed this had taken place.²²³ Museth was an applicant in the same round and had not yet attended an interview. Hampstead said that he knew Menzies was trying to obtain information to assist Museth, but he had not entered into an arrangement to provide Menzies with any information.²²⁴ Hampstead admitted that seeking information and sharing questions was improper, and acknowledged his obligation to report that conduct.²²⁵

ASSESSMENT OF THE EVIDENCE OF HAMPSTEAD

- 2.115 Hampstead impressed as a frank and honest witness. His evidence was characterised by his acceptance of responsibility for his conduct and a lack of attempts to minimise the gravity of his conduct.

INSPECTOR STEPHEN JOHN MARTLEW

- 2.116 At the time of the Jetz hearings, Martlew was a Duty Officer at Gladesville Police Station holding the rank of Inspector.²²⁶ Martlew was a member of

²¹⁶ PIC Transcript, S E Hampstead, 29 November 2001, pp. 1126-1127.

²¹⁷ *ibid.*, p. 1127.

²¹⁸ *ibid.*, p. 1132.

²¹⁹ *ibid.*, pp. 1135-1136.

²²⁰ *ibid.*, pp. 1137-1138.

²²¹ *ibid.*, pp. 1130-1131.

²²² *ibid.*, p. 1131.

²²³ PIC Transcript, R G Menzies, 19 November 2001, pp. 475-476; PIC Transcript, P F Museth, 22 August 2001, pp. 242-243; 29 August 2001, pp. 258 & 282-283.

²²⁴ PIC Transcript, S E Hampstead, 29 November 2001, pp. 1132 & 1135.

²²⁵ *ibid.*, p. 1135.

²²⁶ PIC Transcript, S J Martlew, 27 November 2001, p. 894.

selection panels for the positions of Team Leader/Sergeant in the areas of General Duties and Transit Police.²²⁷

- 2.117 In an intercepted telephone conversation between Menzies and Museth on 4 April 2001, Menzies told Museth that Martlew had told him there was a rotating question about corruption indicators.²²⁸ In his statement to the Commission, Menzies said that the corruption indicator question was known to him from his time on GREAT panels, and that Martlew had confirmed to him that it was being asked in the round then taking place.²²⁹
- 2.118 In evidence, Martlew denied such a disclosure.²³⁰ Martlew's evidence was that there was some general discussion at the Gladesville station about interviews. These discussions occurred when he returned to the station for a couple of days during the round of interviews. He said he knew that Museth and officers from Gladesville were applying for promotion, and that made him conscious of not making inappropriate disclosures. He conceded that Menzies may have extracted confirmation from him that the corruption indicators question would be included, but he did not recall such a conversation.²³¹

ASSESSMENT OF THE EVIDENCE OF MARTLEW

- 2.119 Martlew presented as a candid witness and was not reluctant to concede that he may have disclosed information to Menzies during the course of a general discussion. He acknowledged that it had not been wise to engage in any discussion about the interview process.
- 2.120 While the direct evidence of Menzies is that Martlew confirmed that the corruption indicators question would be asked, the Commission is of the view that there is insufficient evidence to demonstrate that Martlew participated in behaviour that could be constituted as misconduct.

²²⁷ PIC Transcript, S J Martlew, 27 November 2001, pp. 897-898.

²²⁸ PIC Exhibits 65B.

²²⁹ PIC Exhibit 96B, barcode 5999405.

²³⁰ PIC Transcript, S J Martlew, 27 November 2001, p. 906.

²³¹ *ibid.*, pp. 906 & 910-911.

3. AFFECTED PERSONS

- 3.1 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.
- 3.2 The Report to Parliament must comply with sub-section 97(2) of the Act, which 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 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 Act 1990* against the person as a police officer.
- 3.3 In discharging its functions under sub-section 97(2) the Commission is mindful of the effect of section 40 of the Act. 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 Act or proceedings for contempt under that Act. 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 Act 1990*. The material is also admissible in proceedings under Division 1A or 1C of Part 9 of the *Police Act 1990* and any disciplinary proceedings; sub-section 40(3).
- 3.4 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 sub-section 97(2) of the Act.
- 3.5 The following persons are “affected persons” for the purposes of sub-section 97(3) of the Act:
- Robert Gordon **Menzies**;
 - Paul Francis **Museth**;
 - Kel Stanley **Graham**;
 - Scott Andrew **Whyte**;

- Mark William **Messenger**;
- Simon Geoffrey **Jones**;
- Andrew **Marks**;
- Bradley Richard **Nuttall**;
- Peter **Moss**;
- Anthony **Long**;
- Todd Munro **Scott**;
- Sean Edward **Hampstead**; and
- Stephen **Martlew**.

3.6 The Commission is of the opinion that the evidence disclosed the following police misconduct by a number of officers:

- a) seeking and/or receiving information regarding questions to be asked at interview from colleagues, with a view to obtain an unfair advantage for himself;
- b) seeking and/or receiving information regarding questions to be asked at interview from colleagues, so as to obtain an unfair advantage for other colleagues;
- c) conveying information to colleagues regarding questions to be asked at interview, so as to give an unfair advantage to colleagues;
- d) failing to comply with confidentiality requirements relating to questions asked at interview; and
- e) failing to report misconduct.

3.7 The above behaviour was considered by the Commission when forming an opinion as to whether any recommendations should be made pursuant to sub-section 97(2) of the Act.

ROBERT GORDON MENZIES

3.8 During evidence, Menzies admitted:

- receiving the key actions which he incorporated into his job applications and Assessment Centre Report;
- conveying and/or receiving information from Scott, Jones and Long that related to specific questions for the Duty Officer interview;
- discussing topics directly or through the means of the “study book” with Graham and Messenger;

- obtaining and conveying information to Museth, Graham, Moss, Jones and Scott with respect to the questions being asked at interviews for the Team Leader/Sergeant and Investigation Manager/Sergeant positions;
 - breaching the confidentiality requirements relating to the questions to be asked at interview; and
 - not reporting misconduct.
- 3.9 Other witnesses and telephone intercept material provided evidence regarding Menzies activities, including:
- the provision of information by Menzies about competencies and technical professional questions;
 - the provision of information by Menzies about specific questions before an interview;
 - the receipt of information by Menzies that would be passed on to other officers;
 - the provision of information in the form of his “study book”; and
 - a telephone intercept also shows Menzies agreeing to assist Marks in relation to the Investigation Managers interviews.
- 3.10 Menzies gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.11 There is no evidence that Menzies was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Menzies for any criminal offence.
- 3.12 A section 181D notice was served on Menzies on 28 December 2001. On that date Menzies tendered his resignation, dating it 27 December 2001. His resignation was accepted by the Service and was effective from 19 January 2002. As he is no longer a police officer, he cannot be subject to disciplinary or administrative action under the *Police Act 1990*, the question of taking action against Menzies pursuant to sub-sections 97(2)(b), (c) or (d) of the Act does not arise.

PAUL FRANCIS MUSETH

- 3.13 In evidence, Museth admitted:
- seeking and/or obtaining information from Menzies, Graham, Scott, Whyte, Jones and Hampstead of specific questions he would be asked before attending an interview;

- seeking and obtaining for Menzies information about the Duty Officer/Inspector positions for which he was not an applicant, and also conveying this information to Scott and J11;
 - sharing that information with a group of colleagues and attempting to confine the information to that group;
 - breaching the confidentiality requirements attached to questions asked at interviews;
 - agreeing to attend the Water Police interview for the purpose of obtaining the questions for the assistance of another officer;
 - knowing that doing so was “cheating” and improper because it undermined the fairness of the system; and
 - not reporting his own misconduct, or that of others, despite his obligation to do so.
- 3.14 Menzies confirmed during evidence that he provided Museth with information, and that Museth was the “prime person” to whom he would have provided information. He also provided a copy of his “study book” to Museth.
- 3.15 Hampstead, in his evidence, said that Museth obtained from him a copy of questions for the Team Leader/Sergeant (General Duties) interview.
- 3.16 Scott acknowledged, in his evidence, that he received information from Museth concerning questions to be asked at interview.
- 3.17 Museth gave evidence under objection, pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.18 There is no evidence that Museth was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Museth for any criminal offence.
- 3.19 Museth was dismissed from the Service on 7 May 2002 under section 181D of the *Police Service Act 1990*. He is no longer a police officer, and therefore cannot be subject to disciplinary or administrative action under the *Police Act 1990*.
- 3.20 However, the Commission has been advised that Museth is to appeal his dismissal. If that appeal is successful and Museth is reinstated, the Commission is of the opinion that consideration **should** be given, pursuant to sub-section 97(2)(d) of the Act, to the taking of reviewable action within the meaning of section 173 of the *Police Act 1990*.

- 3.21 The Commissioner of Police formed the view that information disclosed in the course of the Operation Jetz hearings changed the status of a number of preferred applicants; that is, their integrity was shown to be such that they could no longer be seen as the applicant of greatest merit for the positions to which they were appointed. As a consequence, the current Commissioner of Police and his predecessor have exercised the power under section 77B of the *Police Act 1990* to change appointment decisions, on the basis of information about applicants' integrity that was not considered at the time when merit for the vacant positions was determined. The Commissioner of Police withdrew Museth's nomination for promotion on these grounds, and the Commission considers this decision appropriate.

KEL STANLEY GRAHAM

- 3.22 In his evidence Graham admitted that:
- he had improperly sought information about interview questions from Menzies;
 - he had breached the confidentiality requirements; and
 - he had failed to report the misconduct of others, of which he had become aware.
- 3.23 There is evidence of other witnesses and telephone intercept product which demonstrates that Graham:
- had supplied information to Menzies that he at least believed would be disseminated to other officers;
 - had received information regarding questions and a copy of the "study book from Menzies"; and
 - had received information regarding the Investigation Managers interview.
- 3.24 Graham gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.25 There is no evidence that Graham was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Graham for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-section 97(2)(b) and 97(2)(c) of the Act.
- 3.26 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Graham within the meaning of section 173 of the *Police Act 1990*.

SCOTT ANDREW WHYTE

3.27 Scott Whyte, in his evidence, admitted that:

- Menzies had provided him with information about specific questions before his interview occurred;
- he received specific information from Graham about interview questions;
- his conduct was improper; and
- he did not report his own misconduct.

3.28 With the benefit of having heard telephone intercept product he made further admissions that he:

- provided information regarding specific transit questions to Menzies for the benefit of Museth, acknowledging that it was improper of him to do so;
- disclosed information regarding questions to Menzies, Graham and another friend, despite understanding that those disclosures were a breach of a direction he had received at interview; and
- had engaged in misconduct and had failed to report that misconduct.

3.29 Menzies gave evidence that:

- Whyte was one of a number who had been provided with a copy of his “study book”.

3.30 Whyte gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.

3.31 There is no evidence that Whyte was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Whyte for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.

3.32 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Whyte within the meaning of section 173 of the *Police Act 1990*.

MARK WILLIAM MESSENGER

3.33 Messenger, in his evidence, admitted that:

- Menzies provided him with a copy of his application for the Duty Officer position, which he then used in drafting his own application;
- he obtained information in respect of the Duty Officer positions from Menzies' "study book";
- that he "would have" had an agreement with Menzies to exchange information about specific questions; and
- that he failed to report the misconduct of other officers.

3.34 Menzies, in his evidence, said in relation to Messenger that:

- he provided Messenger with a copy of his application, which contained improperly obtained key actions;
- he provided Messenger with a copy of his "study book";
- there was an understanding, as opposed to an agreement, that he and Messenger would exchange particular questions and/or topic areas; and
- Jones told him that he was going to speak to Messenger and provide him with information about the Duty Officer positions. However, Jones maintained in evidence that, despite his intention to do so, he never provided Messenger with the information. He believed his failure to do so was a result of Messenger telling him that he was not going to participate in the interviews because of his health.

3.35 Messenger gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.

3.36 There is no evidence that Messenger was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Messenger for any criminal offence.

3.37 Messenger was served with a section 181D notice on 12 April 2002. Messenger's legal advisors requested a deferral of his response to the section 181D notice as he was pursuing a medical discharge from the Service. Subsequently Messenger resigned from the Service, his termination date being 18 September 2002. As he is no longer a police officer, he cannot be subject to disciplinary or administrative action under the *Police Act 1990*, the question of taking action against Messenger pursuant to sub-sections 97(2)(b), (c) or (d) of the Act does not arise.

SIMON GEOFFREY JONES

3.38 Jones, in his evidence, admitted:

- that he received from Menzies the “study book” and information on areas to study;
- that he provided Menzies with information regarding the duty officer interviews which he had overheard, for the benefit of Menzies;
- that when he informed Menzies that he had received a question on category 1 complaints at his interview, it was improper conduct and a breach of the confidentiality agreement that he had signed after the interview;
- that he had also informed Menzies that there were questions about competencies similar to the information that he had overheard, and that conveying that to Menzies was also in breach of the confidentiality requirement; and
- that he failed to report misconduct.

3.39 Other witnesses and telephone intercept material provided evidence regarding Jones’ activities, including:

- in telephone conversations recorded pursuant to warrants, Museth advised Menzies that he had spoken to Jones about the interviews;
- Menzies, in his statement, said that Jones provided him with information that he had overheard; and
- in an intercepted telephone conversation in June 2001, Jones informed Menzies that he had asked around in an effort to get more detailed information.

3.40 Jones gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.

3.41 There is no evidence that Jones was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Jones for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-section 97(2)(b) or sub-section 97(2)(c) of the Act.

3.42 As mentioned previously in this Report, the Commissioner of Police formed the view that information disclosed in the course of the Operation Jetz hearings changed the status of a number of preferred applicants. The current Commissioner of Police and his predecessor have exercised the power under section 77B of the *Police Act 1990* to change appointment decisions, on the basis of information about applicants’ integrity that was not considered at the time when merit for the

vacant positions was determined. The Commissioner of Police has withdrawn Jones' nomination for promotion on these grounds, and the Commission considers this decision appropriate.

- 3.43 In addition to the above, pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Jones within the meaning of section 173 of the *Police Act 1990*.

ANDREW PAUL MARKS

- 3.44 Marks, in his evidence, admitted:

- seeking information about interview topics relating to behavioural and competency questions, but denied that he sought specific questions.

- 3.45 Menzies' evidence in respect to Marks is that:

- he provided Marks with a copy of his Assessment Centre report containing information about the behavioural competencies and key actions; and
- he provided Marks with applications which included information obtained from the key actions documents.

- 3.46 Marks gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.

- 3.47 There is no evidence that Marks was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Marks for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.

- 3.48 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Marks, within the meaning of section 173 of the *Police Act 1990*.

BRADLEY RICHARD NUTTALL

- 3.49 Nuttall, in his evidence admitted:

- that a recorded telephone conversation between himself and Menzies on 6 March 2001 indicated that Menzies was attempting to gather information about interview topics and questions for the purpose of assisting Museth; and

- he knew it was misconduct and that he did not report that misconduct.

3.50 Menzies' evidence in respect to Nuttall is that:

- he had provided Nuttall with a copy of his application which contained the key actions.

3.51 Nuttall agreed in his evidence that:

- he had received notes that Menzies had used in his own application for a Sergeant's position;
- he had no reason to suspect that any of the material was improperly obtained; and
- that Menzies had provided him with a copy of his application and that he had referred to that application in drafting his own.

3.52 Nuttall gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.

3.53 There is no evidence that Nuttall was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Nuttall for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.

3.54 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Nuttall within the meaning of section 173 of the *Police Act 1990*.

PETER MICHAEL MOSS

3.55 Moss, in his evidence admitted:

- that Menzies coached him by asking him questions and, on occasions, providing the answer before he (Moss) could respond himself; and
- that Menzies' questions were not identified as possible interview questions. However, Moss conceded that he was asked six of those questions at his interview.

3.56 Menzies' evidence in respect to Moss is that:

- Moss approached him for details of the questions to be asked in the Sergeants interview, and over a couple of days, Menzies provided those to Moss and

confirmed to him that they were the questions that were being asked in the interview ; and

- he believed that Moss had a general understanding that he was to reciprocate by providing information concerning the interview questions.

3.57 Moss denied this but agreed that the content of the telephone intercept between Menzies and Museth confirmed that Menzies was of that belief.

3.58 A further intercepted telephone conversation between Menzies and Moss revealed Menzies telling Moss that he and one other were to get an advantage. Moss offered no alternative explanation other than he was being offered an advantage in the form of confidential information regarding his impending interview.

3.59 Moss gave evidence under objection pursuant to section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.

3.60 There is no evidence that Moss was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Moss for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.

3.61 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Moss, within the meaning of section 173 of the *Police Act 1990*.

ANTHONY FRANCIS LONG

3.62 In his evidence, Long admitted that:

- he received a copy of Menzies' application which he used as a model for his own, and that he discussed the technical professional knowledge questions with Menzies.
- Menzies faxed to him a list of questions and he returned the fax after marking which questions he was asked at interview and which questions he was not asked;
- he did not comply with the confidentiality requirement when he provided Menzies with specific details about questions being asked in the Duty Officer interviews; and
- his conduct was improper and he did not report his own conduct or that of Menzies.

- 3.63 Long gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.64 There is no evidence that Long was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Long for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.
- 3.65 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Long within the meaning of section 173 of the *Police Act 1990*.

TODD MUNRO SCOTT

- 3.66 Scott candidly admitted in his evidence that:
- he had obtained information about interview questions for his own benefit from Menzies, Museth, Graham and others;
 - he had breached the confidentiality requirements;
 - he should have reported his own misconduct; and
 - he had conveyed information about the Duty Officer interviews to Menzies.
- 3.67 In their evidence, Menzies and Museth confirmed that they had received information from Scott concerning specific questions and conveyed similar information to him.
- 3.68 Scott gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.69 There is no evidence that Scott was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Scott for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.
- 3.70 Pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Scott within the meaning of section 173 of the *Police Act 1990*.

SEAN EDWARD HAMPSTEAD

- 3.71 Hampstead admitted in his evidence that:
- he approached Menzies and asked for assistance and that he received a copy of Menzies' "study book", the relevant parts of which he copied;
 - he received assistance from another officer in the form of the questions asked at that officer's interview and subsequently passed that information to Menzies and Museth. This was confirmed in evidence by both Museth and Menzies; and
 - he had an obligation to report the misconduct.
- 3.72 Hampstead gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.73 There is no evidence that Hampstead was involved in any criminal conduct. Pursuant to sub-section 97(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Hampstead for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b) and 97(2)(c) of the Act.
- 3.74 As mentioned previously in this Report, the Commissioner of Police formed the view that information disclosed in the course of the Operation Jetz hearings changed the status of a number of preferred applicants; that is, their integrity was shown to be such that they could no longer be seen as the applicant of greatest merit for the positions to which they were appointed. As a consequence, the current Commissioner of Police and his predecessor have exercised the power under section 77B of the *Police Act 1990* to change appointment decisions on the basis of information about applicants' integrity that was not considered at the time when merit for the vacant positions was determined. The Commissioner of Police has withdrawn Hampstead's nomination for promotion on these grounds and the Commission considers this decision appropriate.
- 3.75 In addition to the above, pursuant to sub-section 97(2)(d) of the Act, the Commission has formed the opinion that consideration **should** be given to the taking of reviewable action against Hampstead within the meaning of section 173 of the *Police Act 1990*.

STEPHEN JOHN MARTLEW

- 3.76 In his statement, Menzies said that he had engaged in a conversation with Martlew about the corruption indicator question. Menzies knew at the time that it had been asked in previous interviews, as he had been a member of GREAT appeal panels and had “retained several rotating questions from those appeal panels”. In his evidence, Menzies said Martlew confirmed that the corruption indicator question was being asked, but that this further information was not of great assistance to him in his compilation of the likely questions.
- 3.77 There was telephone intercept product involving Menzies and Museth in which Menzies stated that Martlew had told him that corruption indicators was one of the questions in the interviews.
- 3.78 Martlew denied that he provided the information to Menzies. However, he was prepared to accept that Menzies may have extracted the information from him.
- 3.79 Martlew gave evidence under objection pursuant to sub-section 40(3) of the Act. His evidence is therefore not admissible against him in any civil or criminal proceedings, but is available in the consideration of disciplinary proceedings.
- 3.80 There is no evidence that Martlew was involved in any criminal conduct. Pursuant to sub-section 96(2)(a) of the Act, the Commission is therefore of the opinion that consideration **should not** be given to the prosecution of Martlew for any criminal offence. The Commission is also of the opinion that consideration **should not** be given to the taking of action pursuant to sub-sections 97(2)(b), 97(2)(c) and 97(2)(d) of the Act.

4. PROCEDURAL ISSUES

RECENT AMENDMENTS TO THE PROMOTION SYSTEM

- 4.1 The evidence presented during the Jetz hearings indicated that the Service had been aware for some time that the confidentiality of interview questions was a significant and continuing concern. For example, there has been significant changes made to the formality and scope of pre-interview procedures. Over time, there were three versions of a confidentiality statement formally attached to selection documents. A copy of each of those documents were tendered in evidence and are attached to this Report in Appendix Two.
- 4.2 Of the documents mentioned above, there were two headed “Content of Interview Process” and “Confidentiality of Interview Process” that were tendered during the hearings.²³² These were essentially two versions of the same document, with minor wording differences, and both remained in use until 23 March 2001. The contents of one of these documents was read out or handed to applicants at the time of interview. The documents noted the need for “absolute confidentiality of the content of the interview questions”. These documents remained in force until an expanded document titled “Confidentiality of Information in Selection Interviews” was introduced on 24 March 2001.²³³ In addition to setting out in greater detail the obligations of officers to maintain confidentiality, the document required officers to provide a signed undertaking that they would not “disclose any information about any of the questions posed in the selection interview”.²³⁴
- 4.3 On 20 May 2001, the document titled “Confidentiality of Information in Selection Interviews” was superseded by a document titled “Confidentiality of Structured Interview Questions”.²³⁵ The chief features distinguishing that document from the previous versions are that:
- interviewees were formally directed not to disclose the nature and content of the interview questions to anyone;
 - the possible consequences of a breach of that direction were set out, including criminal charges and dismissal pursuant to section 181D of the *Police Act 1990*; and
 - the Selection Committee convenor and the interviewee signed the document.
- 4.4 The written submissions tendered on behalf of the Service in the Jetz hearings describe the modifications to the promotion system that were introduced on 1 January 2002, noting that some changes to the system flowed directly from

²³² PIC Exhibits 9 & 67.

²³³ PIC Exhibit 10.

²³⁴ *ibid.*

²³⁵ PIC Exhibit 11.

matters identified by Operation Jetz.²³⁶ The changes are intended to streamline the promotion process and increase its corruption resistance.

- 4.5 One of the most significant changes to the promotion process is that the structured interview is now one component of the consideration of merit, rather than its chief determinant. Under the new system applicants are rated on the basis of four elements. A satisfactory result must be obtained in each element. The elements are weighted differently depending on the rank of the vacancy being filled. The four elements are:²³⁷

1. The Pre Qualifying Assessment, or “PQA”

- This is a computer-based assessment of technical knowledge generic to each rank and it consists of multiple choice questions randomly selected from a database. It does not apply above the rank of Superintendent.
- The PQA replaces the need for common selection criteria to be assessed at application stage.
- The test is to be held twice a year under the supervision of the Local Area or Specialist Command Manager.
- Applicants must prove their identity and make a confidentiality undertaking before sitting the test.

2. Assessment Centres

- Assessment Centres are required for commissioned officer positions (Inspector and above). Centres are conducted via role plays, group discussion and written exercises.
- Exercises are rotated and increased security measures are in place to protect confidentiality of material.

3. Application form

- This element provides a means to compare officers’ police and external qualifications, and the application of their skills to the advertised competencies. Forms are anonymous and identified by barcode.
- The requirement for the officer’s Commander to comment has been replaced by the need for comments from a three person management team.
- An application must be verified by Statutory Declaration identifying whether the officer has had access to “any material or advice with respect to the police promotion process which is not officially distributed and available to all applicants [and that may have given them] an unfair advantage”, and if so, the nature of that material or advice.

²³⁶ PIC Exhibit 232, barcodes 6176805 – 6176812.

²³⁷ *ibid.*, barcodes 6176805 – 6176812, 6176818 – 6176820 & 6176847 – 6176856.

4. *Structured interview*

- Format and content are relatively unchanged, but the role of interview in determining selection has diminished.
- The key actions used to rate applicants' responses to the required competencies are now available to all officers via the NSW Police intranet.
- Interviewees are required to sign a declaration acknowledging they are directed not to disclose the nature and content of relevant material without the Commissioner's approval.

- 4.6 It is envisaged that the above process will diminish the opportunity for the system to be hampered by abuse of the interview process.
- 4.7 A further significant change in the promotion system in respect to the disclosure of misconduct, is the Police Commissioner "must require an applicant for appointment by way of promotion to a vacant position ... to provide a statutory declaration, ... that the applicant has not knowingly engaged in specified misconduct or any other misconduct." If an applicant "fails or refuses, or who is unable to provide a statutory declaration in accordance with a requirement made under subsection 1", the applicant is ineligible for appointment. However, "the failure, refusal or inability of a person to provide a statutory declaration must not be taken into consideration for a purpose other than the assessment of the persons eligibility to be appointed to the vacant position".²³⁸
- 4.8 It is intended that the modified system will be reviewed at the conclusion of a full round of appointments. Further changes to the operation of the system occurred with the *Police Service Amendment (Promotions and Integrity) Act 2001*, which commenced on 14 December 2001. In particular the Police Commissioner "may change a decision to appoint a person to a ... police officer position (a) before the person is appointed, or (b) where an appeal is made" being a GREAT appeal, "before the appeal is commenced to be heard, if the Commissioner receives information as to the person's integrity (being information that was not considered when the decision to appoint the person was made) which causes the Commissioner to form the opinion that the person does not have the greatest merit."²³⁹ Further, the Police Commissioner can revoke a promotion where the successful applicant has committed misconduct in a manner which assisted in obtaining the promotion.
- 4.9 Changes have also been made to the GREAT process, such as it being constituted by the Senior Chairperson or their selected nominee, and that evidence provided at GREAT is to be on oath. Further, GREAT may strike out appeals that it considers vexatious or frivolous.²⁴⁰

²³⁸ Sections 70 & 76A, *Police Service Act 1990*.

²³⁹ Sub-sections 71B (1) & 77B (1), *Police Service Act 1990*.

²⁴⁰ PIC Exhibit 232, barcodes 6176814 – 6176815.

- 4.10 The Commission notes that the Service is giving consideration to including a reference to clause 46 of the Police Regulation 2000 in the confidentiality statement officers are required to sign as part of the structured interview process. That clause requires officers to preserve the confidentiality of information that they are exposed to in their professional capacity.

OTHER MATTERS

COMPLAINTS CONCERNING THE NSW POLICE SERVICE PROMOTION SYSTEM

- 4.11 Following the public hearings in Operation Jetz, a significant number of serving and former officers contacted the Commission to provide information concerning the promotion system. In the main, these were matters that did not fall within the scope and purpose of the hearings. At the conclusion of the scheduled public hearings, the Commission considered whether it was appropriate to expand the terms of reference of the investigation, and determined that it was not appropriate. Matters raised with the Commission by officers and others were referred to the Service, which established Strike Force Uman to consider them.

MINISTERIAL INQUIRY

- 4.12 On 27 June 2002 the Minister for Police, the Honourable Michael Costa, announced a 12 month Ministerial Inquiry into the promotion system, to be chaired by former Assistant Commissioner Geoff Schuberg. The Ministerial Inquiry will consider legislation and practice in NSW and other Australian jurisdictions and will develop plans to ensure the integrity of the promotion system.
- 4.13 The Commission acknowledges the many areas of concern about the promotion system, which, while beyond the scope and purpose of Operation Jetz, are significant in terms of the satisfaction and acceptance of the promotion system by police officers and the broader community. The Commission welcomes the Ministerial Inquiry and will await its report with interest.
- 4.14 The Commission does not propose to make further comment on the structure of the promotion system at this time, given:
- the limited scope and purpose of the Operation Jetz hearings, which meant that the Commission did not hear evidence in general about the promotion system and its effectiveness or otherwise. Thus, the Commission is not in a position to make comments of general application;
 - at the time of writing this Report, the modified system implemented on 1 January 2002 is yet to be reviewed for effectiveness; and
 - the announcement of a Ministerial Inquiry concerning the promotion system by the Minister for Police on 27 June 2002.

5. APPENDICES

1. **Role and Functions of the Commission**
2. **Letter of Appointment of Mr Brian Donovan QC to position of Assistant Commissioner for the duration of the Jetz Hearings**
3. **Written confidentiality information provided at interviews**
 - “Content of Interview Process” – in use until 23 March 2001²⁴¹
 - “Confidentiality of Interview Process” – in use until 23 March 2001²⁴²
 - “Confidentiality of Information in Selection Interviews” – in use from 24 March 2001 until 20 May 2001²⁴³
 - “Confidentiality of Structured Interview Questions” – in use from 21 May 2001²⁴⁴

²⁴¹ PIC Exhibit 9.

²⁴² PIC Exhibit 67.

²⁴³ PIC Exhibit 10.

²⁴⁴ PIC Exhibit 11.

APPENDIX 1 - ROLE AND FUNCTIONS OF THE COMMISSION

A1.1 The Commission was established under the *Police Integrity Commission Act 1996* (the Act) on the recommendation of the Royal Commission into the New South Wales Police Service. 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.

A1.2 As far as practicable, the Commission is required to turn its attention principally to serious police misconduct (sub-section 13(2)).

POLICE MISCONDUCT

A1.3 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 Commissioner of Police may take action under Part 9 of the *Police 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 Act 1990*.

A1.4 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

A1.5 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); 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 Does the Commission Submit a Report to Parliament regarding an Investigation?

- A1.6 In circumstances where the Commission has conducted a public hearing for the purposes of an investigation, the Commission must prepare a report to Parliament in respect of the matter to which the public hearing related (sub-section 96(2)). 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(3), (4) and (5)).

Components of a Report to Parliament regarding an Investigation

- A1.7 A report to Parliament in relation to an investigation will generally contain a number of components. Under section 97(1) the Commission is authorised to include statements as to any of its assessments, opinions and recommendations, and the reasons for any of its assessments, opinions and recommendations. The Commission must then, in respect of each “affected person”, make a statement as to whether or not 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 97(2)). An “affected person” is a person “against whom, in the Commission’s opinion, substantial allegations have been made in the course of or in connection with the investigation concerned” (sub-section 97(3)).

The Commission’s Approach to the Assessment of Information and Evidence

- A1.8 In forming the assessments, opinions and recommendations referred to above, 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 Commission may form opinions as to whether police misconduct or other misconduct 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)). However 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 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 the definition of police misconduct may include conduct that amounts to criminal and disciplinary offences, that 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.

- A1.9 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

- A1.10 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 that consideration should be given to the prosecution of a person for a specified criminal or disciplinary offence.²⁴⁵ Such a recommendation will be made to the relevant prosecutorial authority, for example, the New South Wales Director of Public Prosecutions. The Commission will not have regard to considerations, such as whether there is a reasonable prospect of conviction, or public policy considerations when deciding whether to make such a recommendation. These, 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.
- A1.11 The circumstances in which the Commission may, in the exercise of its discretion, decline to furnish or defer furnishing a brief of evidence to the relevant prosecutorial authority are:
- where it is considered that to do so is likely to be counterproductive to the Commission's pursuit of its principal statutory functions; or
 - where the relevant person has already been considered for or has been prosecuted in relation to the same, or substantially the same, subject matter and evidence, and it would be unnecessary or duplicitous for the Commission to make a recommendation that consideration should be given to additional prosecutions.

Statements regarding "Affected Persons"

- A1.12 Sub-section 97(2) of the Act requires that:

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,

²⁴⁵ 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 Commission to recommend or state whether consideration should be given to the prosecution of a person for a specified "disciplinary offence" (section 97(2)(b)) have no effective application to police officers. Those powers and obligations may however have application to other public officials.

- c) the taking of action (including the making of an order under section 181D of the *Police 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 Act 1990* against the person as a police officer.

Recommendations and Opinions regarding Disciplinary Action Against Police

A1.13 “Reviewable action” within the meaning of section 173 of the *Police 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 a police officer’s seniority;
- a deferral of a 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.

A1.14 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 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

A1.15 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.

APPENDIX 2 - INSTRUMENT OF APPOINTMENT, DIRECTION AND DELEGATION



INSTRUMENT OF APPOINTMENT, DIRECTION AND DELEGATION

Whereas:

- (i) It is intended that **BRIAN H K DONOVAN QC** be appointed an Assistant Commissioner of the Police Integrity Commission ("the Commission") for the purpose of exercising some of the functions and powers of the Commission and Commissioner of the Police Integrity Commission in connection with the investigation codenamed "Operation Jetz";
- (ii) It is intended to hold a hearing for the purpose of Operation Jetz ("the hearing");

Appointment, direction and delegation

I, **Judge Paul David Urquhart QC**, being Commissioner and Chief Executive Officer of the Commission hereby:

- (a) pursuant to section 10 of the *Police Integrity Commission Act 1996* ("the Act") appoint **BRIAN H K DONOVAN QC** as an Assistant Commissioner of the Police Integrity Commission;
- (b) pursuant to subsection 32(2) of the Act determine that the hearing shall be conducted by **BRIAN H K DONOVAN QC**;
- (c) pursuant to section 9 of the Act direct that **BRIAN H K DONOVAN QC** shall exercise the functions of the Commissioner in connection with Operation Jetz as set out in (d) hereunder; and
- (d) pursuant to subsection 11(4)(b) and (c) of the Act delegate to **BRIAN H K DONOVAN QC** the powers of the Commission and Commissioner as the case may be, at or in connection with the hearing, save and except for the functions described in subsection 11(5) of the Act.

Term of appointment, direction and delegation

This instrument shall remain in force until such time as it is revoked or the Commission's functions in relation to Operation Jetz are discharged, whichever occurs sooner.

A handwritten signature in black ink, appearing to read "Paul Urquhart", is written over a horizontal line.


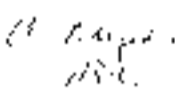
Judge P D Urquhart QC
Commissioner

16 August 2001

REF: 8474380


APPENDIX 3 - WRITTEN CONFIDENTIALITY INFORMATION PROVIDED AT INTERVIEWS

PIC EXHIBIT 9

	NSW POLICE SERVICE HUMAN RESOURCES AND DEVELOPMENT COMMAND ASSESSMENT SERVICES DIRECTORATE Level 12 Farguhon Centre 100 George Street Sydney NSW 2150 Tel: (02) 9569 1210 / 792110 Fax: (02) 9569 2715 / 792115 Ref: 20 INTERVIEW TEL DOC
Content of Interview Process	
* * * * *	
<p>You are reminded of the need for the absolute confidentiality of the content of the interview questions.</p> <p>As directed by the Convenor of the Selection Committee you should not discuss the interview questions with any other person whether or not they are applicants in the process.</p> <p>In addition for the need to maintain confidentiality of discussion with other persons on the questions may diminish your own relative merit for the position(s) applied for.</p>	
Convenor Selection Committee	
	

PIC EXHIBIT 67

COPY



NSW POLICE SERVICE

WORKFORCE AND CAREERS DIRECTORATE

Level 12
Regulation Centre
130 George Street
Sydney NSW 2150

Tel: (02) 9689 7026 / 19028
Fax: (02) 8688 7737 / 19287

904

CONFIDENTIALITY OF INTERVIEW PROCESS

* * *


To ensure fairness and validity of the Selection and Promotion process, absolute confidentiality of the interview questions is essential.

As directed by the Convenor of the selection committee you should not discuss the interview questions with any other person.

Discussion with other people, especially other applicants, may enhance their competitiveness above yours for the advertised position(s).

Convenor
Selection Committee

PIC EXHIBIT 10



NSW POLICE SERVICE

CONFIDENTIALITY OF INFORMATION IN SELECTION INTERVIEWS.

To ensure there is fairness and validity in the Selection process, confidentiality of information about the questions asked in the Selection Interview, is of paramount importance.

The questions are designed to give applicants an opportunity to demonstrate their own level of competence across a range of key competencies and technical areas that have been identified for the position/s being applied for.

Discussion about the questions posed in the Selection Interview, especially to other applicants, may provide them with an unfair advantage over others who do not have the same information.

You are therefore required to agree to the following undertaking, by providing your signature to it, before the interview will commence.

Undertaking

I undertake not to disclose any information about any of the questions posed in the Selection Interview that I will be participating in today.

_____	_____
Signature	Name

Date	

[Handwritten Signature]

PIC EXHIBIT 11

CONFIDENTIALITY OF STRUCTURED INTERVIEW QUESTIONS

To help ensure fairness, validity and minimise the potential for abuse or corruption of the Selection process, confidentiality of structured interview questions is of paramount importance.

The questions are designed to give applicants an opportunity to demonstrate their own level of competence across a range of key competencies and technical areas that have been identified for the position being applied for.

Disclosure of the nature and content of the questions posed in the selection interview, especially to the other applicants, if at all likelihood, would provide them with an unfair advantage over others who do not have knowledge of the content of the questions posed. This would contribute to undermining the effectiveness and viability of the selection process.

You are hereby directed not to disclose the nature and content of the structured interview questions to any person, without the approval of the Director, Workforce and Careers Directorate. You are reminded of your obligations and accountabilitys amongst other things, under The NSW Police Service Act, 1990 and the NSW Police Service Code of Conduct and Ethics. In the event you breach this direction, you may commit a criminal offence and may be subject to suitable action, including dismissal under the provisions of section 181D of the Police Service Act

I have read the foregoing and understand its content. I hereby acknowledge my obligations and non-affiliative, unimpaired other things, under the NSW Police Service Act, 1990 and the Service's Code of Conduct and Ethics. I undertake not to disclose the nature and content of any of the structured interview questions, in which I am about to be asked, to any person without the approval of the Director, Workforce and Careers Directorate.

Interviewee

विभागपरिचय

Signature

Signature

Name _____

Name _____

Date _____

Case

63. *Phyllanthus* : *gibbifolius*

