DANGEROUS LIAISONS

July 2009

A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)

CRIME AND MISCONDUCT COMMISSION

QUEENSLAND

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In this report, with one exception (see page 5), pseudonyms have been applied to all current and former police officers and prisoners. One former police officer, referred to as YZ, was not given an opportunity to respond to the material concerning him prior to the publication of this report. YZ denies any misconduct on his part.

CRIME AND MISCONDUCT COMMISSION
QUEENSLAND

CMC vision:

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

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Some of the narratives presented in this report contain strong coarse language, offensive words or phrases and sexually explicit references.

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Dear Sirs

In accordance with section 69 of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes to each of you its report *Dangerous liaisons. A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)*. The Commission has adopted the report.

Yours faithfully

ROBERT NEEDHAM
Chairperson

FOREWORD

With the introduction of the *Police Powers and Responsibilities Act 2000*, Queensland police were granted a wide range of powers necessary for effective law enforcement and for the protection of the community.

Regrettably, the misconduct we investigated as part of Operation Capri — in large part the story of police officers' involvement with a dangerous criminal informant — demonstrated that while those officers who were the subject of our investigation made wide use of the powers afforded them under the Act, they largely failed to exercise or even recognise their associated responsibilities.

More generally, they took advantage of the authority derived from their status and standing in the community as police officers.

In addition, the evidence revealed an attitude on the part of a not insignificant number of police officers, and their supervisors, that it was acceptable to act in ways that ignored legislative and QPS policy requirements, that were improper, and in some cases were dishonest and unlawful.

Based on past experiences, the CMC had no confidence that the attitudes of those police officers would change without the pressure of public exposure. For that reason, I appreciate Commissioner Atkinson's public recognition of the failures of some of his officers, and his reaffirmation of the principles that the Queensland Police Service must stand for.

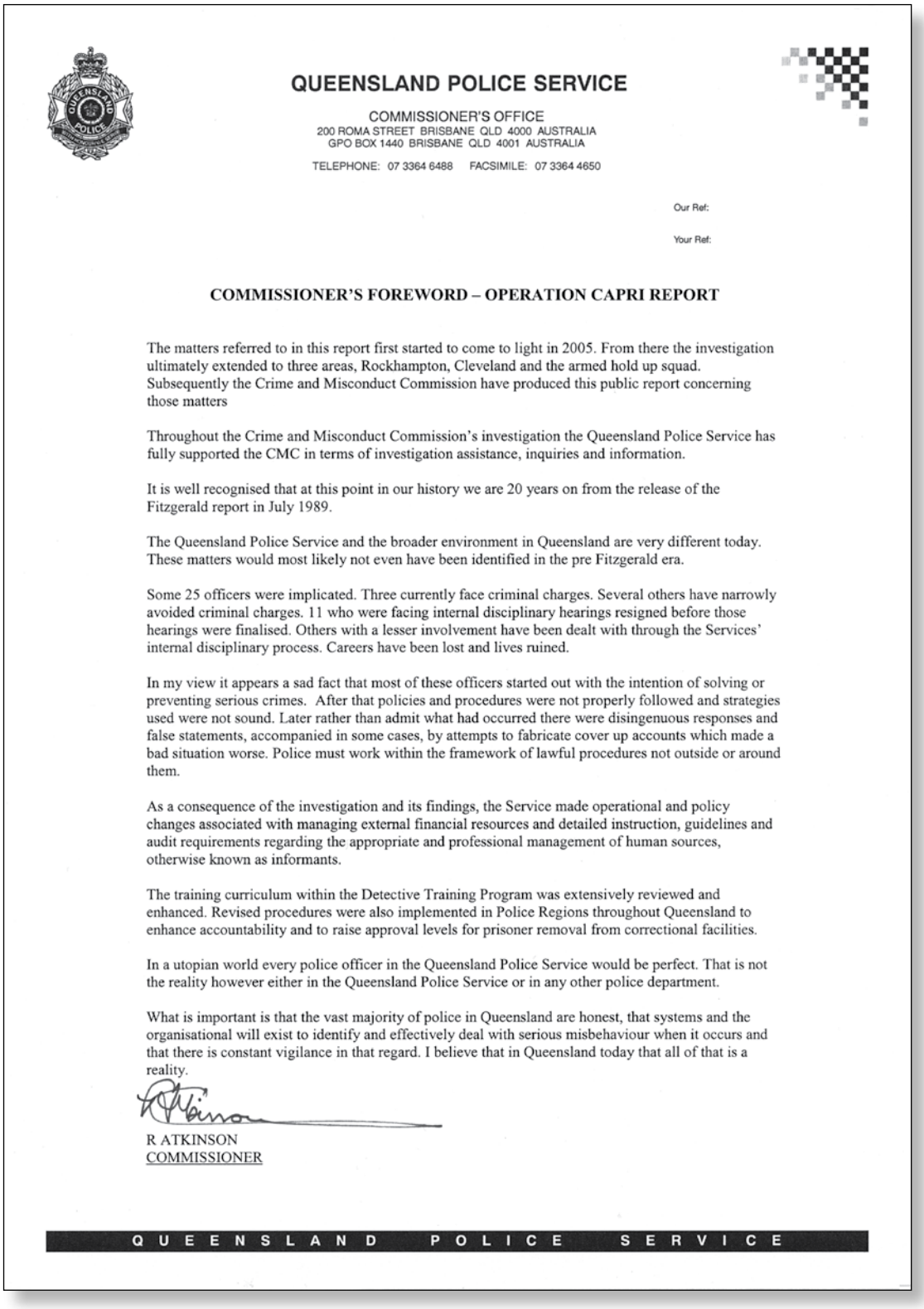
The publication of this report, coming as it does close to the 20th anniversary of the release of the Fitzgerald Report, should serve as a reminder that lessons learned gradually diminish with the passage of time and generational change. It is inevitable that as time passes, 'slippage' in the ethical standards of our police will occur.

In that context I would draw attention in this report to the actions of honest officers who refused to be drawn into misconduct, actively warned against it, and did not allow themselves to be manipulated by a criminal. Behaviour such as theirs, which seeks to prevent and discourage misconduct, is what the people of Queensland have the right to expect from their police officers.

Finally, in making the findings of Operation Capri public, I hope this report will be read by all police officers and their supervisors, particularly those who deal with informants, and that it will impress upon them both the risks and the responsibilities inherent in the exercise of their professional duties.

Robert Needham
Chairperson

FOREWORD



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COMMISSIONER'S FOREWORD – OPERATION CAPRI REPORT

The matters referred to in this report first started to come to light in 2005. From there the investigation ultimately extended to three areas, Rockhampton, Cleveland and the armed hold up squad. Subsequently the Crime and Misconduct Commission have produced this public report concerning those matters

Throughout the Crime and Misconduct Commission's investigation the Queensland Police Service has fully supported the CMC in terms of investigation assistance, inquiries and information.

It is well recognised that at this point in our history we are 20 years on from the release of the Fitzgerald report in July 1989.

The Queensland Police Service and the broader environment in Queensland are very different today. These matters would most likely not even have been identified in the pre Fitzgerald era.

Some 25 officers were implicated. Three currently face criminal charges. Several others have narrowly avoided criminal charges. 11 who were facing internal disciplinary hearings resigned before those hearings were finalised. Others with a lesser involvement have been dealt with through the Services' internal disciplinary process. Careers have been lost and lives ruined.

In my view it appears a sad fact that most of these officers started out with the intention of solving or preventing serious crimes. After that policies and procedures were not properly followed and strategies used were not sound. Later rather than admit what had occurred there were disingenuous responses and false statements, accompanied in some cases, by attempts to fabricate cover up accounts which made a bad situation worse. Police must work within the framework of lawful procedures not outside or around them.

As a consequence of the investigation and its findings, the Service made operational and policy changes associated with managing external financial resources and detailed instruction, guidelines and audit requirements regarding the appropriate and professional management of human sources, otherwise known as informants.

The training curriculum within the Detective Training Program was extensively reviewed and enhanced. Revised procedures were also implemented in Police Regions throughout Queensland to enhance accountability and to raise approval levels for prisoner removal from correctional facilities.

In a utopian world every police officer in the Queensland Police Service would be perfect. That is not the reality however either in the Queensland Police Service or in any other police department.

What is important is that the vast majority of police in Queensland are honest, that systems and the organisational will exist to identify and effectively deal with serious misbehaviour when it occurs and that there is constant vigilance in that regard. I believe that in Queensland today that all of that is a reality.

R ATKINSON
COMMISSIONER

Q U E E N S L A N D P O L I C E S E R V I C E

CONTENTS

LIST OF ABBREVIATIONS

ABA	Australian Bankers' Association
ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
ARU	Armed Robbery Unit
CIB	Criminal Investigation Branch
CMC	Crime and Misconduct Commission
CM Act	*Crime and Misconduct Act 2001*
CSA	*Corrective Services Act 2002*
CRISP	Computerised Reporting Information System for Police
CUSF	Credit Union Security Forum
DPP	Director of Public Prosecutions
ESC	Ethical Standards Command
FMPM	Financial Management Practice Manual (QPS)
ICAC	Independent Commission Against Corruption (New South Wales)
JAG	Department of Justice and Attorney-General
OCIG	Organised Crime Investigation Group
OPI	Office of Police Integrity (Victoria)
OPM	Operation Procedures Manual
PPRA	*Police Powers and Responsibilities Act 2000*
QCS	Queensland Corrective Services
QPRIME	Queensland Police Records and Information Management Exchange
QPS	Queensland Police Service
SCOC	State Crime Operations Command
SDIG	State Drug Investigation Group
SIMS	State Informant Management System
SOP	Standard Operating Procedures

SUPERGRASS LIARS

The rise and fall of Lee Henderson

■ *TOP Gold Coast cop Laurie Pointing is stepping down with grave misgivings about the ability of the Queensland police and society to arrest the soaring serious crime rate. His fears stem largely from a concern that too many hardened criminals are not being asked to pay their debt to society because of early release from jail. Sentenced to up to 12 years for violent crime, they are serving only two or three years before they are back on the streets preying on society. It is a concern shared by freelance writer Bernie Matthews, who has spent months on a cost-benefit analysis of the national growth industry of rewarding habitual criminals who turn informant by unlocking their cells and giving them a 'fresh' start. His investigations strongly suggest that, as with disgraced supergrass Lee Owen Henderson, the cost is far too high...*

□ Above: Lee Owen Henderson claims he was 'fitted-up' for the murder of young Gold Coast mother Tracey Dovey

IF the National Crime Authority and the NSW Police had not been taken in by Lee Owen Henderson's lies, a young Gold Coast mother would still be alive to watch her two children grow up.

Tragically, however, Tracey Dovey is dead. Henderson, serving a life sentence for her murder, is in a Brisbane jail where, thankfully, his continuing spiel of lies is cuts little ice with the Queensland police or the jail authorities who have made is clear they intend to keep him behind bars as long as they legally can.

However the unpalatable fact remains that Henderson represents a newbreed of criminal who knows no honour and would shop his best mate or even his own mother to buy his freedom.

In NSW, where the now totally discredited Henderson traded the deceits of a twisted imagination for the key to a prison gate, the supergrass has more clout than the parole board.

Henderson began his criminal career in Melbourne pimping and bludging off prostitutes before migrating to Sydney where he quickly became known to the NSW police. Within months of his arrival in Sydney he was arrested on a charge of conspiracy to murder.

On October 23, 1985, while on remand in Sydney's Long Bay Jail, Henderson took a prison guard hostage during a riot. He subsequently received five years imprisonment for his part in the rebellion.

Henderson was transferred to Goulburn High Security Unit where he first turned informer by dogging on his mates. Unfortunately for Henderson, there are no secrets in the NSW prison grapevine. His clandestine messages and letters, in which he made wild accusations against so-called underworld figures, and excerpts from the official investigation into his allegations, were intercepted and copied by trustee prisoners working in the prison administration block.

□□□

In one document, Henderson claims knowledge of criminal 'clicks' (cliques) with a lengthy list of names and crude diagrams supposedly indicating inter-association among the gangs. In copies of letters smuggled out of prison, he boasts of his exploits and courage inside and outside of jail.

It was this type of basically useless information and Walter Mitty-like belief in his own legend, all of which was ridiculed from the outset by hardened criminals and experienced police who 'knew the score,' which so endeared Henderson to the NCA as a 'valued informant.'

Indeed, the names Henderson lists in his so-called 'clicks' could have been gleaned from newspaper articles or books published before the authorities began taking his allegations seriously.

Henderson further impressed law enforcement agencies with a concocted story about Sydney underworld identity and former Australian Labor Party numbers man, Tom Domican. He even agreed to testify against Domican, but later retracted his evidence by saying: "I was forced into giving evidence by a screw (prison guard)."

Domican was subsequently cleared of all related charges.

The litany of lies continued with Henderson next attempting to barter false information for freedom by accusing a Sydney police officer, Gary Spencer, of being responsible for the murder of high-profile prostitute, Sallie Ann Huckstepp.

Huckstepp's body was found in a duckpond in Sydney's Centennial Park in January, 1986. Although she had drowned, an autopsy also revealed a lethal overdose of heroin in her body.

Henderson claimed to have authentic tape recordings of Spencer plotting and discussing the murder. The tapes were subsequently revealed as phoney. No one has ever been charged over the death of Huckstepp, whose murder remains unsolved.

It cost the Alpha Task Force — a joint NSW and Federal Police operation — valuable time and money to discover that the tapes accusing a fellow officer had been manufactured by Henderson in the prison library.

His 'reputation' as an informant was, of course, subsequently destroyed by a member of that task force, Detective Inspector Barry Dunne, who warned the Fitzgerald Inquiry in 1989 not to be led down the fantasy path by Henderson. Dunne told the inquiry that 'easily $2 million' had been spent by the task force during a six month investigation which ended with the discovery that Henderson had fabricated complex allegations of police corruption.

Back in 1988, however, when Henderson was acquitted of the conspiracy to murder charges which first landed him in Sydney jail, the supergrass still had some sympathetic ears among law enforcement agencies.

In fact his defence at the trial in which he was acquitted rested largely on the claim that his murder plans were fantasies designed to improve his chances of collecting information for the NCA. In the end, the jury accepted that Henderson had never plotted to kill anyone.

Freedom, however, was still, for the moment, denied Henderson who remained in custody pending an application by Victorian police for his extradition. Suddenly he was at it again — accusing a cell constable, Chris Gamble, of attempting to recruit him to murder a motorist supposedly making waves over a booking.

Gamble was suspended and Henderson mysteriously freed on bail on the outstanding Victorian charges. Gamble, who was later cleared, has good cause to reflect on both events.

□□□

On August 27, 1988, Henderson was picked up, presumably on a bail violation, by Sydney police. He avoided arrest by supplying 'information' about the murder earlier that day of a Kings Cross barman, Mark Rogers.

Later that day the paths of Henderson and the police crossed again. Questioned at the scene of a traffic accident, Henderson was found to have a sawn-off shotgun in his possession. He was charged with unlawful possession of the firearm and also with causing a public nuisance by telling lies about the Rogers murder.

Once again Henderson was mysteriously granted bail and, according to the grapevine, told to get out of NSW. Fatefully, he headed for Queensland an the Gold Coast.

On November 21, 1985 — just two months after Henderson had been ushered out of Sydney — Tracey Dovey was murdered in her Burleigh Park home.

Five weeks later Henderson, who, by then, was in custody on charges to which he eventually pleaded guilty of extortion and kidnapping Gold Coast businessman Joseph Patrick O'Sullivan, was charged with the young woman's murder.

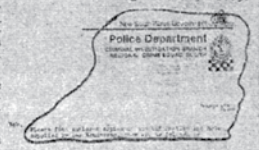
At the subsequent murder trial evidence was given that Henderson gave Dovey a "hotshot" — a lethal heroin overdose — before partially strangling her and then raping the dying woman while her five-month-old daughter, Anna, was lying, crying, in an adjoining room.

Typically, Henderson, pleaded his innocence and, since his conviction and life sentence in June, 1990, has kept protesting to anyone gullible enough to listen, that he was 'fitted up' with the Dovey murder.

Like so many of his fellow grasses, Henderson is a compulsive liar who will stop at nothing to ingratiate himself with police or prison authorities.

How many Tracey Doveys must be abused, tortured and killed before those authorities realise that by rewarding criminal informants with freedom that they are putting every member of the community at risk?

□ Left: Ann Vought with a picture of her murdered daughter Tracy Dovey.



□ Above: Police documents relating to Henderson turning grass for the New South Wales police. He was to be warned later to get out of the state

PROLOGUE

The newspaper article reproduced on the opposite page – first published by the *Gold Coast Bulletin* in July 1993 – contains a warning of the risks involved in rewarding dangerous prisoners who turn informer for personal advantage.[1]

The article focuses upon a prisoner informant named Lee Owen Henderson who, it was said, was a 'supergrass' possessing 'a twisted imagination'. Henderson had deceived officers of both the National Crime Authority and the New South Wales Police, before killing a young woman on the Gold Coast.

The article continued:

> … the unpalatable fact remains that Henderson represents a new breed of criminal who knows no honour and would shop his best mate or even his own mother to buy his freedom.

Despite the intervening 16 years, the newspaper article of July 1993 could have been written today.

This report details a lengthy and complex investigation conducted by the Crime and Misconduct Commission (CMC) over two and a half years between March 2006 and September 2008. The investigation, codenamed Operation Capri, revealed multiple incidents of police misconduct, particularly in connection with the use and management of prison informants.

Operation Capri had its genesis in 2005, when the CMC received information from the Australian Federal Police (AFP) suggesting that certain Queensland police officers had an improper association with Lee Owen Henderson, a prisoner then incarcerated at the Capricornia Correctional Centre, near Rockhampton. That association appeared to be largely based around Henderson's alleged value as an informant.

Henderson was regarded as a valuable 'confidential human source' by certain Queensland police officers (and indeed, this is how Henderson viewed himself). However, the evidence suggests that he rarely, if ever, provided information of value. Instead, Henderson manipulated police officers for his own ends.

In return for his supposed assistance, Henderson was obtaining benefits from police, including access to confidential law enforcement information, access to Queensland Police Service (QPS) and Queensland Corrective Services (QCS) resources for his own personal use, removals from custody, and some financial assistance. Some officers assisted him in an (unsuccessful) attempt to secure a lower security classification.

In the course of investigating these matters, the CMC discovered that the relationship between the QPS and Henderson had grown out of a practice that appears to have originated in the Armed Robbery Unit, in 2001. The practice involved police officers providing prisoners with rewards and other benefits to encourage the making of confessions and the giving up of information.

1 Bernie Matthews, *Gold Coast Bulletin*, 19 July 1993, p.9. The full text is reproduced as Appendix 1.

As the CMC's investigation progressed, a suspicion arose that police officers may have been involved in other dishonest conduct which included the removal of prisoners from custody for improper purposes, the unlawful diversion of telephone calls made by prisoners from correctional centres, misappropriation of money intended to be used as rewards, and the improper receipt of money and gifts from Henderson. Later, the investigation revealed what appears to have been an attempt by police officers to conceal evidence of Henderson's involvement in a murder investigation.

In many instances it is unclear what motivated the police officers. Some of the misconduct identified during Operation Capri appears to have stemmed from a misguided belief held by certain police officers that the results they appeared to be achieving would ultimately justify their actions. (With the benefit of hindsight, little of substance was achieved.)

Some misconduct evolved out of the relationship that developed between certain police officers and Henderson, and was the product of Henderson's capacity to manipulate those officers.

Otherwise a small number of police officers appear to have simply taken advantage of opportunities available to them, believing there was little chance of their dishonesty being detected.

The events detailed in this report reveal that the level of misconduct not only compromised individual police officers, but had the potential to undermine the integrity of the QPS as an organisation, and with it, the criminal justice system. The reliance by law enforcement officers on informants, without regard to the associated risks, poses an obvious threat to the integrity of the criminal justice system.

An irony in the *Superliar* article is its statement that 'thankfully, [Henderson's] continuing spiel of lies cuts little ice with the Queensland police…'.

It is regrettable that, despite that public revelation of the dangers of dealing with Henderson, just over a decade later the relationship between Henderson and Queensland police officers warranted investigation by the CMC.

INTRODUCTION

Events leading to Operation Capri

Initial complaints about the removal of prisoners: October 2003 to March 2004

In October 2003, the CMC received an anonymous complaint alleging that a police officer attached to the Armed Robbery Unit of the QPS had removed a prisoner from custody and had allowed the prisoner to have sexual contact with his wife in exchange for his confessing to crimes.

The complaint was assessed and referred to the QPS to be dealt with.

Initial inquiries by the QPS revealed that the allegation most likely related to Prisoner BR.[2]

Both Prisoner BR and his wife were approached by the QPS, but neither was willing to speak about the matter. Consequently, the allegation was regarded as unsubstantiated.

A few months later, in March 2004, a further complaint was made to the CMC alleging that two police officers attached to the ARU had removed prisoners from custody and permitted them to have visits and sexual contact with their respective partners. Again, it was alleged that these favours were provided in return for the prisoners making confessions to crimes.

On this occasion, the complaint identified two prisoners, one of whom was Prisoner BR.

Again, having assessed the complaint, the CMC referred the matter to the QPS. As he had done on the earlier occasion, Prisoner BR refused to speak about the matter, while the other prisoner confirmed the allegation but declined to make any complaint. The two police officers concerned were spoken to about the matter, and denied the allegations. The QPS investigation was unable to substantiate the complaint.

Complaint by Prisoner BR: November 2004

On 25 November 2004, the CMC received a complaint from the lawyer then representing Prisoner BR, who at that time was facing criminal charges in respect of armed robbery offences.

The lawyer advised that BR was asserting that, in the course of 2003, he had been removed from custody by officers of the ARU on a number of occasions so that he could be interviewed about, and confess to, various unsolved armed robbery offences. BR alleged that when removed from custody he had been permitted by police officers to visit and have sexual contact with his wife.

Based on his confessions to police, Prisoner BR had been charged with numerous armed robbery offences. The CMC was told that BR proposed to argue that those confessions had been improperly obtained as a result of the inducements provided to him in the form of unsupervised time with his wife, and that BR was aware that police officers had acted in a similar way in relation to other (nominated) prisoners.

Having decided to commence its own investigation of Prisoner BR's claims, the CMC ascertained that yet another prisoner – Prisoner SA – had recently challenged the admissibility

2 The use of pseudonyms throughout this report is explained on page 5.

of confessions he had made to police in relation to various breaking and entering charges on the basis that he had been induced to make the confessions after being promised opportunities to have sex with his girlfriend. In Prisoner SA's case, on 25 February 2005, Judge Brabazon of the District Court ruled that '*inconsistencies and strange features*' in the police officers' evidence made it impossible for him to conclude that the confessions were voluntary. Accordingly, the confessional evidence was excluded, with the result that the prosecution was forced to discontinue proceedings in relation to 70 offences.

Between 28 February and 10 March 2005, the allegations raised by Prisoner BR were the subject of argument in a pre-trial hearing in the District Court. Having considered the evidence, Judge O'Sullivan ruled that the prosecution had not shown that BR's confessions had been made voluntarily, and the evidence of those confessions was ruled inadmissible. The prosecution subsequently discontinued proceedings against BR in relation to 10 offences.

The circumstances in which Prisoner BR (and certain other prisoners) were removed from custody by police officers were examined by the CMC as part of what became Operation Capri. That aspect of the investigation is detailed in segment 2 of this report.

Information received concerning improper association of police officers with prisoner Henderson: April 2005

In late April 2005, the AFP informed the CMC that, in the course of one of its criminal investigations, information had been identified that suggested a prisoner, Lee Owen Henderson, then an inmate at Capricornia Correctional Centre in Central Queensland, had an improper association with certain QPS officers.

Central to the AFP information was evidence that had been gathered by means of lawful telephone interceptions conducted as part of the AFP's investigation of a suspected large-scale drug importation. (The AFP investigation is referred to in segment 6 of this report.)

The telephone interceptions demonstrated that calls made by Henderson from inside prison were routinely being unlawfully diverted – and that such diversions had been facilitated with the assistance of police officers. (The circumstances surrounding the diversion of Henderson's telephone calls are canvassed more fully in segment 3 of the report.)

Of further concern to the CMC was the fact that it was evident from the telephone intercepts that Henderson was privy to confidential police information, and that he appeared to be sharing that information with criminal associates. (The details of this matter are outlined in segment 7 of this report.)

Based on the AFP information, the CMC commenced a covert investigation.

Operation Capri

By 8 March 2006 the CMC's covert investigation into allegations concerning Henderson and his association with police officers had progressed to the point that it was elevated to operational status,[3] and given the codename 'Operation Capri'.

In April 2006, the allegations concerning the various prisoner removals were incorporated into Operation Capri.

Over time, other related allegations or lines of inquiry were also placed under the overall umbrella of Operation Capri. Those matters are canvassed in the nine segments of this report. (For an overview of the segments and a diagrammatic timeline of events, see pages 7–8.)

3 An investigation is accorded operational status by the CMC when it has grown, or is likely to grow, to the point where its complexity will require a significant investment of resources by the CMC's Misconduct Investigations area.

Operation Capri began in March 2006 and the last of the investigation reports was sent to the QPS in September 2008. The QPS disciplinary process began in 2008, with the most recent decision being handed down in April this year. Disciplinary proceedings have yet to be finalised.

Logistics of the investigation

Primary responsibility for Operation Capri lay with the CMC's Covert Investigation Team, a small multi-disciplinary group comprised of police and civilian investigators, intelligence analysts, a financial investigator and a lawyer.[4] At critical times, the Covert Investigation Team was supplemented by officers drawn from other areas of the CMC, including senior lawyers. Additionally, Mr Paul Smith, a barrister, was engaged to act as counsel assisting the CMC at some investigative hearings.

The investigation involved working through tens of thousands of documentary exhibits and assessing more than 6000 recorded telephone conversations.

As part of Operation Capri, the CMC conducted over 200 separate interviews with witnesses and subject officers, and issued close to 100 Notices to Discover. In addition, 24 searches were conducted.[5] Over 10 000 separate documents were created in the form of reports, assessments, correspondence and briefs of evidence.

The CMC conducted 104 witness examinations over 37 days, in Brisbane, Rockhampton, Yeppoon, and Mareeba; 75 of those examinations involved 60 police officers.

In addition to salary expenses, approximately $150 000 was spent by the CMC on Operation Capri, the majority of which involved the cost of transcription, witness travel and related expenses, legal fees, and the costs associated with conducting investigative hearings outside Brisbane.

One segment of Operation Capri — referred to as Operation Foxtrot Distinct – was undertaken jointly by the CMC and a small team of experienced police officers attached to the QPS Ethical Standards Command (ESC) (see segment 1). Those officers are commended for the quality and thoroughness of the investigation and for their professionalism. Furthermore, the CMC acknowledges the significant assistance afforded by officers and staff from QCS, JAG, the AFP, ACC, OPI, and ACLEI.

Criminal versus disciplinary proceedings

At an early stage of Operation Capri, the CMC recognised that although evidence was emerging of possible criminal behaviour, it would be difficult to prosecute such matters.

For instance, in respect of almost every matter investigated, the evidence suggesting police misconduct comes from individuals with lengthy criminal histories, including for offences of dishonesty. Furthermore, while the police officers at the centre of allegations were able to be questioned through the use of the CMC's coercive powers, and as part of the police disciplinary process, almost nothing of those officers' evidence would be admissible against them in criminal proceedings.

The CMC therefore took the pragmatic view that the public interest would be best served if Operation Capri focused on exposing and correcting any improper conduct rather than on

4 The Covert Investigations Team numbered no more than 12 persons at any time.

5 13 search warrants were issued pursuant to the *Police Powers and Responsibilities Act 2000*, and 11 searches were conducted in accordance with authority granted pursuant to the *Crime and Misconduct Act 2001*.

prosecuting individual offenders.[6] Accordingly, in any particular instance, unless there was evidence of guilt independent of witnesses whose credibility was likely to be challenged, the matter was not referred for consideration of criminal prosecution. However, many cases were referred to the QPS for consideration of disciplinary action against particular police officers.

Criminal, disciplinary and other outcomes

Results of disciplinary proceedings

On the basis of evidence identified during Operation Capri the CMC recommended to the QPS that disciplinary action for misconduct be considered against 17 serving officers, and that a further 6 officers receive managerial guidance.

Of the latter 6 officers, 5 were given managerial guidance as recommended, and in one case no action at all has been taken.

Of the 17 officers for whom disciplinary action for misconduct was recommended:

- in one case, no action at all has been taken by the QPS to date
- one officer resigned and two officers retired medically unfit before the QPS commenced any disciplinary action
- one officer resigned and one officer retired medically unfit after the QPS commenced disciplinary action, but before the charges were heard.
- six officers were ultimately dealt with by way of managerial guidance only: in one instance because the QPS considered the evidence insufficient to warrant a charge of misconduct, and in the remaining five cases because the QPS, after disciplinary hearings, dismissed the charges of misconduct as unsubstantiated.
- in three cases, charges of misconduct were found to be substantiated, and in those instances:
  - one officer was dismissed[7]
  - one officer resigned before a sanction was delivered
  - one officer submitted an application for medical retirement before the sanction was delivered and that application is currently under consideration
- in two cases, disciplinary action for misconduct has not yet concluded.

Results of criminal proceedings

Criminal proceedings were commenced against six people (including two of the 15 officers referred to above). In this respect:

- One serving police officer and two now former police officers have been charged with indictable offences arising from alleged conduct in the course of duty. These are currently before the courts.
- Two civilians were charged and pleaded guilty to summary offences.
- One prisoner was charged with attempting to pervert the course of justice in respect of his involvement in the murder investigation, Operation Delta Fawn. That charge was dismissed after a committal hearing.

In large measure, the disciplinary and other outcomes reflect the difficulty that was anticipated by the CMC at the outset of Operation Capri: namely, that establishing particular offences or conduct would prove to be problematic.

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6 This approach is consistent with the Prosecution Guidelines applied by the Director of Public Prosecutions, which recognise that if it is not in the interests of the public that a prosecution be initiated then it should not be pursued. The CMC took into account the various criteria identified in the DPP's Guidelines as underpinning the concept of 'public interest'.

7 The officer has appealed the decision.

Procedural reforms

Throughout the course of Operation Capri, the CMC identified procedural and systemic weaknesses within QPS and the Department of Corrective Services (DCS), and raised these issues with the agencies concerned. As a result, reforms were put in place by both QPS and DCS.

For example, the process by which prisoners are able to be temporarily removed from custody by police officers was addressed by both agencies, and modifications were made to the relevant procedures.

Furthermore, significant reforms to policy, management structures and training occurred within the QPS, particularly in the area of State Crime Operations Command.[8]

About this report

This report does not provide an exhaustive account of all the evidence brought together under the umbrella of Operation Capri. This has already been delivered to the QPS in a series of formal investigation reports.

This report is not intended to chronicle the activities of any police officer, police station or work unit, or of any single prisoner, but simply reflects the development and direction of the investigation. It offers a concise summary of the matters investigated, the outcomes, and a discussion of what the CMC considers to be the key implications for the QPS.

Identifying individuals

In reporting publicly on Operation Capri, the CMC had to consider the degree to which this report should identify individuals, be they police officers, former police officers, serving prisoners or private citizens.

The CMC is mindful of the fact that naming a person in a report about police misconduct can cause significant embarrassment to that person and may in some circumstances have the potential to damage a person's reputation. In the case of serving prisoners, there is the added risk of potential prejudice to their personal safety.

Ultimately, the CMC elected to adopt a consistent naming convention, whereby pseudonyms have been applied to all police officers and prisoners (with the exception of Lee Owen Henderson, for reasons given below).

The CMC does recognise however that the identity of particular officers may be apparent to those who may have worked with them, or who are otherwise familiar with the events and physical locations to which the report makes reference.[9]

Where people have been referred to by name, it is solely for the purpose of clarification (for example, some senior police officers are referred to by name). In such cases, the CMC wishes to emphasise that no adverse inference should be drawn against those individuals.

Lee Owen Henderson

This report frequently refers to the activities of prisoner Lee Owen Henderson. It does so because his activities were one catalyst of the investigation, and because his improper association with several police officers was a connecting thread between many of the segments of Operation Capri.

8 Some of these reforms occurred independently of Operation Capri revelations.

9 Place names remain unchanged.

Lee Owen Henderson has an extensive criminal history extending over two decades, and has served terms of imprisonment in Victoria, New South Wales, Western Australia, and the Northern Territory. Continuously incarcerated in Queensland since 1989, he is currently serving two concurrent terms of life imprisonment.

Henderson has been publicly 'outed' as an informant on previous occasions – from as early as the mid-1980s. In a series of articles published in *The Sydney Morning Herald* in July 1987, Henderson was quoted, and variously described as 'a mafia hitman-turned-informant', 'an inmate-informant', and 'Mafia strongman and now alleged NCA informant'.[10]

As recently as 6 March 2008, Henderson published an 'Open letter to the media', identifying himself as 'one of these police informants' referred to in newspaper articles that he claimed had been published during 2007 concerning allegations investigated as part of Operation Capri.

The fact Henderson identified himself as an informer removes any argument that his status as an 'informant' should be kept secret, and that his name should not appear in this report.

Procedural fairness

The CMC is satisfied it has complied with procedural fairness requirements.

All persons and entities thought at risk of being viewed in an adverse light because of publication of this report were given an early draft and invited to make submissions. Most did so, and all of the issues raised in those submissions have been taken into account and, where appropriate, the CMC has acceded to the requests.

A jointly coordinated submission from the Queensland Police Union of Employees on behalf of some police officers and other individuals was received which was critical of the CMC's determination to publicly report on Operation Capri. In noting that the affected persons rejected any suggestion of criminal behaviour or misconduct, the submission argued that the report should not be published because, inter alia:

- the CMC had not allowed sufficient time for proper consideration and comment upon the draft report
- the allegations, assertions and conclusions are untested, in that they have not been the subject of cross-examination
- the persons involved have never been the subject of adverse criminal or disciplinary findings.

The CMC rejects these arguments.

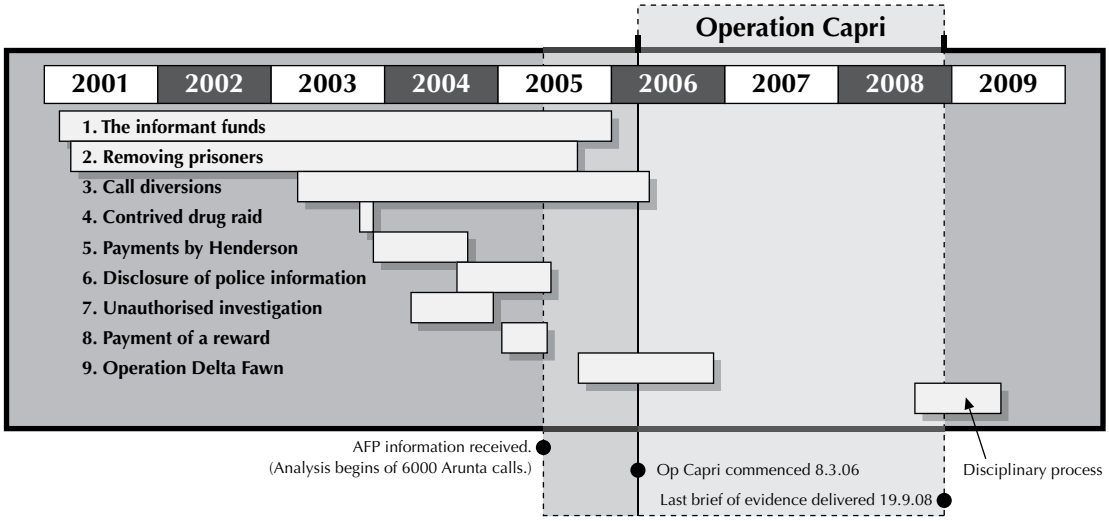
In every case, the relevant issues had either been explored with, or otherwise identified to, the individuals concerned. With one exception, every aspect of the evidence contained in this report had been canvassed with the respective individual in the course of investigative hearings, disciplinary interviews and, in relevant cases, in the QPS disciplinary process. In that exception referred to above, the person concerned had refused to answer questions in the course of a CMC investigation hearing – on the basis of a claim for spousal privilege.

While it is true that some aspects of the evidence remain untested by cross-examination, the report makes it clear where allegations have been accepted or denied by a respondent. In the case of those officers who are referred to, it is not disputed that the conduct in question occurred. At issue in those cases is the officer's knowledge, or intent.

10 *The Sydney Morning Herald*: 'Akister angry at informant's claims' (7 July 1987), 'Strike threat by crime informer' (15 July 1987); 'Informer provides big-crime diaries' (16 July 1987)

Timeline of the investigation

The timeline should be viewed in conjunction with the segments, to appreciate how they fit together.



So far as is possible, each segment of the report has been placed in chronological sequence to convey how some events occurred well before the commencement of Operation Capri (e.g. as early as 2001), how other events overlapped, and how some events were taking place even as the investigation progressed. Thus:

- **Segment 1: The informant funds** examines the circumstances in which police officers attached to the Armed Robbery Unit failed to properly deal with monies intended for the payment of rewards for information in respect of armed robbery offences committed upon banks and other financial institutions.

- **Segment 2: Removing prisoners from custody** examines the actions of police officers in temporarily removing prisoners from custody. The investigation focused upon allegations that police officers attached to the Armed Robbery Unit, and indeed elsewhere, acted improperly in securing the removal of prisoners from correctional centres. The evidence suggests they used that process, in part, as an inducement to prisoners to confess to unsolved armed robbery and other offences.

- **Segment 3: Unlawful diversion of telephone calls** explores how certain police officers – principally Detective Sergeants OT and AS – facilitated the unlawful diversion of telephone calls made by Lee Owen Henderson from correctional institutions, thus enabling him to routinely circumvent the Corrective Services secure telephone system. They provided him with a virtually uncontrolled means of communication by which to conduct his own affairs at the expense of the QPS.

- **Segment 4: The contrived drug raid** centres on evidence suggesting that Henderson orchestrated the theft of a sports bag (containing a firearm, a quantity of marijuana, and a large sum of money) which belonged to a drug trafficker, from an address in one of Brisbane's outer suburbs. To cover the theft of the items by his criminal associates, Henderson used his police contacts to arrange for a police drug raid to be conducted on the address. Henderson arranged for the firearm to be recovered by police, but retained and made use of the sum of money.

- **Segment 5: Payments made to police officers** summarises evidence suggesting that certain police officers – principally Detective Sergeant OT – accepted gifts of cash and other property from Henderson. It also shows how those officers' involvement with their informant extended well beyond that of a professional relationship for law-enforcement purposes.

- **Segment 6: An unauthorised investigation** examines how, in 2004, police officers at Rockhampton CIB allowed Lee Owen Henderson to pose as an underworld crime figure with connections to corrupt police, supposedly to assist those officers in an investigation of a potential large-scale importation of cannabis. The *Police Powers and Responsibilities Act 2000* imposed an obligation on police to obtain authorisation to conduct the investigation. No authorisation was ever given for the conduct of the investigation, and a belated application for approval was rejected on the basis that Henderson was unsuitable.
- **Segment 7: Improper disclosure of confidential police information** canvasses evidence suggesting that Detective Sergeant OT improperly accessed and provided confidential police information to a prisoner and to a journalist.
- **Segment 8: Payment of a reward to Henderson** reveals how, in early 2005, police officers sought and obtained for Henderson a $5000 reward, supposedly in recognition of the assistance he had given to law enforcement, and how $1000 from that reward was paid into a bank account of a police officer.
- **Segment 9: Operation Delta Fawn** outlines the circumstances in which police officers at Rockhampton colluded with Henderson in order to conceal the true circumstances of Henderson's role in a murder investigation.

SEGMENT 1: THE INFORMANT FUNDS

Timeline: January 2001 to December 2005

This segment of the report examines the circumstances in which police officers attached to the Armed Robbery Unit failed to properly deal with monies intended for the payment of rewards for information in respect of armed robbery offences committed upon banks and other financial institutions. It also examines the ARU's failure to adhere to QPS policies and procedures, including those for informant management.

> ***As different things occurred down the track and the success rate was so good, a lot of [conditions] were relaxed a bit by the Assistant Commissioners and people down the line, to say, 'Well, listen, you know, you're doing a great job there, just pay the informants.'***
>
> **— Detective Inspector OD, former officer-in-charge ARU, interview, 16 November 2007**

Background to the investigation

At a relatively late stage in the conduct of Operation Capri, the CMC became aware of the existence and operation of two separate pools of money made up of contributions from the Australian Bankers' Association (ABA) and Credit Union Security Forum (CUSF). Collectively these are referred to as 'the informant funds'.

As the phrase implies, the informant funds were used by police officers attached to the Armed Robbery Unit to pay informants — including prisoners — for information about armed robberies of financial institutions.

In February 2007, the CMC received information alleging that police officers attached to the Armed Robbery Unit had used money from these funds for improper purposes.

It was apparent that the allegations concerning the operation of the informant funds warranted closer scrutiny. However, by that time Operation Capri was already well advanced, and the CMC's investigative resources were stretched. It was therefore determined, in consultation with the QPS, that a joint investigation should be conducted in respect of the informant funds.

In June 2007, under the umbrella of Operation Capri, the Ethical Standards Command of the QPS commenced an investigation called Operation Foxtrot Distinct.

Operation Foxtrot District focused on:

- how the informant funds were obtained
- how the funds were administered, including the process by which payments were authorised
- identifying monies paid out from the informant funds, to whom they were paid and why, and the responsible and authorising officers
- identifying any impropriety that may have occurred.

Operation Foxtrot Distinct examined 77 separate transactions conducted by officers of the Armed Robbery Unit between February 2001 and December 2005.

The close examination of payments made into and out of the informant funds suggests that the funds were not properly managed and that money disbursed from the funds cannot be adequately accounted for. While all officers deny impropriety, the evidence is such that the suspicion that police officers used money for personal or otherwise impermissible purposes cannot be discounted.

What the investigation revealed

Creation of the informant funds

In April 1999, the ABA wrote to the then Commissioner of Police advising that several of its member banking institutions wished to contribute towards a fund to assist police investigations into armed robberies of banks. The ABA letter stipulated specific conditions for management of that fund: money was to be placed in a departmental trust account, with payments to be made *'only for information leading to some result'*. Wherever possible, two responsible officers were to witness each payment and secure a signed receipt from the informant.

The ABA letter further stipulated that payments from the fund were to be authorised by the Commissioner of Police, a Deputy or Assistant Commissioner, and they were to be sufficiently documented to satisfy the Auditor-General's requirements for such transactions. The ABA also required *'annual feedback on the results achieved and the effectiveness of using the fund'*.

On 13 October 2000, the Finance Officer, State Crime Operations Command (SCOC) received $10 000 from the ABA for the informant fund.

Similar arrangements governed the CUSF fund, which was established in May 2001 with an initial contribution of $8000.[1] In that case, approval of the Assistant Commissioner State Crime Operations Command was required before a payment (of not more than $1000) could be paid for information that had led to a 'result'.

Formation of the Armed Robbery Unit and its informant strategy

Not long after the receipt of the money from the ABA, Detective Senior Sergeant OD, then a member of the Fraud Squad, was tasked to re-form an armed robbery squad as part of the Organised Crime Investigation Group of the SCOC. This, it was suggested to the CMC, was a strategy adopted in response to the significant institutional armed robbery problem that existed at that time. According to OD, such robberies were *'out of control'*:

> My role was to make sure armed robberies were solved – to clear up armed robberies in the state. And over a four year period those armed robberies went from 92 to 45, to 23, and when I left there was three unsolved armed robberies. … I think the results speak for themselves.[2]

Senior Sergeant OD's observations in this regard need to be viewed in light of the fact that a good many of the charges instituted by the Armed Robbery Unit ultimately had to be withdrawn after courts ruled that confessions obtained by the ARU were inadmissible. Thus, some of the offences regarded as solved by the QPS may, in truth, remain outstanding. (This issue is addressed in greater detail in segment 2.)

OD also claimed he was permitted to hand-pick his staff:

> I was asked to put that squad together. I was asked to put together a squad of blokes who could deal with the problem. I said, 'Well, I want to go outside State Crime Operations. I want to go to squads all around Brisbane.' And the reason I wanted to do that was because they had informants and they had local knowledge of things that were happening out in those areas. … And I thought that having those staff there was a far better option than other State Crime Operations detectives. … And that was agreed to — to recruit those people to come in and do that. … Armed robberies at that time were seen as a very big problem, and they wanted it stamped out.

1 The requirements are set out in a letter from the CUSF to the QPS, dated 23 May 2001. They are similar to the conditions applying to the ABA monies.

2 CMC disciplinary interview, 20 June 2008.

Thus, the Armed Robbery Unit was established on 12 January 2001, with Senior Sergeant OD as Officer in Charge. OD told the CMC he had invited particular detectives to apply, and '*nine times out of ten*' those detectives were appointed to his Unit.[3]

According to Senior Sergeant OD, a strategy adopted by the Armed Robbery Unit in tackling the crime problem was for investigators to approach serving prisoners:

> We had a large number of photographs throughout Queensland of offenders committing violent armed robberies of financial institutions and I thought the only way to really identify those people was to get into the gaols and say, 'Look, boys, who is this?' And so we might speak to a number of people throughout the gaol, obviously offer money for anyone that would come up with the right name, and if that proved fruitful we'd go back and give payment to those people.

This strategy, OD explained, was financed from the informant funds.

Operation of the informant funds

On 21 February 2001, Assistant Commissioner Andrew Kidcaff,[4] who was then in charge of the State Crime Operations Command (SCOC), formally approved the establishment of an account for the $10 000 received from the ABA and instructed then-Detective Chief Superintendent Peter Swindells to manage the account '*in line with the conditions outlined by the ABA*'. The $10 000 was not deposited into a separate trust account, but into the general operating account used for the entire QPS.

The first payment made from the ABA Fund occurred on 26 February 2001, when $1000 was given to an informant recorded only by the pseudonym 'Max'. The supporting documentation included the Assistant Commissioner's approval for the payment and a receipt that had been signed and witnessed. However, there was nothing in the material to show that the payment had been made for '*information leading to some result*'.

On 11 April 2001, Assistant Commissioner Kidcaff was informed that the procedures adopted for obtaining witnessed receipts extended to the making of audio recordings of the handover of the payment to the informant.

According to Senior Sergeant OD, in its first year of operation, the Armed Robbery Unit achieved an 86 per cent clear-up rate for armed robberies of financial institutions. The number of unsolved armed robberies declined from 92 to about 45. As OD explained, '*The banks were extremely happy and really probably would have given me a hundred million if I wanted it*'.

Encouraged by the improved clear-up rate, in May 2001, member institutions of the CUSF combined to make a contribution of $8000 for use by the Armed Robbery Unit.

In the case of payments made from the informant funds, details were recorded in a handwritten ledger held in the safe of the Detective Inspector, Organised Crime Investigations Group (OCIG), within the State Crime Operations Command.

In June 2001, OD[5] was instructed by the Superintendent, OCIG, to ensure that formal operating procedures (known as Standard Operating Procedures or SOPs) were developed in relation to the informant funds. This was never done.

The first payment from the monies contributed by the CUSF occurred on 3 January 2002, when $250 was handed to an informant recorded under the pseudonym 'The Apprentice'. The supporting documentation included the Assistant Commissioner's approval and the signed and

3 According to now-retired Assistant Commissioner Swindells, OD and other senior officers were able to recommend staff for the Armed Robbery Unit, but the transfer of those officers who were recommended was nonetheless processed in the normal way through the chain of command.

4 Since retired.

5 Then acting as Inspector.

witnessed receipt, but there was no audio recording of the payment being made, nor material to show that the information paid for had led to some result.

Over the next few months payments to informants from the informant funds were generally supported in each case by the Assistant Commissioner's approval, the witnessed receipt and the audio recording of the payment being made. The last informant payment approved by Assistant Commissioner Kidcaff occurred on 10 July 2002. Kidcaff retired in July 2002, and Detective Chief Superintendent Swindells was promoted into the vacancy created by Kidcaff's retirement.

Assistant Commissioner Swindells subsequently decided that his authority was no longer required for payments to informants of up to $1000, as he considered management of the informant funds could be appropriately delegated to the inspector/senior sergeant level.

Introduction of the State Informant Management policy

On 1 March 2001 the State Informant Management System (the SIMS policy) – the QPS policy by which police officers are meant to deal with informants – came into effect.[6] It gave explicit instructions on how to manage and pay rewards to informants.

At the time of its introduction, the Commissioner of Police described the SIMS policy as bringing into effect *'significant changes to the previous systems and structures in relation to the management of informants. Greater emphasis has been placed on accountability mechanisms.'*

The 'Statement of Principle' contained in the SIMS policy identified and addressed risks associated with the management of informants:

> Registration of all informants is the basic element of any informant management system. Registration reduces the potential for corruption and/or impropriety. It also minimises any perception of any corruption and/or impropriety.
>
> The supervisor of a member of the QPS who handles an informant is accountable for ensuring integrity through the effective control and management of the subordinate. Each step in the informant management process needs to be supervised and documented. The provision of rewards or benefits to an informant, whether monetary or otherwise, must be carefully monitored and scrutinised.
>
> … It is expected that procedures outlined in the SIMS (which sets out minimum standards of informant management) will be adhered to. However, from time to time unique circumstances may arise which will necessitate variance. Any departure from these procedures must be documented and a record maintained of the reasons for such departure.

Audit of the informant funds

In October 2003 the Ethical Standards Command commenced a routine audit of all groups in the SCOC. When it came to the informant funds, the audit showed that the accounts were not being managed in accordance with the conditions stipulated by the ABA and CUSF, and there had been instances of non-compliance with the QPS Financial Management Practice Manual (FMPM) and the SIMS policy. The audit revealed that:

- payments had been made without written approval of the Assistant Commissioner
- payments had been made without ensuring that the information had led to a result
- some payment receipts had not been witnessed by two officers
- reasons for payments and outcomes were not always documented
- the informant's identity or pseudonym was not always documented

6 Introduced via Commissioner's Circular No. 03/2001, dated 23 February 2001.

- there was no process to ensure the security of the combination to the safe used to store the informant funds and associated records
- the controls to ensure compliance with the ABA and CUSF conditions were ineffective
- there was limited evidence of auditing.

The ESC's audit report included the following recommendations related to the informant funds:

1. That the Assistant Commissioner SCOC seek amendment to the FMPM and SIMS policy to recognise and reflect the purpose of the informant funds.
2. That the Detective Inspector OCIG ensure compliance with the management of the informant funds.
3. That the Detective Chief Superintendent SCOC ensure quarterly compliance audits of the informant funds.

On 30 September 2004, the Assistant Commissioner, ESC, reported that of the audit report's 67 recommendations, only three had not yet been implemented: each of these concerned the informant funds.

No further action was ever taken to implement the three outstanding recommendations. This was because the ESC was informed by OD:

> Currently, there are no funds in either account. The ARU is currently negotiating with both parties in relation to further funding. Negotiations are also in progress concerning how and when these funds are to be distributed and what management practices are to be adopted. It is anticipated that SOPs will be rewritten upon funds being received and negotiations being finalised.

This information was untrue.

At the relevant time, although the ABA contribution to the informant funds had been exhausted, $4010 remained of the CUSF contribution. Further, between 15 September and 15 November 2004, CUSF member institutions contributed two further payments to the informant funds, each of $2000. Between 10 November 2004 and 24 May 2005, ABA member banks made a further three contributions to the informant funds, totalling $6500.

Payments to informants from the informant funds ceased on 8 December 2005. As at that date, and over the entire period of the operation of the informant funds, 77 payments had been made, totalling $17 990. The balance of the funds stood at just over $13 000.

According to Assistant Commissioner Swindells, the ARU ceased using the informant funds because there were not a lot of institutional armed robberies taking place, and the original ARU members had moved to other areas within the QPS. (Senior Sergeant OD had been promoted to the rank of Inspector, and transferred.)

Assistant Commissioner Swindells retired from the QPS in July 2008.[7]

Investigation of suspect payments

As part of Operation Capri, investigators from the Ethical Standards Command analysed the creation and operation of the informant funds.

They established that, between 26 February 2001 and 8 December 2005, 77 payments had been recorded as having been made to informants from the funds. They considered each of the payments, examining whether the monies had actually been paid to the informants recorded. In a significant number of cases, informants interviewed during the investigation claimed that they had not in fact received the monies that QPS officers purported to have paid them for information.

7 Assistant Commissioner Swindells retired in the normal course of events.

The ESC's investigation, codenamed Operation Foxtrot Distinct, uncovered evidence which, if accepted, gives rise to a suspicion that some officers attached to the Armed Robbery Unit:

- engaged in misappropriation of money from the informant funds
- falsely asserted that payments had been made to informants
- fabricated audio recordings and written receipts as evidence that payments had been made
- knowingly furnished false documents
- knowingly signed receipts falsely asserting to have been a 'witness' to the payment of money to an informant
- forged the signature of informants
- failed to manage funds in a transparent and accountable manner
- provided false and misleading information in an earlier audit in relation to the administration of the informant funds.

Specific examples of improper conduct are referred to below:

- Officers fabricated an audiotape and produced it as proof of a payment to an informant.

  The audio recording purported to evidence a meeting between two officers and an informant at a coffee shop in West End. Forensic analysis of the recording showed it was *'highly inconsistent with having been made at the [the coffee shop] and, based on peculiarities and the background noise on the recording, was highly consistent with having been made in proximity to car park bay 148 on level B2 of Police Headquarters'*.

  The investigation also confirmed that a police officer assumed the role of the informant for the purposes of the recording.
- Officers signed receipts asserting they had been present when payments were made to informants where other evidence confirmed the officers could not have been present. In one case, records from the Department of Immigration established that the officer was overseas at the time of the payment.

Suspicion also exists in respect of instances where:

- no receipt could be located to evidence particular payments
- officers were reimbursed for payments which the officer claimed to have been personally made to an informant, but failed to produce any supporting evidence
- 'split payments' were said to have occurred — with a portion of the approved reward money deposited into a prisoner's trust account, and the balance said to have been handed to a third person (such as the prisoner's girlfriend) but without supporting evidence to confirm that the third person actually received the sum.

Of the 77 separate transactions considered as part of Operation Foxtrot Distinct, ESC investigators were satisfied there had been full compliance with the receipting requirements[8] on only 33 occasions; that is, the payment of rewards monies was appropriately witnessed by two police officers. In respect of a number of other transactions, there had been partial compliance.

Assessment of the evidence

The evidence suggests that the manner in which officers attached to the Armed Robbery Unit dealt with the informant funds fails the most basic levels of accountability. Indeed, the record-keeping was such that it is virtually impossible to establish the *bona fides* of payments. In the majority of instances, one is left with nothing more than the claim of the police officer that a transaction occurred, and that it was legitimate.

8 A transaction where the payment of money to an informant was witnessed by two police officers, evidenced by a contemporaneous receipt.

Evidence gathered during Operation Foxtrot Distinct suggests that opportunistic officers exploited a lack of both accountability and of supervision to take personal advantage of the informant funds.

Discussion of issues

Failure of supervision

By the time he was interviewed about this aspect of Operation Capri, Senior Sergeant OD had been promoted to the rank of Detective Inspector. Detective Inspector OD denied any personal involvement in, or knowledge of, misconduct by his subordinates within the ARU, and this report does not suggest otherwise.

However, OD conceded there was a failure to implement adequate measures to ensure proper accountability. He said:

> No, I didn't. And I was happy with the way it was run, and I thought it was being done appropriately. I can see now, when you come and [show] this to me, that yeah, there should have been probably more checks and balances. But back then, everyone appeared happy with what was going on. I can see now, six years down the track, that, hey, there is a management policy, there is an accounting procedure that hasn't been followed. But I mean it was different back then.

As the officer in charge of the Armed Robbery Unit, OD bears responsibility for that failure and its consequences. Of the 77 transactions examined as part of Operation Foxtrot Distinct, OD had a role in authorising 40, amounting to a total of $9150. He had input into both issuing and receiving payments from the informant funds, and as a 'witness' to the payment of money to others.

A number of issues arise with respect to OD's own conduct. Principal among those is his failure, as officer in charge of the ARU, to ensure compliance with the relevant informant management procedures — the SIMS policy — adherence to which would have removed much of the opportunity for misapplication of the informant funds.

Failure to manage informants appropriately

Inspector OD initially disclaimed knowledge of the SIMS policy, subsequently insisted that it was not applicable to management of the informant funds, and ultimately asserted the policy was 'unworkable' in so far as the ARU was dealing with prisoner informants.

> The results achieved by the squad ah would not have been achieved if we had to work under that policy. And I think everyone above me agreed with that and no-one at any stage said to me you're acting outside that policy and you are to change it.

For example, OD expressed the view that documenting the identity of the informant, an essential element of the SIMS policy, was unnecessary *'as long as the information was right'*.

As the evidence has shown, OD was prepared to permit the payment of money from the informant funds where the recipient was referred to only by a meaningless pseudonym — and in most instances, to individuals who were not even registered as informants. This undermines a fundamental tenet of informant management.[9]

The following extracts from a CMC investigative hearing with Detective Senior Sergeant EN offer some insight into the ARU's approach to the management of informants (including keeping records and making payments).

9 The CMC recognises that, for the purposes of informant confidentiality, it might be appropriate to avoid the use of full and correct names, and to adopt pseudonyms instead. However, in order to comply with registration requirements, the use of a registered number or similar identifier would ensure confidentiality. In the case of the informant funds, there is no independent or ready means by which to ensure the probity of payments.

EN had worked in the Armed Robbery Unit at material times. At the hearing he was examined about the work of the ARU and about payments to particular informants:

Q: She was your informant?

A: I don't remember her.

Q: Why would you have given her money?

A: She'd given someone, possibly me, information.

Q: If you look at the ledger it talks about 'paid out by [EN]'?

A: Uh-huh.

Q: So looks like you paid it out, no-one else?

A: Oh, there is no doubt I am the one who gave her the money.

Q: There is simply no way we can identify this Jane Doe?

A: Not at the moment, no.

Q: Well, when you say not at the moment, are you capable of identifying her?

A: I don't remember her. If I remember her … I will tell you.

Q: Can you remember what information she gave you?

A: No.

Q: So we can't even go to a conviction and work backwards from it?

A: Oh, possibly. We will have to go through all the people that were convicted or arrested for armed robberies around 2002.

Q: Do you regard this as a satisfactory way to record payments to informants?

A: Yes.

Q: You do?

A: Yes.

Q: What, so no-one else can trace where the money has gone?

A: I can't remember. Can you remember everything you did five years ago?

Q: That's why I keep records.

A: As do I.

Q: And your records lead us nowhere?

A: You don't — you have — every record you have identifies exactly what you did five years ago.

Q: Witness, please, you agree your records lead us nowhere?

A: No, they lead us to the fact that on this date I paid Jane Doe $200.

Q: Now, who is Jane Doe?

A: Don't know.

Q: Your records won't tell us?

A: No.

….

Q: Who is Fruitie?

A: Don't know.

Q: Whose informant was he?

A: I don't remember him.

Q: You don't remember him at all?

A: No.

Q: Yet you paid him $500?

A: Yes.

Q: That's a sizeable bit of money, isn't it? That's a large reward?

A: There has been bigger or smaller.

Q: That's a large reward in terms of what you have been paying previously. Would you accept that?

A: It is bigger than the ones I would normally pay but I just explained that I would string some people out so they would end up with the same amount over a period of time.

Q: And you can't help us at all who this Fruitie is?

A: Not at the moment, no.

Q: When you say not at the moment, have you got access to other materials that would help you to determine who Fruitie is?

A: Well, you have got every note and notebook and diary I have ever used in the last five years, so that would have been presumably what I would have gone to. They don't appear to be helping us.

…

Q: So once again we're in a position where you can't give us any further information to identify either any police officer who on-forwarded Fruitie to you or to identify Fruitie further?

A: Well, not from sitting here. Not to say that I can't, as with the little tit for tat we went through before, I can't tell you from sitting here, no.

Q: Where would you go? If we gave you a couple of days, where would you go to search for the information?

A: I would go and speak with people I'd worked with.

For the sake of completeness, it should be noted that Senior Sergeant EN subsequently had the opportunity to check the identity of 'Fruitie' with people he had worked with. At a subsequent disciplinary hearing against him, he produced a statement from an ex-ARU officer — who had been too ill to attend an interview with the ESC investigators. The former ARU officer claimed that 'Fruitie' was his informant. He described 'Fruitie' as a man named Dave with a simple surname which he could not recall, but something like Smith or Jones.

The former ARU officer claimed that he had taken out money from the informant funds to pay 'Fruitie', but was unable to attend the arranged meeting and, instead, in August 2004, gave the money to Senior Sergeant EN to make the payment. The obvious difficulty with this claim was that the ARU records show that Senior Sergeant EN obtained the $500 paid to 'Fruitie' some two months earlier, in June 2004.

The Deputy Commissioner hearing the disciplinary charge rejected the former ARU officer's claims as '*bordering on the fanciful*'.

There is no evidence that any member of the ARU managed prisoner informants in accordance with the SIMS policy. Moreover, it was apparent from their evidence to the CMC that police officers within the Unit — OD included — took the view that the 'ends justified the means'.

Failure to keep adequate records

Notwithstanding that he spent three and a half years in charge of the ARU, OD failed to implement any pertinent standard operating procedures. More significantly, none of his subordinates were trained in the requirements attaching to the payment of money from the informant funds.

With regard to the process of receipting of payments made to an informant, Inspector OD explained (in an interview conducted with him in November 2007):

> The sergeants or myself would explain to them that — what the situation was in terms of having the receipt signed, and … having the transaction tape recorded.

Inspector OD was reminded of the terms and conditions set out when the informant funds were created — in particular, the conditions attaching to the ABA fund. He said:

> Back in 1999 that may well have been the case. But as, but as different things occurred down the track and the success rate was so good, a lot of those things were, were relaxed a bit by the Assistant Commissioners and people down the line, to say, 'Well listen. You know. You're doing a great job there, just pay the informants.'

The audit of the informant funds conducted by the ESC in late 2003 recognised shortcomings in the way the funds were being administered, and resulted in a recommendation that '*new standard operating procedures be drafted and adopted re the management of these funds*.'

In response, OD had submitted a report in July 2004 seeking more time to furnish such procedures.[10] He was promoted to the rank of Inspector in October 2004, and no standard operating procedures were ever implemented.

It was a requirement applying to both informant funds that two responsible police officers were to witness every payment made to an informant, and that all such payments were to be accounted for. This basic requirement was rarely complied with, such that most of the payments were 'authorised' without sufficient or adequate supporting documentation.

As justification for this, Inspector OD said he relied upon the trust he had in the officers he had hand-picked for the Unit, and did not require any proof beyond the word of his subordinate — whom he trusted.

In a number of instances, police officers (OD included) signed a receipt purporting to be a 'witness' to the payment of money to an informant, when in fact that officer had played no role at all in the transaction. OD defended this action by claiming that although signing as a 'witness', he had merely:

> … signed it to say that I've given [the police officer] the money … On a lot of occasions I would sign receipts when I'm not there. All I'm doing is acknowledging giving them the money. I'm not acknowledging actually being there.

Where — as has occurred — informants have subsequently denied receiving any money, there is no reliable evidence to confirm the payment and a suspicion remains that the relevant sum of money was simply misappropriated by an officer or officers.

The situation is that one is now left with the word of a police officer who claims he paid a sum of money to an informant against the word of the informant who claims no such payment was ever made, in circumstances where the 'receipt' generated in order to evidence the payment is worthless or simply does not exist.

Importantly, as the Officer in Charge, OD appears not to have considered (or perhaps chose to ignore) the signal that such behaviour by a supervisor would send as to the standard of integrity expected of his subordinate police officers. When the head of the ARU was prepared to act in that way, it is not surprising that his subordinates acted as they did.

10 Senior Sergeant OD's report to the ESC falsely asserted that the informant funds were 'completely empty'.

Disciplinary proceedings

Although the investigation identified sufficient evidence to warrant consideration of criminal charges against a number of officers, the CMC and QPS decided that the public interest would be best served by dealing with suspected misconduct through the police disciplinary process.

A number of considerations influenced this decision, including the fact that criminal prosecutions would:

- require evidence from witnesses whose credibility would be open to challenge;
- potentially endanger the safety of a number of informants, by exposing their identities; and
- discourage potential future informants.

It was also a relevant consideration that the events in question were now largely historical, having occurred some years ago, and that the prosecution of criminal proceedings was likely to result in considerable additional delay before the matters could be finalised.

In the result, in January 2008 the CMC approved an ESC report recommending disciplinary action against Detective Inspector OD and four other officers. (OD retired prior to the conclusion of the disciplinary process.)

A decision on a further officer, against whom disciplinary action might have been considered, was deferred because the officer took long-term sick leave, before later retiring on medical grounds.

SEGMENT 2: REMOVING PRISONERS FROM CUSTODY

Time frame: 2001 – 2005

This segment of the report focuses upon allegations that police officers attached to the Armed Robbery Unit, and elsewhere, acted improperly in removing prisoners from correctional centres as an inducement to confess to unsolved armed robbery and other offences. As prisoners heard of the arrangement, they in turn sought to use the removals process for their own ends. The segment also shows the development of an inappropriate association of police officers with prison informant Lee Owen Henderson.

> ***… The focus was: 'We've got 92 unsolved armed robberies. You put that to bed.' And that direction was given to me by a number of senior staff over the intervening years … right up to Assistant Commissioner: 'Your role is to solve armed robberies. Get it done.'***
>
> ***I believe in a four-year period I did that. … We were involved in a whole range of other investigations along the way. It was seen as the go-to squad to get the job done. I admit that compliance [with policies and procedures] issues could have been better, but again, my role was to solve armed robberies. In relation to SOPs and things like that, I was told, 'Don't worry about any of that, you just get the job done.'***
>
> **— Detective Inspector OD, former officer-in-charge ARU, interview, 20 June 2008**

Background to the investigation

Over a three-year period from late 2003, the CMC received a number of complaints alleging misconduct by police officers in temporarily removing prisoners from some of Queensland's correctional centres. A distinct pattern emerged to the allegations, which gave rise to a suspicion that certain police officers — in particular, officers attached to the ARU — had engaged in a practice of offering inducements to serving prisoners so as to elicit their confessions to unsolved crimes.

The initial complaints were referred to the Ethical Standards Command for internal investigation. Later, when the extent of alleged behaviour became apparent, and links were identified with other aspects of Operation Capri, it was determined that the complaints about prisoner removals should become the subject of investigation by the CMC.

Instead of piecemeal investigations of individual complaints, Operation Capri afforded the CMC an opportunity to examine and compare the circumstances of all of the suspect prisoner removals. When examined in this way, the available evidence indicates police misconduct by at least a dozen officers.

Legal basis for removing prisoners from custody

There are two methods by which a police officer may seek to lawfully remove a prisoner from a Correctional Centre:

- under section 70 of the *Corrective Services Act 2006*[1] (a 'CSA removal'); or
- under the provisions of Chapter 7 Part 2 of the *Police Powers and Responsibilities Act*[2] (a 'PPRA removal').

Under a CSA removal, the general manager of a prison may authorise the removal of a prisoner so that the prisoner may assist police in the conduct of an investigation, or be questioned by police about an offence it is suspected the prisoner has committed. The CSA removal is the widest in scope, and may be used where police officers engaged in an investigation seek to 'recruit' a prisoner as a witness, or as a longer term informant. The limiting feature of the CSA removal is that it is subject to the prisoner first giving his/her consent in writing. The risk to the prisoner is that he/she may be more easily exposed as a police informant.

None of the matters investigated as part of Operation Capri involved a removal authorised pursuant to the CSA.

All prisoner removals examined by the CMC were PPRA removals where a police officer applies to a magistrate for the issue of a formal order, authorising the removal of a prisoner from a correctional centre to enable the investigation of an indictable offence.

Unlike CSA removals, PPRA removals are restricted to situations where the subject prisoner '*is suspected of having committed an indictable offence*'. In such cases, a magistrate may make a 'removal order' when satisfied it is reasonably necessary for '*questioning the (prisoner) about the offence; or the investigation of the offence*'.

The relevant provisions of the PPRA stipulate:

- That the application must relate to a prisoner who is suspected of having committed an indictable offence and is in custody.

  A police officer may apply for the removal of the prisoner for — questioning about the offence, or the investigation of the offence. (The magistrate may make a removal order *only* if satisfied the order is reasonably necessary — i.e. for questioning the person about the offence, or the investigation of the offence.)
- The application must be made in person, and the applicant must swear to the grounds on which the order is sought.
- The removal order must contain —
  - the name of the prisoner and the relevant prison;
  - the name of the police officer who will have control of the prisoner;
  - a statement that the person in charge of the prison must release the prisoner to the police officer named in the order;
  - the reason for the prisoner's removal;
  - the place to which the prisoner is to be removed;
  - a statement that the prisoner must be returned to custody as soon as reasonably practicable after the approved detention period ends.

1 Formerly section 55 *Corrective Services Act 2000*.

2 The various provisions were re-numbered in January 2005. Unless otherwise stated, references contained in this report are to the provisions as they were previously numbered – i.e. from 1 July 2000 to January 2005.

In other words, to obtain a PPRA removal order, the person to be removed from custody must be a suspect for the offence then being investigated. For this reason, the consent of the prisoner is not required.

The PPRA envisages that the prisoner, upon removal, will be taken to a 'police establishment'. However, a police officer may take a removed prisoner to a place *'other than a police establishment if the police officer considers it reasonably necessary'*.

Police officers seeking to remove prisoners from custody under either a CSA removal or a PPRA removal are required to maintain and update applicable custody/search indexes, notebooks and diaries. Other provisions in the QPS Operation Procedures Manual (OPM) governing the conduct of interviews and recording of confessional evidence also apply.

What the investigation revealed

As part the investigation of the prisoner removals, the CMC examined 43 separate removals of nine prisoners between 2001 and early 2005. Operation Capri ultimately focused on 36 removals involving those nine prisoners. The following case studies outline the removals from custody of six of those prisoners.

The case studies suggest that the motivation of the police officers who removed prisoners from custody varied:

- Some police officers acted in the expectation prisoners would confess to criminal acts, and thus would solve outstanding offences;
- Some police officers used the removal process to reward prisoners for the assistance the prisoner had given, or was thought likely to give, in the investigation of other crimes;
- Some police officers arranged removals purely as a favour for the prisoner.

Whatever the motivation, the case studies demonstrate how the allegations of police misconduct – which might easily have been refuted if untrue – are unable to be resolved, because police officers failed to complete routine paperwork, thus leaving incomplete or non-existent records.

Although the evidence reveals that the Armed Robbery Unit made the greatest use of the prisoner removal system, the suspicion of police misconduct extends beyond the ARU. Examples are provided of the removal from custody of one prisoner in 2001, and another in 2005; both cases involved confessions made in respect of property offences (e.g. offences of breaking-and-entering).

Removals of Prisoner 'BR'[3]

On 24 December 2002, two police officers from the Dutton Park police station arrested and charged Prisoner BR with an offence arising from his alleged involvement in an armed robbery.

Over the course of 2003, BR was temporarily removed from custody on seven separate occasions (on four by officers from Dutton Park, and on three by officers attached to the Armed Robbery Unit). In each instance, the removal was facilitated so that BR could be interviewed about, and offer admissions to, unsolved armed robbery offences.

Based on his admissions, BR was ultimately indicted in respect of 16 offences of armed robbery.

At his trial in 2005, BR asserted that he had confessed to some of the offences because police had offered him inducements, such as being allowed to spend time unsupervised with his wife

3 The allegations arising from the case of Prisoner BR were mentioned in the Introduction to the report.

in police buildings, and being taken on home visits. Having heard evidence on the point, the trial judge was not satisfied as to the voluntariness of BR's confessions, and declined to admit details of the confessions into evidence.

BR was eventually convicted and sentenced in respect of six offences — being matters where the prosecution possessed evidence of his guilt that was independent of his confessions. The prosecution was forced to discontinue the other 10 charges.

The BR case was examined initially by the Ethical Standards Command and subsequently as part of Operation Capri.

Support for the claims made by BR (and his wife) was found in recordings that exist of prison telephone conversations, both preceding and following dealings between BR and police.[4] On a number of occasions, information passed in conversations between BR and his wife in the days leading up to police removing BR from custody was confirmed by subsequent events and by police records (such as entries in the visitor records maintained at Police Headquarters, and telephone call charge records of individual officers).

Moreover, the evidence uncovered by the CMC as to manner in which police officers dealt with BR reveals repeated occurrences of procedural non-compliance, including failure to record conversations, failure to make entries in notebooks and diaries, failure to make CRISP[5] entries, and routine wilful non-compliance with the terms of the orders authorising BR's removals from custody.

The CMC provided the QPS with a detailed report of its investigation of the BR matter. The report recommended consideration of disciplinary action against five serving police officers. Three other officers against whom disciplinary action might have been appropriate have now resigned from the QPS. The CMC is unable to complete its investigation of one officer who, for medical reasons, is not fit to be interviewed.

Removals of Prisoner 'TH'

In the course of its investigation of BR's removals, the CMC's attention was drawn to an apparently similar course of conduct by police officers dealing with another prisoner, TH.

Prisoner TH had been sentenced in 2000 to six years' imprisonment for two offences of armed robbery. Inquiries revealed that in a period of just over 12 months from 16 January 2003 police attached to the Armed Robbery Unit removed TH from custody on nine occasions (twice overnight).

During the course of the first three removals (16, 21 and 29 January 2003), police interviewed TH in relation to three armed robbery offences, for which he was charged on 29 January 2003.

Police removed him from custody on a further four occasions in 2003 (18 February, 26–27 March, 10 April, 30–31 July), supposedly to provide statements against co-offenders or to provide information as part of Operation Salt (a QPS investigation into the armed robbery of a bank at Browns Plains in which an offender had shot a police officer).

In September 2003, TH was sentenced for the three armed robbery offences for which he had been charged on 29 January. Supported by a 'letter of comfort'[6] provided by an ARU officer, he received a wholly suspended sentence of imprisonment for five years.

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4 The circumstances in which telephone calls made by prisoners are recorded are identified in segment 3.

5 Computerised Reporting Information System for Police

6 A 'letter of comfort' is a document provided by a law enforcement agency on behalf of an accused being sentenced, advising the court of any assistance the offender may have given police. The letter is usually in the form of an affidavit sworn by a senior police officer, and the court is required to take into account the information when determining the appropriate sentence for the offender (the procedure is in part formalised by s13A *Penalties and Sentencing Act 1992*.

Due to the paucity of record-keeping by the ARU officers who removed TH on two further occasions (21 November 2003, 27 January 2004), the reasons for these removals are impossible to ascertain.

Operation Capri identified evidence suggesting that in the course of his various removals from custody during 2003–04, TH was permitted to have contact with his partner in the ARU offices, was taken to his grandparents' house on three occasions, and on one occasion was permitted to meet his partner and young children in the Roma Street Parklands. On more than one occasion, police took TH to his partner's address, where he was able to spend time with his children.

As with the other prisoner removals examined by the CMC, the circumstances surrounding the removal of TH from custody show a very high degree of procedural non-compliance by police including failure to properly record conversations, and a failure to keep accurate notes and diaries.

The CMC has examined the letter of comfort extended to the court on TH's behalf. The document purports to describe in general terms the assistance TH had provided to police in a number of investigations.

Having identified the matters referred to in the letter of comfort, the CMC compared the letter's contents to known evidence of TH's level of assistance to police. There is a degree of suspicion that much of the information conveyed in the letter of comfort either exaggerates the level of TH's assistance, or is completely false.

Removals of Prisoner 'HO'

According to Prisoner HO, in early 2004, while serving a sentence of imprisonment in the Wolston Correctional Centre, he was told by Prisoner TH about how he could confess to criminal offences in return for an opportunity to enjoy a visit with family.

TH subsequently made contact with a police officer attached to the Armed Robbery Unit and put in train arrangements for HO's removal from custody on 28 January 2004 so that HO could confess to outstanding armed robbery offences.

Police officers from the ARU then obtained a magistrate's order authorising HO's removal from custody. This took place on 28 January 2004, at which time, according to HO, an understanding was reached between HO and police officers that HO would be rewarded with a visit to his home in return for his confession.

HO was transported to QPS Headquarters, where he confessed to a number of offences, including a 1999 armed robbery of a taxi driver, an offence HO committed when 15 years of age.

A notice requiring HO to appear in court (in respect of the offence against the taxi driver) was served on him. HO claims that it was explained that it was not possible to achieve a home visit on that day, but police promised arrangements would be made to have him removed from custody on another day, at which time he could be taken to his family's residence.

As promised, two police officers from the ARU removed HO from custody again on 26 February 2004 and transported him to QPS Headquarters where he made a voluntary confession to a further robbery. HO was then taken to his mother's residence, where he enjoyed time with family members and an ex-girlfriend.

Police officers involved in this removal told the CMC that a search was performed at the residence for clothing HO claimed he had been wearing when he committed an offence. (Other than the police officers, none of the persons present at the residence at that time accepts that any search took place.) HO has said that the police officers told him and his family to say to anyone who might ask that police came looking for clothing.

It is relevant to note that on 29 January 2004, in a recorded Arunta call to his mother, HO spoke about how he had intended to visit her the previous day, but the police had run out of time. He said the visit would happen in a couple of weeks. On 25 February 2004, in another recorded call, HO told his mother that the visit should be the next day, or the day after.

On 19 May 2004, HO was sentenced for the 1999 armed robbery of the taxi driver. A concurrent term of imprisonment was imposed, with the effect that HO received no additional jail time because of the matter.

Removals of Prisoner 'BA'

In 1997, prisoner BA had been approached by police seeking his assistance as a potential witness in a murder investigation. BA provided a witness statement in which he denied seeing anything occur.

BA told the CMC that he later learned (from a fellow prisoner) that he might achieve release on parole if he was to assist police in the murder investigation. He made contact with an officer from the Armed Robbery Unit, raised the possibility of parole, and offered to provide a new statement. A second witness statement was duly provided to police in May 2000. It implicated a number of accused persons who were subsequently charged with committing the murder.

By June 2002, BA had given evidence – in accordance with his second witness statement – against those accused persons in the course of committal proceedings.[7]

BA told the CMC that around this time, he told an officer of the Armed Robbery Unit that he wanted to clear up some outstanding armed robbery offences for which he had not been charged. BA said he wanted to do this so that when he got out on parole, he would not be in fear of being arrested for the offences and returned to prison.

On 17 June 2002 (after the committal proceedings) BA was removed from custody by two officers from the Armed Robbery Unit, and he claims that while with the police he confessed to a number of armed robbery offences. Despite his confession, BA was never charged with any of the offences. Instead, according to BA, after making his confession he was taken by police to the residence of his then-girlfriend and was permitted to have sex with her.

If BA's account is accepted, one implication is that his removal from custody was intended to be a reward for his cooperation as a prosecution witness in the murder case. If true, this issue would have been very relevant to evidence he gave — or might have given.

Despite the admissions he claims to have made, BA was never charged with any of the offences, and notwithstanding extensive inquiry, the CMC has been unable to find any evidence of his even being recorded as wanted in respect of any outstanding matter. (BA suspects this was because police intended waiting until he gave evidence at the murder trial.)

These are serious accusations to make, and the truth of them is unable to be determined. The significant feature is that the accusations might have been readily answered if the police officers who dealt with BA had complied with their obligations to maintain proper records. As the evidence shows, they did not. Their failure to comply means that it is impossible to discount the accusations.

7 BA told the CMC that by the time of the subsequent trial in 2004 he had turned to religion. When called to the witness box he refused to take the witness oath when directed to do so by the judge. BA explained to the CMC that he was determined not to give false evidence in the trial, but was too frightened of what the police officers might do to him if he told the judge why he couldn't give the (false) evidence he had given at the committal hearing. As BA saw it, he found himself faced with two choices: commit perjury or be punished for not committing perjury. BA chose the latter and the trial judge sentenced him to 9 months imprisonment for contempt of court.

According to Corrective Services' records, BA was removed from custody at 9.42 am on 17 June 2002, and returned to custody at 3.30 pm on the same date. However, no corresponding entries appear in the QPS Custody Index, nor is there any CRISP record referring to BA as a suspect in any outstanding armed robbery or other offence.

The only QPS documentation containing information about dealings with BA on 17 June 2002 are the police diaries maintained by the officers who dealt with him. Those documents are themselves inconsistent: one indicates BA wished to seek legal advice before being interviewed, and the other suggests BA accompanied police on a 'drive-around at Logan'.

The CMC has been unable to clarify the matter with either of the police officers who dealt with BA: both claimed to be unable to be interviewed for medical reasons. They have both since retired from the QPS on medical grounds.

Inquiries were made to locate BA's former girlfriend. The woman concerned was ultimately interviewed by CMC investigators in January 2008. She confirmed that police officers had escorted BA to her residence on one occasion, and that she and BA enjoyed some time together while police sat nearby. The woman also said that it had been her belief that BA had been allowed to visit her because he was assisting police as a witness to a matter they were then investigating.

Unlike the other case studies, this is not a situation in which a prisoner complained he had been charged with offences he did not commit. On the contrary, in BA's case, suspicion of misconduct arises because he was not charged. There is an implication both that BA was removed from custody as a favour, because of his assistance to police in the prosecution of the murder, and also, that his confessions were not acted upon so that they might ensure his continuing cooperation as a witness.

This remains a classic example of a matter in which one is left with the word of an easily discredited accuser, against police officers. While neither officer has had the opportunity of formally denying the allegations, the evidence is clear that they ignored procedural requirements.

Removals of Prisoner 'SA'

SA had been apprehended by police on 4 April 2001. He was immediately transported to the Dutton Park Police Station and was interrogated about his involvement in property offences.

At some point on the day of his arrest, SA made mention of wanting to see his then-girlfriend. SA alleged that he was informed arrangements could be made for him to spend time with his girlfriend if he agreed to do some 'clear-ups' i.e. confess to outstanding matters.

According to SA, the arrangement reached on the day of his arrest was that if he confessed to ten offences, he would be permitted one hour with his girlfriend. He duly confessed to ten offences, and was permitted time alone at the police station with his girlfriend.

SA was charged and remanded in custody at the Arthur Gorrie Correctional Centre.

According to SA, the 'deal' reached on the day of his arrest was then altered: he was required to confess to 20 offences in order to spend time with his girlfriend. On 12 April and 19 April, SA confessed to 20 offences. On 1 May 2001, he confessed to 18 property offences and a small number of motor vehicle-related offences.

An examination of the evidence reveals a pattern of conduct: on the occasion of each removal, police arrived at Arthur Gorrie Correctional Centre, obtained SA's consent for removal, and took him away. Thereafter, he assisted police by directing them on a 'drive-around' of local suburbs – that is, he led police to properties where he had committed offences.

No comprehensive record was made of the directions SA gave to police. Although they had tape recorders, police activated the recorders only upon arrival at nominated properties, and merely asked that SA acknowledge that he had directed the police vehicle to the particular address. The recordings are therefore incapable of establishing what may or may not have transpired while SA was being transported in the police vehicle.

On each occasion, at some point during the day, police called upon SA's girlfriend, collected her, and took her to the police station so that – according to the officers concerned – she might act as SA's 'interview friend'[8] in what they proposed would be a formal interview to be conducted with SA at the end of the drive-around process. SA and his girlfriend would then spend time alone while police conducted checks in respect of the properties and offences identified during the course of the drive-around.

On each occasion, having spent the day directing police during a drive-around, offering ad hoc admissions (which were audio-recorded) and having spent time with his girlfriend while police attended to preparations in order to conduct a formal interview, SA declined to participate in a formal interview. This meant that SA's girlfriend was never used in the capacity of an interview friend.

During a court mention of SA's charges in June 2004, defence counsel formally challenged the admissibility of evidence arising from the interviews conducted by police, on the basis that the confessions made by SA had been induced and therefore were not voluntarily made.

At that point, SA faced a total of 97 charges.

In the course of his pre-trial hearing, it was submitted for SA that on each occasion he had been interviewed, police had induced his co-operation by promising he could spend time alone with his girlfriend. The Court was informed that SA was prepared to acknowledge his responsibility for certain offences for which he had been indicted, but that he had not committed many of the offences to which he had confessed.

At the conclusion of the pre-trial hearing, the learned trial judge found it was likely that SA had made admissions to offences *'… either inaccurately or, perhaps ... where there had been no offence committed at all'*.

The trial judge ruled that the prosecution had failed to establish that an inducement had not been held out to SA to make the admissions. In coming to this conclusion, the judge pointed to a number of inconsistencies and '*strange features*' in the evidence which made it impossible to conclude that the confessions were made voluntarily. In the result, evidence of the interviews conducted with SA was ruled not to be admissible.

On 26 June 2005, SA pleaded guilty to 27 charges. The Crown was forced to discontinue proceedings in respect of the remaining 70.

SA was ultimately sentenced to imprisonment for nine years. In light of the fact he had already spent over four years in pre-trial custody, the sentencing judge ordered that SA should be immediately considered for parole.

8 When a person is in the company of a police officer for the purpose of being questioned about his or her involvement in the commission of an offence, the person is required to be informed of, and has a right to speak with or communicate with a friend or relative (PPRA, s.249). If requested by the person, the friend or relative must be permitted to be present and give advice to the person during questioning (s.250), unless the officer decides to exclude the friend or relative because of that person's unreasonable interference with the question (ss.255 – 257).

SA's now-former girlfriend did not give evidence at the pre-trial proceedings. However, the CMC managed to locate and formally interview her concerning her involvement in the police interrogation process. While the account she offered generally corroborates SA's claims, her recall of specific dates, conversations and other information — such as the identity of particular police officers — in many respects is inconsistent with established facts.

However, the versions offered by the various police officers who dealt with SA also contain inconsistencies. Moreover, their conduct reveals poor investigative practices, including a consistent failure to comply with the most basic standard operating procedures e.g. failure to make complete audio recordings, and failure to record details in the QPS custody index. The evidence is such that — as the trial judge ruled — it would be impossible to conclude that SA had not been improperly offered inducements in order to confess to offences.

SA's case demonstrates that the questionable police practices extended beyond the Armed Robbery Unit, as is also illustrated below in the case of Prisoner RI.

Removals of Prisoner 'RI'

In early January 2005, RI was arrested and charged with a number of property offences. At the time of his apprehension, RI declined to participate in an interview with police. However, following a routine court appearance on 31 January 2005, he took part in an electronically recorded interview with two police officers involved in the investigation.

According to the police officers, at the conclusion of that interview and after their recording device had been switched off, RI asked the about the possibility of doing a drive-around so that he might identify properties where he had committed offences. The next day, one of the police officers sought and obtained a magistrate's order authorising RI's removal from custody for the purpose of a '[d]rive-around interview in relation to break and enter offences committed by [RI] in South Brisbane'. The application in support of the removal order is lengthy, and contains reference to the conversation said to have been had with RI the previous day.

In late 2006, RI provided the CMC with a written statement setting out his recollection of what had taken place. In that statement, RI asserted that he had no recollection of the drive-around being discussed on 31 January 2005 — '*I don't recall agreeing to this at the time. I would not do a "drive-around" unless there was something in it for me*'. RI told the CMC that police raised the notion of a 'drive-around' with him for the first time when they came to the prison to remove him from custody on 2 February. According to RI, when confronted by police officers at the prison:

> On this occasion, I asked [the officer] what was in it for me to do the 'drive-around' and [the officer] said to me that they could arrange for me to be able to see my girlfriend … alone for half an hour to an hour. I therefore agreed to do the drive-around.

However it was raised, it seems RI clearly understood the nature of the *quid pro quo* arrangement.

RI's removals on 2 and 7 February 2005

RI was removed from custody by police officers on two occasions in February 2005.

On 2 February, the transcript of the day's recording suggests RI's drive-around process took place between 10.43 am and 3.35 pm. No further recording was made until RI participated in a short interview as he was being returned from Morningside Police Station to prison. In this exchange, the prisoner confirmed that no promise or inducement had been held out to him to participate in the day's interview. He was asked whether he would he do '*another drive-around another day*', and responded, '*Yeah, that's cool.*'

On 3 February 2005 one of the officers obtained a magistrate's order authorising RI's further removal from custody.

The application in support of the order was in almost identical terms to the earlier application, and contained reference to the events of 2 February, pointing out that RI had made admissions to 21 break-and-enter offences, and had indicated a preparedness to conduct a further drive-around.

In his statement to the CMC, RI asserts:

> When the police arrived again on 7 February 2005 I again agreed with them that I would go with them if I was able to see my girlfriend. It was described to me as 'the same deal as the other day'.
>
> During this drive-around the police had a pile of paperwork in each of the back pockets of the front seats of the car. As we left the jail … [one of the officers] said, 'Have a look through them (crime reports and matrix). I reckon they're all yours.' There would have been at least 300 crime reports along with those matrix reports that I went through. As I went through them, I read everything, for example how entry was gained, what was taken, approximate time the crime was committed, any known suspects, restitution amount, complainants' names along with other things which I cannot now recall.
>
> During both drive-arounds I made admissions to crimes I didn't even commit. I made those admissions because I wasn't allowed the time alone with my girlfriend if I didn't stick to my end of the deal, which was to give them as they had said, 'at least 20 breaks to make it worthwhile'.

According to RI, arrangements were made for him to spend time alone with his girlfriend on both 2 and 7 February 2005. On the latter date, he claims she was collected by police and delivered to Morningside Police Station, where they had sex and he injected himself with drugs his girlfriend had brought with her.

Evidence regarding the attendance of RI's girlfriend

In the witness statements prepared by the various police officers for the criminal proceedings against RI, only one officer made reference to RI's girlfriend: asserting that on the occasion of RI's *second* removal from custody, his girlfriend had been telephoned by police and asked to attend the police station with a particular item of clothing. The witness statements produced by other police officers contain no mention of RI's girlfriend.

In evidence during the committal proceedings against RI (in January 2006), the officers sought to clarify the issue of the girlfriend's presence. The officer whose statement contained the mention of RI's girlfriend gave evidence 'clarifying' the account in the statement:

> … I've mentioned, that during the second day of the 'drive-arounds', the defendant's girlfriend ... attended Morningside Police station. It's since been brought to my attention that that was on the first day of the 'drive-around' and the — the circumstances in which she was first contacted to attend, were slightly different to the way they've been indicated in my statement.

He then outlined a different account as to how the girlfriend had come to attend the police station. The officer's witness statement asserted that police had contacted the girlfriend by telephone very late in the day to request that she bring a particular item of clothing to the police station, his evidence was that police (and RI) went to the woman's address earlier in the day, during the course of the 'drive-around' process. His testimony was that one of the police officers used a mobile telephone to call the girlfriend from just outside her house, and she was asked to come outside. After a short discussion with RI, she was asked to bring the particular item of clothing to the police station.

The other police officers gave evidence that was largely consistent with this amended account, although a number of factual discrepancies are evident in the testimony of the police officers.

With a view to testing the officers' amended version, the CMC examined telephone call charge records of all the telephones known to have been used by the police officers at the time. The telephone call charge records were found to be consistent with the account provided by RI.

They do not support the versions offered by the police officers, particularly the claim that RI's girlfriend was telephoned late in the day.

As part of Operation Capri, on 25 February 2008, the CMC located RI's former girlfriend and interviewed her about the circumstances in which she had provided her witness statement to police in November 2006. The account she gave supports neither RI or the police officers.

At the time of her interview with CMC investigators, the woman was residing at a drug and alcohol rehabilitation centre and faced a number of outstanding criminal charges. (She has a reasonably extensive criminal history, which includes convictions for drug, fraud and property offences.) In the CMC's view, the woman would not be a reliable witness.

Removals involving Lee Owen Henderson

Henderson was removed from custody at Wolston Correctional Centre by police officers on nine separate occasions.[9] The officers involved with Henderson generally contended that he was removed to facilitate his assistance to police as a confidential human source, or informant, although there is little objective evidence that he aided an investigation in any legitimate sense.

This explanation calls into question Henderson's removals under the auspices of the PPRA provisions (i.e. as if Henderson was a suspect, rather than an informant). It appears therefore that officers routinely misrepresented circumstances when seeking authority for Henderson's removals.

The sequence of removals demonstrate the degree of Henderson's influence over police officers, the progressive development of inappropriate police–informant relationships (particularly with Detective Sergeant OT) and Henderson's manipulation of certain officers.

Removal on 6 February 2002

On 5 February 2002, a police officer attached to the Armed Robbery Unit sought a magistrate's order authorising Henderson's removal from custody for the purpose of '*… assisting members of the Armed Robbery Unit … in relation to armed robbery matters in Queensland*'.

The written application noted that Henderson had expressed a desire to be interviewed in relation to an offence that had been committed in January 2002 (i.e. the previous month). As he had been in custody for the previous 15 years, it is difficult to see how Henderson might have been suspected as a party to the offence then being investigated, nor was it ever made clear to the CMC in what sense he was regarded as a suspect.

The available evidence suggests that Henderson had done nothing to indicate to any member of the ARU that he was aware of the identity of the person or persons who had committed the offence.

To the contrary, a strong inference is raised by the evidence that Henderson was removed from custody on 6 February 2002 for the sole purpose of allowing members of the ARU to assess his usefulness as a human source in *future* matters.

The official diaries maintained by police officers who dealt with Henderson contain conflicting accounts of what occurred with him (with no diary referring to the offence identified in the application), and that otherwise, there is no reference to Henderson in the QPS custody index, tapes index, relevant crime report, or any other crime intelligence or similar report the police officer would have been required to complete.

9 Henderson was subsequently transferred to the Capricornia Correctional Centre near Rockhampton and later still to the Townsville Correctional Centre. At both locations he was removed from custody on numerous occasions, and those removals are mentioned elsewhere in the report, particularly segment 6.)

In a letter written by Henderson to an officer of the ARU on 9 February 2002, reference is made to a meeting with police at which Henderson agreed to enter into an ongoing arrangement to provide assistance. Further, on 16 May 2002, Henderson wrote to a female associate, 'M'. That letter advises that Henderson met with a [named] officer and that officer's superiors, and had been asked to *'come on board and help and work with them'*. By 17 February 2002, Henderson had generated his own letterhead, advertising himself as 'Info Gatherer & Strategist, Freelance Operations Advisor, Recruitment Specialist'.

Removals on 6–8 April 2002

On 4 April 2002, an Armed Robbery Unit officer obtained a magistrate's order authorising Henderson's removal from custody on Saturday 6 April 2002.

The application in support of the order asserted that Henderson was to be interviewed about 'a series of armed robbery offences committed upon financial institutions within the State of Victoria'. It was further asserted that Henderson had expressed a desire to 'clear up' six armed robbery offences committed in Victoria in the 1980s. The application read, in part:

> Subsequent inquiries with Victorian Police reveal that the information supplied by Henderson is correct. Henderson has stated to Queensland detectives that he is willing to provide statements in relation to offences committed by himself and others. Henderson has also agreed to be interviewed by Victorian detectives who will be in Queensland on Saturday the 6th April 2002 for a period of three days.

Incomplete record-keeping in respect of this removal has made it impossible for the CMC to determine precisely what Queensland police officers did with Henderson, beyond his dealings with the Victorian officers. (An example of the unreliability of the record-keeping is found in the official diary of one ARU officer, which notes that a particular officer was present for, and assisted in, dealings with Henderson on the particular date. The named officer was on a rest day at that time, and was therefore unlikely to have been present.)

The CMC sought the assistance of the Victorian Office of Police Integrity (OPI) in identifying what involvement Henderson might have had with Victorian Police in April 2002.

The investigation undertaken by OPI, codenamed Operation Chimes, identified certain official police records in respect of a visit to Brisbane by two Victorian police officers from 5 to 7 April 2002. The two Victorian officers were examined before an investigative hearing conducted by the OPI.

According to the Victorian officers, Henderson provided information about an armed robbery committed on a payroll in Geelong, Victoria. Subsequent inquiries undertaken by the officers upon their return to Victoria satisfied the officers that no record existed of any such offence having been committed.

There is no evidence to support the claim made in the ARU officer's application to the magistrate on 4 April 2002, namely that any (preliminary) inquiries had been made of, or information had been obtained from, Victoria Police.

Removal on 28 May 2002

Henderson was removed from custody on 28 May 2002, purportedly so he could be interviewed about 'armed robberies committed in Victoria prior to 1990'.

Mention of Henderson's removal is contained in the diary maintained by one of the Armed Robbery Unit's officers, although the diary reference suggests Henderson was to assist in relation to the investigation of a Queensland offence.[10] Other than that single diary entry, there are no entries in the QPS custody index, tapes index, nor any criminal intelligence report or other documentation concerning any dealing with Henderson on that day.

10 The officer concerned produced a medical certificate declaring him unfit to the interviewed.

The purpose behind Henderson's removal on 28 May 2002 remains unclear, and the CMC is unable to establish what occurred while he was in police custody.

The CMC has been advised by the Chief Magistrate that the original application in support of this removal was unable to be located.

While the order authorising Henderson's removal refers to offences committed in Victoria, the evidence suggests that on the occasion of his previous removal, Henderson had been spoken to by Victorian police officers, and had proved incapable of providing any reliable information. For this reason, and given that the order would normally reflect the grounds identified in the application, there is a strong inference that false information had been put before the magistrate in support of Henderson's removal.

Henderson's registration as a QPS informant

QPS records show that Detective Sergeant AS, a police officer attached to the Armed Robbery Unit, formally registered Henderson as a confidential informant on 24 June 2002. The officer recorded that Henderson was to be an informant in respect of Operation Salt (the robbery of a bank at Browns Plains), although there is little if any evidence to suggest Henderson was ever in a position to assist police in respect of that investigation.

Further, although registered as an informant, no (required) contact advice reports were placed on Henderson's file in relation to Operation Salt or any other matter during 2002 or 2003.

From evidence discovered by the CMC during Operation Capri, it would appear that Henderson perceived he was 'working with' police. Certainly, he held himself out as such.

In a letter written to a friend on 18 July 2002, Henderson explained that he was busy '*working with and alongside Special Squads hunting dangerous armed robbers, serial rapists and killers*'.

Henderson's correspondence in August 2002 bore the letterhead of a 'Special Projects Unit', and identified its services as: 'Info gathering, Strategic planning, Criminal ID Analysts, Tracking, Covert surveillance, Interrogations, Protection specialists, Negotiators'.

Removal on 2 September 2002

Henderson was removed from custody by Armed Robbery Unit officers on 2 September 2002. According to the magistrate's order, he was to be taken to the QPS Headquarters to enable him to assist police '*in relation to armed robbery investigations*'. Again, advice from the Chief Magistrate is that the original application cannot be located.

The failure of police officers to complete the required QPS records means there is little official material from which to identify what, if anything, Henderson did by way of assistance to the ARU.

On the day after his removal from custody, Henderson wrote to his female associate, M, making reference to the events of the previous day. This letter makes it clear that police officers from the ARU had met with M, her daughter, and grandchild. Henderson stated he was '*looking forward to our next chance for lunch, or something, just … 4 of us … for the day like that …*'

In subsequent letters to M in June and August 2003, Henderson refers to it being almost a year since he had seen M's grandchild at Brett's Wharf.

In May 2006, photographs were located in Henderson's prison cell at Townsville Correctional Centre depicting Henderson with M and members of her family, at Brett's Wharf on the Brisbane River.

Moreover, Henderson appeared in the photographs wearing neat civilian clothing – together with a tie bearing a motif that had been adopted by officers of the ARU.

During investigative hearings about this matter, the officers of the ARU who were suspected of dealing with Henderson on this occasion gave conflicting accounts of Henderson's activities. One officer conceded Henderson had been taken to Brett's Wharf, but claimed it was on only one occasion, on a subsequent removal on 26–27 November (see below).

The official documentation is either incomplete or has been shown to be inaccurate. There is no evidence to support police claims that Henderson was interviewed about armed robbery offences, much less that he provided information to assist those investigations.

Removals on 13 November 2002, 26–27 November 2002

During November 2002, Henderson was twice removed from custody to assist police in QPS investigations codenamed Operation Have and Operation Samian.

Operation Have had been commenced in May 2000 to investigate the murder of Andrea Snowdon, whose body had earlier been found in bushland at Gumdale, in Brisbane's east. At the time of her murder, Snowdon had been working as a receptionist at an illegal brothel at Capalaba West. Seven months later, one of the proprietors of the brothel was also murdered. The second murder came to be investigated as Operation Samian, in conjunction with Operation Have. (The two murders remain unsolved.)

One of the officers involved in Operation Have was Detective Sergeant OT, then of the Cleveland CIB. From entries recorded in police running sheets, it is apparent that, in October 2002, Detective Sergeant OT expressed a belief to fellow investigators that Henderson might be able to assist police in the investigation of a particular suspect. The basis for OT's belief is not clear.

On 13 November 2002, an officer from the Armed Robbery Unit sought and obtained a magistrate's authorisation for Henderson's removal from custody. Although the original application cannot now be located, it is clear that Henderson was never regarded as a suspect for the homicides. This is hardly surprising, as he was in prison at the time of both offences.

According to an entry in his diary for 14 November 2002, the officer who obtained the removal order collected Henderson from the Wolston Correctional Centre and conveyed him to police headquarters to speak about 'an outstanding Cleveland homicide.' There is no corresponding entry in the relevant running sheet in respect of Henderson's removal on 14 November 2002, nor any entry in the QPS custody index or other record.

A further order authorising Henderson's removal was obtained by the same officer on 25 November 2002 — to facilitate Henderson being interviewed in relation to 'outstanding criminal offences.' (Again, the original application cannot be located.) The order stipulated that Henderson would be taken to police headquarters on 26–27 November 2002.

Henderson was, of course, not a suspect for any offence then being investigated.

The diary of the officer who obtained the removal order contains an entry for 26 November 2002 recording that he '*conduct[ed] numerous inquiries in relation to double murder at Capalaba. All information passed on to Homicide Squad … Advise [Detective Sergeant OT] as this relates to his investigation*.'

Again, there is no entry in the running sheet for 26 November 2002 or any other official record in relation to Henderson's activities on that date.

So far as Henderson's activities on the following day are concerned, the officer's diary suggests that he transported Henderson to Hamilton and Belmont, and that Henderson met with suspects.

An entry contained in the Operation Have running sheet for 27 November 2002 records that Henderson was taken to Brett's Wharf, then, after a change in arrangements, to the Belmont Tavern to meet with a suspect in the investigation. The running sheet also records details of an exchange between Henderson, a suspect, and the suspect's legal representative (who was also present). It is apparent from the running sheet entry that no contemporaneous recording was made of Henderson's conversations with the suspect.

The legal practitioner who was present at the Belmont Tavern on 27 November 2002 was examined by the CMC in an investigative hearing in September 2006.

The legal practitioner gave evidence of how he had been engaged at short notice to attend a meeting between his client (the suspect) and Henderson, who, upon his arrival, explained that he was on day-release from prison.

The circumstances of the meeting and the exchange that occurred were considered by the legal practitioner to be so extraordinary that when the meeting ended, he made detailed handwritten notes of what took place. He produced those notes to the CMC and made reference to them while being examined.

According to the legal practitioner, Henderson informed 'the suspect' that a criminal figure had put out 'a contract' on the suspect's life. Henderson held himself out as being able to prevent the hit, but only if the suspect assisted Henderson to identify the whereabouts of a particular individual. Henderson then produced what appeared to be an official document from the Department of Corrective Services concerning the nominated individual. (That document was provided to the CMC. It proved to be an offender profile produced from the Corrective Services' computer network. It is a document to which Henderson should not have had access.)

After a short time, the legal practitioner stepped in and advised his client that the conversation with Henderson should cease immediately. Henderson then telephoned for a taxi and departed the tavern. He was observed by the legal practitioner to climb into a taxi, and the taxi drove away from the scene. Henderson was the sole passenger.

The ARU officer, Detective Sergeant AS, who had primary responsibility for Henderson on the relevant day told the CMC he had no recollection of removing Henderson from custody in November 2002. Rather, he attributed the events of the day to the occasion when Henderson was taken to Brett's Wharf (which other evidence suggests occurred two months earlier).

The officer offered an account of how Henderson came to travel from Brett's Wharf to 'Tingalpa or somewhere over Cannon Hill' to meet with a suspect, but was otherwise unable to offer any information detailing Henderson's activities. According to the officer, the suspect had asked if Henderson was a police informant, and the meeting had ended after a very short time, with Henderson being immediately taken by police back to prison.

Apart from the recollection of the police officer (which does not fit other known facts) and the limited entry in the running sheet (which is inconsistent with the evidence given by the legal practitioner), there are no other official records to offer any definite account of Henderson's activities on 27 November 2002.

An insight into how Henderson viewed his role in the matter can been gleaned from a letter he wrote to a close relative of one of the murder victims a week after his meeting with 'the suspect'.

In a letter dated 4 December 2002 to the victim's relative, Henderson advised of the identity of the individuals who were then on the police list of suspects for the murders. Furthermore, Henderson offered to organise a 'hit' on those individuals for $20 000 plus expenses. In the letter, Henderson set out his underworld connections, and boasted that '*2 cops will feed me weekly info on police investigations which I'll feed to you.*'

Henderson's activities in the period January – June 2003

The level of Henderson's contact with the Armed Robbery Unit dropped off after the removals in November 2002 and it would appear Henderson perceived he had fallen out of favour with the ARU. He then turned his attention to the Australian Federal Police.

On 10 January 2003, a Corrective Services' intelligence officer conveyed advice to the AFP that Henderson had expressed an interest in providing information to law enforcement. The AFP duly registered Henderson as a human source on 13 February 2003.

For the next twelve months, Henderson liaised with federal agents on a wide variety of matters, most of which pertained to state offences. Based on dealings with Henderson, a number of information reports were produced by the AFP and disseminated to relevant law enforcement agencies. Henderson's relationship with the AFP came to an end in early 2004.[11]

The evidence suggests that from January 2003 Henderson made a concerted effort to achieve a downgrading of his prison security classification. From a letter he wrote at that time, it is apparent Henderson believed that with a lower security classification, his chances of release from prison would improve.

In a letter to his female associate, M, dated 12 February 2003, Henderson wrote that being armed with everything he knew, he would be able to make a '*quick couple of hundred thousand within 3 months of being out.*' Henderson also informed M that an officer from the ARU had written a report to the 'Minister for Prisons' pleading a case for Henderson to be released.

On 13 February 2003, Detective Sergeant AS – then of the Armed Robbery Unit – forwarded a letter to the Director-General, Department of Corrective Services, supporting Henderson's application for re-classification as a low-security prisoner. AS's letter claimed Henderson had assisted AS since August 2001, and that information he had provided had led to the arrest of numerous offenders.

The CMC's investigation has found little evidence to support AS's assertion (see segment 8).

Henderson's application for security re-classification was considered in April 2003. It was unsuccessful. Henderson subsequently lodged an appeal against the decision.

On 16 June 2003, Detective Sergeant OT wrote a letter in support of Henderson's appeal. OT's letter was addressed to the General Manager, Wolston Correctional Centre, and asserted that he had been associated with Henderson since 1992, and that in 2001 Henderson had assisted police in a murder investigation (a matter canvassed elsewhere in this report — see the *Reward Matter*), as well as two other murders committed in the Wynnum District (most likely a reference to Operation Have).

11 The reasons for this are described in segment 6.

OT's letter asserted that Henderson's assistance was timely, and his information accurate.

Despite the assertion he had been associated with Henderson since 1991, during Operation *Capri*, OT acknowledged his involvement with Henderson did not commence until 2002–3, when Henderson was 'passed' to him by officers of the ARU. There is no evidence that Henderson was involved with Detective Sergeant OT in 2001, as OT alleged in the letter.

Despite OT's efforts, Henderson's appeal failed, on 25 June 2003.

On 26 June 2003, Henderson wrote to OT thanking him for his letter of assistance in Henderson's appeal. The letter continued:

> It was good to talk with you & give me a chance, to thank you for the letter you wrote & faxed to the centre's General manager to ensure he is aware of the needy, quick contact & the results that can be achieved at times. … Of course I have spoken too my team, that I command & briefed them on my intention to launch an attack on the unsolved major crimes in your District for the last 3 years & target (Intell & Operational) planning on criminal individual & groups in your district to assist you gathering major arrests.

On 30 June 2003 Henderson again wrote to Detective Sergeant OT. The letter was transmitted by facsimile, bearing the subject heading: 'Regarding Thursday's Operational Meeting.' Henderson's letter read, in part:

> This letter is in regards to our last phone conversation relating to the three year back log of unsolved cases (2000-2003) In particular what I wish to target are the following crimes:
>
> 1. Murders
> 2. Bank hold-ups/or other robberies that contain video footage
> 3. Home invasions
> 4. Burglaries with a distinct MO
> 5. Rapes with a distinct MO

The letter continued, with Henderson advising OT he needed access to photographs, intelligence on various crime groups, a *'clean untraceable mobile telephone with message bank'* and a local post office box. Henderson signed off, *'I look forward to further discussions with you and your team on Thursday'*.

Removal on 3 July 2003

On 2 July 2002, Detective Sergeant OT obtained a removal order authorising Henderson's removal from Wolston Correctional Centre to the Cleveland Police Station.

The application in support of the order indicated that Henderson was to be questioned 'concerning serious indictable offences'. It continued:

> The prisoner is believed to be in possession of information concerning two unsolved murders in the Wynnum Police District [Operations Have and Samian]….
>
> The prisoner wishes to assist police with this information but, for his own safety, does not wish police to speak to him in the confines of the Correctional Centre.
>
> The prisoner has been removed by police from State Crime Operations Command previously in relation to other serious indictable matters without any incident.
>
> The prisoner is going to supply police with a statement in relation to an attempted murder matter.
>
> The General Manager of Wolston Correctional Centre has been advised on 2.7.03 of this application.

Henderson was clearly not a suspect for any homicide then being investigated, therefore the removal order was not obtained pursuant to the correct legislation.

The Wolston Correction Centre records show that Henderson was removed from custody by Detective Sergeant OT at 8.05 am on 3 July 2003, and was returned to custody by other officers at 6.05 pm on the same day. Other than a brief note in OT's diary (to the effect that Henderson was taken to Wynnum Police District for inquiries regarding 'Wynnum District Police crime'), there are no QPS records detailing what occurred that day.

The CMC's inquiries have ascertained that Henderson was observed by an off-duty Corrections officer lunching with Detective Sergeant OT at the Sands Hotel, Cleveland. When this evidence was revealed to OT, he conceded having taken Henderson to the hotel for lunch. He further conceded that following lunch, he had permitted Henderson to spend time with a friend and her daughter as a 'treat' or 'sweetener'.

Furthermore, a short time after his return to custody, Henderson failed a urinalysis test for drugs – returning a positive reading for Benzodiazepines. The presence of Benzodiazepine is consistent with the use of the drug Valium, which had not been prescribed.

Detective Sergeant OT duly supplied a written report to the Intelligence Officer at Wolston Correctional Centre asserting whilst removed from custody on 3 July, Henderson had complained of back pain, and as a consequence, OT had attended the Redlands Hospital and collected medication which was subsequently provided to Henderson.

On the basis of OT's report, no action was taken against Henderson by the Department of Corrective Services.

There is nothing in OT's official police diary concerning the visit to Redlands Hospital, or of the report provided to Wolston Correctional Centre in respect of the positive drug test. Moreover, the Redland Hospital has advised the CMC that there is no record of the supply of the medication.

The available evidence suggests there was no legitimate purpose for Henderson's removal from custody by Detective Sergeant OT on 3 July 2003. Certainly, the evidence gathered by the CMC during Operation Capri provides no basis to accept the assertions contained in OT's application for authority to remove Henderson.

Detective Sergeant OT disputed the suggestion that Henderson was removed on 3 July 2003 purely to have lunch and meet friends. He conceded, however, that he had never provided such privileges to other prisoners, and accepted that his relationship with Henderson was too friendly, and was inappropriate. He suggested his failure to complete necessary records or to complete his police diary was born of sloppiness and was lazy police work.

OT told the CMC that he had virtually no recall of the circumstances of Henderson's removal from custody on 3 July 2003, and surmised that Henderson had assisted police with information in relation to an investigation codenamed Operation Delta Tallow.

When the CMC brought it to OT's attention that Operation Delta Tallow had not commenced at the time of Henderson's removal, he suggested that Henderson had made telephone calls in the lead-up to the commencement of Operation Delta Tallow. (This is hardly credible, given that the Operation was not commenced for a further 18 months, no record was created of the calls, and OT's application in support of Henderson's removal contained no mention of an intention to use Henderson in such an investigation.)

Removal on 9 July 2003

On 8 July 2003, Henderson wrote a letter addressed to Detective Sergeant OT seeking access to an *'untraceable mobile with message bank up and running by Thursday morning and a … mobile to ring out on …'*. (The letter appears to have been transmitted by facsimile to Cleveland Police Station.)

OT's diary contains a notation on the following day, 9 July 2003, suggesting that he liaised with two police officers at QPS Headquarters about intelligence he had received from an 'informant' concerning a shipment of firearms.

On the same day the letter was transmitted, Detective Sergeant OT instructed two administrative officers employed at the Cleveland Police Station to divert any telephone calls that they might receive from Henderson to any number Henderson might request.

This 'call diversion service' continued until 26 April 2006.[12]

Later that day, one of the officers referred to in OT's diary entry sought and obtained an order authorising Henderson's removal from custody, and subsequently transported Henderson to QPS Headquarters.

Contrary to the notation in OT's diary, the application in support of Henderson's removal suggested that Henderson was to assist police with an investigation involving the importation and distribution of drugs.

> Intelligence checks have revealed the subject person Henderson, is in frequent contact with a source in Melbourne who, in turn, has direct frequent telephone contact with the same crime syndicate in Cairns.
>
> It is believed that removing Henderson from Wolston Correctional Centre and questioning him about his involvement in these offences, and the persons involved, will assist the investigation process.

Henderson was removed from Wolston Correctional Centre on the afternoon of 9 July 2003 by a police officer.

The QPS custody index indicates that Henderson was lodged at the Brisbane City Watch-house at 7.03 pm on 9 July 2003, where he was strip-searched at 7.20 pm. There are no further entries concerning Henderson's custody or movement until his release, at 8.40 am on 10 July 2003. There are no entries on the QPS tapes index suggesting any interview was conducted with Henderson.

The CMC interviewed the police officer who had removed Henderson on 9–10 July 2003. The officer claimed that the application for Henderson's removal had been based upon information provided by OT, and that Henderson unsuccessfully attempted to make contact with certain people using a mobile telephone and a pre-paid SIM card.

The officer, who claimed he had a 'personality clash' with Henderson, explained that the information obtained from Henderson turned out to be 'rubbish', and was not advanced.

Outcome of the investigation

Audit of prisoner removals

In September 2006 the QPS was informed of some of the issues uncovered during Operation Capri.

Upon being briefed, the Commissioner of Police directed that an immediate audit be undertaken of prisoner removals over the previous five years. The audit was intended to ascertain the level of compliance by police officers with their statutory and procedural obligations.

With the CMC's concurrence, between December 2006 and March 2007, the Ethical Standards Command audited a sample of recorded instances of prisoner removals over the six-year period, 1 July 2000 – 17 June 2006.

12 The issue of the call diversions is canvassed in segment 3.

In July 2007, the CMC was provided with a draft report detailing the results of the audit. (The draft remains the only version of the report. The ESC resources were later focused on conducting Operation Foxtrot Distinct.)

With the assistance of records from the Department of Corrective Services, the audit identified 493 separate prisoner removals. Distinguished by year, the 493 removals occurred as follows:

2000/2001	53
2001/2002	61
2002/2003	64
2003/2004	117
2004/2005	92
2005/2006	106
	493

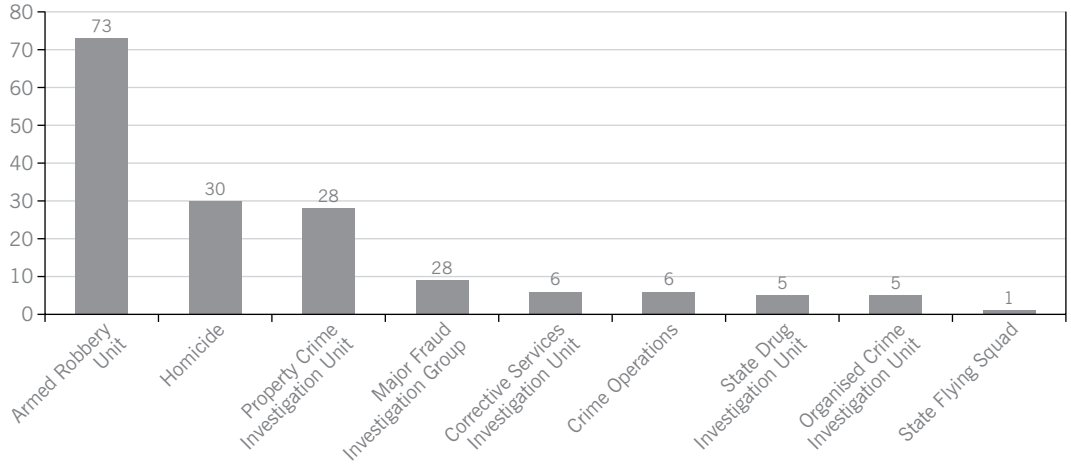
Of the 493 removals, a purposive audit sample of 315 removals (involving 169 prisoners) was identified for closer examination.[13] The selection of the 315 matters was based on the following criteria:

- all prisoner removals from Wolston and Capricornia Correctional Centres
- all prisoner removals instigated by officers from the ARU
- all prisoner removals instigated by officers from Cleveland CIB and Rockhampton CIB
- all prisoner removals relating to any CIB establishment or individual police officer where the rate of prisoner removal was greater than three removals over the six-year period
- all prisoner removals involving a prisoner removed on four or more occasions
- a random sampling of removals in respect of any prisoner removed on more than one occasion.

Two prisoners (Henderson and BR) were excluded from the audit because the circumstances of their removals were being closely examined as part of Operation Capri.

Initial analysis revealed that 163 removals (51.4% of the audit sample) were conducted by officers of State Crime Operations Command. Of these, 73 removals (23.1% of sample total) were conducted by officers from the Armed Robbery Unit.

The following table shows the breakdown of removals conducted by State Crime Operations Command:



13 The majority of these removals involved prisoners held in custody at Arthur Gorrie Correctional Centre (44.1%) and Wolston Correctional Centre (24.4%).

By way of further brief summary, the audit of the 315 sampled removals revealed that 260 (82.6%) were conducted utilising PPRA orders, while 13 (4.1%) removals were conducted under CSA provisions. (The basis of the remaining 41 removals was not able to be ascertained as no removal order or associated documentation could be located.)

Of the 260 PPRA removals, the stated reason for removal in 163 instances was 'questioning/ interview', and, in a further 24 instances, 'field interview/drive-around.' For the remaining 73 removals, the reason identified on the order was either so vague that it could not be identified, or such that it was apparent that the order had been granted on the wrong statutory basis (i.e. the order should not have been made under the PPRA provisions).

Of the 163 instances in which the prisoner was removed from custody to be formally interviewed, corresponding entries existed in QPS tape indexes for only 84 cases.

Put another way, in almost half of the removals where the stated purpose involved a formal interview of the prisoner, either no attempt was made to conduct an interview or, if an interview was conducted (or attempted), no corresponding entry was made in the applicable QPS index (i.e. there is no evidence to confirm compliance with the order).

Of the 315 removals in the audit sample, 301 *should* have been recorded in the QPS custody index (the other 14 were removals being conducted by other law enforcement agencies). However, the required entry was not completed in 120 cases (a non-compliance rate of 40%), In 65 of the 181 instances where an entry was made, it was deficient.

In other words, in 185 of the 301 removals, the required custody index was either not completed at all, or completed in an unsatisfactory way — meaning there was non-compliance with the operational procedures in 61% of prisoner removals.

In summing up the audit findings, the draft report observed:

- in many cases the prisoners removed from custody were serving sentences for very serious offences, including murder and armed robbery
- there were few processes in place to ensure managers and supervisors had knowledge of, or were involved in, the process by which prisoners were removed from custody
- little consideration was given to prisoner security in the process of applying for authority to remove a prisoner from custody
- police officers were using incorrect processes to achieve removals (i.e. authority was sought under the PPRA when not appropriate)
- the rates of non-compliance with QPS policy and procedure were a cause for concern.

The draft report concluded that while the audit had identified a lack of compliance with policy, it appeared that the removals 'were generally for lawful purposes.'

The CMC took issue with this conclusion, principally because the audit process had not involved a sufficiently detailed examination of the circumstances of the individual prisoner removals. Quite simply, it was impossible to form a view as to the legitimacy of any removal unless the particular circumstances were investigated.

Operation Capri examination of removals

As the matter stands, the only prisoner removals that have been examined in detail are those investigated as part of Operation Capri.

Of the 36 prisoner removals examined in Operation Capri, 17 were excluded from the QPS audit process. (Those 17 matters included removals involving Henderson and BR.)

Of the remaining 19 prisoner removals that were included in the QPS audit, the evidence identified during Operation Capri established that in most cases there has been an allegation made that an inducement was made to the prisoner concerned.

In 17 of the 19 cases, the allegation is that the prisoner was permitted time alone with a family member or friend. (In seven of those 17 instances, the allegation is that the prisoner was permitted time alone within a police establishment, and in the remaining 10 cases, the episode occurred in another location.)

In three cases, there is no evidence of any law enforcement activity having occurred, such that it appears the only basis for the prisoner's removal was to fulfil a promise to the prisoner.

QPS response to audit findings

As a result of the audit findings, the Deputy Commissioner of Police issued a direction that henceforth, prior to seeking an order for a prisoner's removal from custody, approval had to be obtained at the level of Chief Superintendent (Operations Coordinator) within the various police regions and commands.[14]

On 9 April 2008 the QPS advised that it intended to implement the following recommended changes to policy and procedure, namely:

1. that the Detective Training Program (Phase One) provide a more in-depth session on the removal of prisoners from custody[15]
2. that officers in charge of stations and establishments have appropriate monitoring processes in place to ensure interviews with suspects for indictable offences are recorded in compliance with the Electronic Recording of Interviews and Evidence Manual
3. that officers in charge of stations and establishments implement a monitoring system to ensure Custody/Search index entries comply with the requirements of the OPM
4. that officers in charge of investigative work units review monitoring controls to ensure:
   a. officers enter requisite information in official diaries
   b. officers hand their official diary to the officer in charge of the issuing station or establishment prior to transfer
   c. official diaries are inspected monthly and are being used correctly.
5. that watch-house managers have monitoring systems in place which validate compliance by police in relation to Custody/Search index and watch-house custody register entries.

14 Previously the requirement was that such approval had to be obtained at the level of Regional Crime Coordinator, although in none of the various matters examined by the CMC was there evidence of any such approval being sought or obtained.

15 While the proposed changes to the detective training regime will go some way to ensuring police compliance with necessary statutory and procedural requirements, it should not be overlooked that the episodes of police misconduct identified during Operation Capri involved experienced police officers. The CMC considers this reflects a need for ongoing training and revision.

In addition, section 2.5.8 of the OPM has been reviewed to accurately reflect the roles and responsibilities for Regional and Command operations. The amendments, which address in a comprehensive manner the issues arising from the audit and from Operation Capri, were developed in conjunction with the Department of Corrective Services.

Finally, the Ethical Standards Command will conduct a further audit of prisoner removals in 2009.

Other issues arising from prisoner removals

Forms

Operation Capri highlighted deficiencies in the published forms used both in the written application and the magistrate's order.

A review was conducted by the QPS of the standard forms, and certain amendments were made with a view to ensuring compliance with the PPRA requirements.

Failed prosecutions

A large number of charges against the prisoners SA and BR were discontinued as a consequence of pre-trial rulings arising from the allegations of police misconduct.

The QPS currently conducts a system of committee review of some summary prosecutions that fail. The reviews are limited to:

- cases in which costs are awarded
- cases involving the dismissal or withdrawal of the charge or where no evidence is offered by the prosecution
- cases where a magistrate makes adverse comment concerning an officer
- cases where a member of the QPS identifies there are issues which require review.

The adverse outcomes in some of the prosecutions referred to in this part of the report did not qualify for automatic review, simply because they were not conducted as summary prosecutions.

The CMC urges the QPS to implement a similar system of review in respect of prosecutions conducted upon indictment.

Discussion of issues

There is clear evidence of police officers disregarding QPS policies, procedures and orders when dealing with prisoners, and acting improperly in securing court orders authorising the temporary removal of prisoners. It has also been alleged (but denied by the officers concerned) that some police:

- used removals as an inducement to obtain confessions;
- falsified evidence; and
- gave misleading testimony in court, and to the CMC.

In some instances the conduct of the police officers concerned may be viewed as having an element of 'noble cause' – it aimed to clear up crimes. While in some cases it achieved its short-term end of securing confessions to outstanding crimes, one consequence was that many criminal charges ultimately failed, because the court could not be satisfied that confessions at the centre of certain prosecutions were free of impropriety.

It is also possible that miscarriages of justice have occurred, in that some prisoners may have been convicted in respect of offences that they did not commit. (However, in view of the fact that the 'victims' of the miscarriages were willing participants, and throughout the investigation generally proved to be reluctant witnesses, it is impossible to identify the extent to which justice has been perverted.)

Equally, and as some police officers have contended, it is possible that prisoners who made a truthful confession to offences ultimately escaped conviction because their confessions were ruled inadmissible.

There is a very real risk that a number of offences — including armed robbery offences — which are currently regarded by the Queensland Police Service as closed, remain, in truth, unsolved.

Consideration of criminal and disciplinary proceedings

When it came time for the CMC to consider whether the available evidence might support criminal proceedings in individual cases, certain practical difficulties were recognised. For instance, holding out a person with an extensive criminal history as a reliable witness is problematic. So, too, is the lack of proper record-keeping by police officers which, while a breach of discipline and highly suspicious, does not necessarily translate to proof of criminal conduct.

Moreover, the suspicion that attaches to the conduct of some police officers only arises because the investigation revealed a course of conduct or pattern of behaviour involving many officers and prisoners. Evidence of the conduct of other police officers would not generally be admissible as evidence of similar fact, and, even if it were, the other practical difficulties would make a criminal prosecution of the matter impractical.

Accordingly, as it has done throughout Operation Capri, the CMC has adopted the view that criminal proceedings generally would not be justified where a prosecution case was dependent upon the acceptance of evidence from a witness who was a serving prisoner at the time of the conduct in question.

The CMC determined that sufficient evidence existed against one former officer to warrant consideration of criminal proceedings in respect of the evidence that person gave during the course of a CMC investigative hearing, together with that officer's conduct in obtaining the order for the prisoner's removal. A brief of evidence in respect of those matters was provided to the Director of Public Prosecutions, and the former officer now faces charges against sections 123 and 193 of the *Criminal Code* (alleging offences of Perjury, and Making a false statement, respectively).

Furthermore, the CMC determined that the available evidence was sufficient to warrant consideration of disciplinary action against 16 police officers. A detailed investigation report in respect of those officers was provided to QPS. A similar determination would have been reached in respect of a further four officers who, since the investigation commenced, have resigned from the QPS.

SEGMENT 3: UNLAWFUL DIVERSION OF TELEPHONE CALLS

Time frame: 8 July 2003 – 26 April 2006

This segment of the report explores how certain police officers – principally Detective Sergeants OT and AS – facilitated the unlawful diversion of telephone calls made by Lee Owen Henderson from correctional institutions, thus enabling him to routinely circumvent the Corrective Services secure telephone system. They provided him with a virtually uncontrolled means of communication by which to conduct his own affairs at the expense of the QPS.

> ***I don't know exactly how I started that off … it was to elicit [information], like, be able to gain information 'cos at this time I believed [Henderson] was still potentially valuable … and that those phone calls may lead us into bigger things.***
>
> **— Detective Sergeant OT, interview, 28 November 2007**

Background to the investigation

In late April 2005, the CMC was advised of evidence gathered by means of lawful telephone interceptions undertaken as part of an Australian Federal Police (AFP) criminal investigation. That evidence revealed that telephone calls made by Lee Owen Henderson from inside prison were routinely being unlawfully diverted, seemingly with the complicity of Queensland police officers.

The Arunta Controlled Telephone System

Inmates in Queensland's prisons system are able to make telephone calls using the Arunta Controlled Telephone System. Under this system, prisoners are permitted to call to up to ten different telephone numbers which the prisoner must identify and have pre-approved.

Operation of the Arunta system is governed by the provisions of the *Corrective Services Act 2006*.[1] To prevent prisoners using the system to engage in illegal activities, with certain exceptions, all telephone calls are recorded. The excepted calls are those made by a prisoner to a police officer, to the prisoner's lawyer, and to agencies such as the Ombudsman or Parole Board. Such calls are referred to variously as 'privileged' or 'legal', and are not recorded.

The Arunta system is automated. Prisoners entitled to use the system are issued a personal identification number (PIN) which, when activated, permits the prisoner to dial any of the numbers the prisoner has been authorised to call. The use of the PIN identifies the prisoner, permits the call (to an authorised number), and enables the cost of the call to be debited from the prisoner's account.

It is an offence punishable by up to six months imprisonment for a prisoner to call an approved number knowing the call will be diverted to another number to allow contact with someone other than an approved person, or to continue a call the prisoner knows has been so diverted.[2]

General principles of criminal responsibility mean that a person who knowingly diverts such a call, or assists in diverting such a call, will be a party to the same offence.

1 The *Corrective Services Act 2006* replaced the *Corrective Services Act 2000* on 28 August 2006.

2 Section 50 *Corrective Services Act 2006* (formerly section 36 *Corrective Services Act 2000*).

When an Arunta call is placed, both the caller and recipient hear the following recorded message immediately after the call is connected:

> This phone call is being made from the [named] Correctional Centre. The call is being recorded and may be monitored. It is unlawful for the person making this call to ask for the call to be diverted to another number or to use this call to participate in a conference call. If you do not wish to receive this call, hang up your phone now.

A similar message is heard when a 'legal' call is made:

> This telephone call is being made from the [named] Correctional Centre. The call is categorised as a legal call and is not being recorded and cannot be monitored. It is unlawful for the person making the call to be diverted to another number which is not part of the business or practice of the person being called, or to use the call to participate in a conference call. If you do not wish to accept the call, hang up your phone now.

There are obvious advantages for a prisoner if he/she is able to facilitate the diversion of a 'legal' call. For example, the prisoner would be able to communicate confidentially with a person or persons the prisoner is not otherwise entitled to speak with by telephone. There is also the added benefit that someone else picks up the cost of calls to mobile or STD services.

What the investigation revealed

In early July 2003, Detective Sergeant OT issued instructions to two administrative officers at the Cleveland Police Station to divert any telephone calls they might receive from Henderson to any number he (Henderson) requested. OT stipulated that the administrative officers should keep a log of the diverted calls. The CMC also ascertained that an ARU officer, Detective Sergeant AS, had given a similar instruction to an administrative officer working within the ARU to divert Henderson's calls — although in that case no log was maintained of the diverted calls.

Once the diversion systems had been established, Henderson enjoyed what was effectively unfettered access to any person he chose to telephone. And, because the number he dialled from prison was to a police establishment, the Arunta system regarded it as a 'legal' call — which was not recorded.[3]

Henderson's use of the Arunta system

Between 8 July 2003 and 25 April 2006, some 1241 calls from Henderson were diverted through the Cleveland Police Station (at a total cost to the QPS of $2056.85). A further 261 calls from Henderson were diverted through State Crime Operations Command (at a cost of $263.43).

Operation Capri also discovered that Henderson was able to circumvent prison constraints in other ways. On occasions he would simply use the Arunta accounts of other prisoners — including calls which were diverted through police establishment (i.e. 'legal' calls).

Analysis of Corrective Services records reveals Henderson to be a very heavy user of the Arunta system. Exclusive of calls Henderson may have made on the Arunta account of other prisoners, between 6 July 2003 and 25 April 2006, he made 9775 telephone calls using his own PIN. The total cost of these calls was $17 649.20 — a sum paid by Henderson from funds in his prisoner telephone account. Henderson's monthly expenditure on telephone calls was $535, an extraordinary sum for a prisoner without any obvious source of income.

3 Henderson was well aware that his diverted calls were not monitored. In one of his meetings with the Mareeba farmer, Henderson boasted that telephone calls between them could not be 'traced', as his initial call was categorised as 'legal' and was not recorded. He explained that once the call was made, he was 'bouncing off diverted lines'.

Diversions made through Cleveland Police Station

Of the 1241 telephone calls diverted at Henderson's request through the Cleveland Police Station, over one half were directed to in excess of 100 separate individuals, including Henderson's family, friends, and criminal associates.

Detective Sergeant OT endeavoured to explain the call diversion arrangement as a process by which Henderson was able to make telephone calls with a view to gaining information that might lead to *'bigger things'*.

During an interview with the CMC in November 2007, OT said he had a 'cursory' knowledge of the Corrective Services Act provisions governing the diversion of prisoner telephone calls, but claimed to have no detailed understanding of the legislation. He acknowledged having heard the recorded message at the commencement of prison telephone calls on many occasions, but said he had not been aware that 'legal' calls were not recorded. (The recorded message makes it clear such calls are neither recorded nor monitored.)

OT told the CMC he was aware prisoners could not lawfully ask for their telephone calls to be diverted, but said he did not consider that his actions in facilitating the diversion of Henderson's calls made him an accomplice to an offence.

OT also admitted that he had permitted Henderson to use the QPS telephone system – via the call diversions — for personal use. Indeed, although he was not aware of the identity of many of the people to whom Henderson's calls were transferred, OT had personally diverted calls, and knew that others within the Cleveland Police Station were diverting calls at Henderson's request.

OT said he had never referred to the call log to ascertain whom Henderson was contacting or whether his calls were for lawful purposes. OT made no record of the calls he himself diverted.

OT stated that he had not sought specific permission from any senior officer before setting in place the call diversion process, but he claimed senior officers and his supervisors were aware of the process, and had not said anything about it.[4]

Further, OT explained that after Henderson's transfer to the Capricornia Correctional Centre, he (OT) had been asked by Inspector AN[5] to transfer a number of Henderson's calls, as the telephone system at Rockhampton Police Station would not allow diversions.

For his part, Inspector AN told the CMC he had been aware of calls being diverted on Henderson's behalf (through the Rockhampton Police Station), but believed those calls had been to law enforcement officers. He conceded that he may have had a discussion with OT concerning the diversion of Henderson's calls, but said he had no knowledge of Henderson making calls via the Cleveland Police Station for non-law-enforcement purposes.

The CMC found no evidence that these repeated breaches of the law resulted in any positive assistance to any police investigation. In his interview with CMC officers in November 2007, OT conceded that, to his knowledge, Henderson had never provided any information that enabled the bringing of a single criminal charge against any offender. Moreover, OT could only recall one occasion on which he completed a criminal intelligence report based on information sourced from Henderson.

4 A senior officer who supervised the administrative officers at the Cleveland Police Station told the CMC he was aware of a handwritten register of calls pertaining to Henderson, but thought the register contained details of calls Henderson had made to the police station. Upon perusing the document, the officer conceded it was a list of calls diverted *through* the Station. He acknowledged that the diversion of such calls would not be appropriate, and asserted that under no circumstances would he have authorised such a practice.

5 Who later became the Regional Crime Coordinator.

Diversions made through the Armed Robbery Unit

Analysis of Henderson's calls revealed that 261 of these had been diverted through the Armed Robbery Unit.

Detective Sergeant AS was interviewed by the CMC about this issue, and claimed he was unaware of the Corrective Services Act provisions in relation to prisoner telephone calls. However, he said he was aware that prisoners required special permission to dial particular numbers.

AS said that he didn't know if it was an offence to transfer a prisoner's call but that it was '*Okay as long as you were acting in good faith and trying to do your job*' [as a police officer].

Like OT, Detective Sergeant AS claimed he had no idea that Henderson's telephone calls to law enforcement numbers were not monitored or recorded (despite the unambiguous recorded message at the beginning of each call). AS also claimed that he did not know that Henderson was using the telephone accounts of other prisoners to make contact with the ARU.

AS conceded he had given permission to an administrative officer employed within the ARU to divert Henderson's calls to his (AS's) mobile telephone, but not otherwise. He insisted he was unaware the administrative officer had also diverted Henderson's calls to persons other than law enforcement officers.

The administrative officer explained to the CMC that when Henderson telephoned he routinely asked to speak with ARU officers, and sometimes sought to be put through to Detective Sergeant OT at the Cleveland Police Station. The officer had also transferred Henderson to some landline numbers, because Henderson had said he was '*working on a big case*'. According to the administrative officer, AS had instructed that Henderson should be put through to whomever he wanted, because he (Henderson) was '*part of the team*' working on cases for the ARU.

According to AS, Henderson was an extremely valuable informant, their '*eyes and ears*' in the prison and outside, someone who could obtain information that they as police officers could not. Despite his apparent value, AS never kept a complete record of his contact with Henderson, never submitted a criminal intelligence report based on information from Henderson, or entered any of Henderson's information on any criminal intelligence database.

Calls diverted to law enforcement agencies/personnel

Of the 1241 calls transferred through the Cleveland Police Station, 559 (45%) were diverted to law enforcement officers. Those calls were diverted to 65 telephone services for contact with no less than 38 different officers within six separate law enforcement agencies.

Similarly, of the 261 calls transferred through the ARU, 118 (45%) were diverted to law enforcement officers. Those calls were diverted to 19 telephone services for contact with no less than 15 different officers within four separate law enforcement agencies.

At the time, the State Informant Management System (SIMS policy)[6] detailed relevant requirements for QPS officers having contact with informants. The SIMS policy[7] dealt with the requirements in relation to the regional and inter-regional movement of active informants, change of control/sharing of an informant and transfer of informants to external agencies, respectively.

It is perhaps not surprising that the SIMS policy did not contemplate a situation where an informant would be allowed unfettered access to such a large number and range of law enforcement agencies and officers. The policy was clearly based upon the underlying principle

6 SIMS section 7.6

7 SIMS sections 8.2, 8.3 and 8.4

that an informant should be controlled and managed by one case officer, and that an officer should not seek information from an informant who was registered to another officer without the consent of the case officer or the regional registrar. (Such consent had to be recorded on the informant's management file and the diary of the case officer or the regional registrar.)

Although Henderson was a registered informant to Detective Sergeant AS for a time (he was de-activated between 9 December 2003 and 14 November 2005), there is no record of consent by AS or anyone else for Henderson to be managed or transferred to another case officer. No record exists of any request by OT or any member of the ARU to deal with Henderson, nor of consent by AS to Henderson's contact with OT or any other member of the ARU (as would have been required by the SIMS policy).

In relation to OT's association with Henderson, AS told the CMC: '*I don't know how [OT] fits into this thing with Henderson*.' AS also said that he didn't think Henderson had any association with OT, and claimed he had no recollection of referring Henderson to OT.

Because OT and AS had permitted Henderson contact with so many officers from so many different law enforcement agencies, Henderson was able to use information obtained through law enforcement contacts to 'self-corroborate' information he provided to other law enforcement contacts.

Indeed, OT acknowledged to the CMC that he knew at an early stage that Henderson had engaged in such conduct:

> … I can recall going back to the earliest days, that I'd started dealing with Henderson that, he had double dipped a couple of times and it was like self corroborating information you know what I mean like he'd supply information here, and then information there, and then, … like [Queensland Police] would say, 'Oh well, [Western Australia Police] have got that same information, so it must be red hot.' But, it was exactly the same information and it was something you did have to watch with him…[8]

Calls diverted to Henderson's associates

About 55 per cent of all the calls transferred at Henderson's behest were diverted to persons outside the policing community. This included calls to lawyers, Henderson's parents, and his other friends and associates. Nine persons contacted by Henderson had criminal backgrounds. Many others could not be identified.

Assessment of the evidence

The objective evidence points to police officers enabling Henderson to make extensive use of the call diversion process.

It is true that nearly 50% of Henderson's calls were diverted to law enforcement officers (from six separate law enforcement agencies), and without more, evidence of regular contact between a serving prisoner and police officers might be thought not to raise any great cause for concern. However, such a view would involve a misconception of the inherent dangers involved in police officers relying on police informants.

The circumstances in which Henderson achieved contact with the officers involved a complete disregard of the standard management practices applicable to police officers dealing with informants.

8 Transcript of interview, Detective Sergeant OT, 28 November 2007, Tape 2, p. 12

A key requirement in the management of informants is ensuring each informant is controlled and managed by one case officer at a time. This prevents informants manipulating the system by 'double dipping' — that is, by self-corroborating. QPS policies and procedures reflect this principle, and include a specific requirement that a police officer not seek information from an informant who is registered to another officer without first obtaining the consent of the case officer, or the regional informant registrar (generally the Regional Crime Coordinator).

Given Henderson's history, the risk that he would attempt to manipulate the system to his own advantage was extreme.

The CMC was unable to identify any instance in which a diverted telephone call from Henderson assisted in a police investigation. To the contrary, the evidence suggests Henderson made much use of the call diversion process to engage in contact with family, friends and other associates; to facilitate the disclosure of confidential law enforcement information; and to engage in dishonest activity, as will be demonstrated in subsequent segments of this report.

Consideration of criminal and disciplinary proceedings

Section 50(5) of the *Corrective Services Act 2006*[9] prohibits a prisoner from making a telephone call that the prisoner knows will be diverted to another number, or from requesting someone to divert such a call. By virtue of the operation of section 7 of the *Criminal Code*, a person who does an act to aid or enable a prisoner to breach section 50(5) would be regarded as having committed the same offence.

The offence proscribed under the *Corrective Services Act 2006* is a summary offence, in respect of which time limits apply to the commencement of prosecution[10]. While prosecution proceedings would have been possible in respect of some of the diverted calls discovered during Operation Capri, the CMC took the view that the better course was to monitor the conduct with a view to facilitating the widest possible investigation of Henderson's relationship with police.

While this meant that it would not be possible to prosecute individual breaches of section 50(5), the CMC was still able to refer evidence of OT's and AS's conduct to the QPS for consideration of disciplinary action. This occurred in January 2008.

In the result, both officers resigned from the QPS, with the effect that no formal disciplinary action was possible or necessary.

9 Formerly section 36(5) of the *Corrective Services Act 2000*

10 Section 350 provides that a proceeding must commence within 1 year after the commission of the offence, or within 6 months after the offences comes to light, but in any event, within 2 years after the offence.

SEGMENT 4: THE CONTRIVED DRUG RAID

Time frame: 13 October 2003

This segment of the report centres on evidence suggesting that Henderson orchestrated the theft of a sports bag containing a .357 revolver, a quantity of marijuana, and a large sum of money. The sports bag and its contents, which belonged to a drug trafficker, were stolen from an address in one of Brisbane's outer suburbs. To cover the theft of the items by his criminal associates, Henderson used his police contacts to arrange for a contemporaneous police drug raid to be conducted on the address. Henderson arranged for the firearm to be recovered by police, but retained and made use of the sum of money.

Henderson: Listen! Tell 'em I said now's the time to open the bag.

...

Associate: We're on a gold field!

— Telephone conversation between Henderson and an associate, 13 October 2003

Background

In the course of investigating Henderson's relationship with police officers, and via analysis of his Arunta calls, the CMC's attention was drawn to events that occurred in October 2003 when he was an inmate of Wolston Correctional Centre.

At 2.06 pm on 12 October 2003, Henderson made use of another prisoner's Arunta account to speak with a woman residing in an outer suburb of Brisbane. The call was recorded and affords evidence of Henderson's role in soliciting the subsequent theft of a sports bag which, at that time, had been secreted in a shed on the woman's property by a drug trafficker who had connections to the residents of the property next door.

The prisoner whose Arunta account Henderson used was Prisoner BA.

BA was examined about this issue at an investigative hearing conducted by the CMC. He explained how, at the material time, the woman in question was residing next door to 'some druggies', who had approached the woman asking if they could secure a bag in the shed at the rear of her residence.

Word of the sports bag found its way via BA to Henderson who, suspecting the bag might contain money, set about arranging for the contents to be stolen by one of his associates. In order to both facilitate and hide the theft, Henderson arranged for police officers to carry out a drug search on the neighbouring property. His plan was that the sports bag should be removed from the shed on the woman's property at the same time the police raid was being conducted next door. The inference is that Henderson wanted the drug trafficker to suspect that the bag and its contents had been stolen by police.

According to BA, it was anticipated that there would be about $10 000 in the bag, but there was, in fact, a sum greater than $100 000. (Evidence obtained by the CMC from sources close to the drug trafficker suggests that the bag contained a sum in excess of $250 000.) Whatever the precise amount, BA has asserted that a sum of money went to Henderson and, for her trouble, the woman from whose shed the bag was retrieved received $2000 and a motor vehicle (which Henderson purchased from a motor dealership in Brisbane: see segment 5).

BA also claimed that after the sports bag had been stolen, Henderson made arrangements for police to 'locate' a concealable firearm that had also been in the bag. Henderson arranged for the firearm to be left at a particular location, and gave police directions to that location.

Returning to the events in question, during his telephone conversation with the woman on 12 October 2003 (i.e. the day before the drug raid), Henderson said he would organise for her to be moved from her house.

> Henderson: Alright listen, I've already got a crew onto it alright, and listen, just listen to me carefully. I'm gonna talk to a friend of mine during the week. Right, and I'm gonna, I'm gonna try and use maximum influence as I can to get you moved from there to a location … and we'll knock up the cost for it, get you a place where it's better security.
>
> Woman: Yeah.
>
> Henderson: Alright and away from that area.

The CMC's investigation revealed that the woman was moved from her house a short time later. (In the days following the theft of the sports bag, the woman reported to police that she had been the victim of a burglary, and her shed was damaged by fire.)

In the course of Henderson's conversation with the woman on 12 October 2003, in what was clearly a reference to the impending police raid, Henderson warned the woman that she might hear noises next door early in the morning.

> Henderson: And, there's probably going to be a fair bit of, ah, early morning racket next door, if you know what I mean. Very shortly … Alright, so just if ya, if ya hear a whole heap of fucken crash bang noises don't worry about it.

Apparently coincidently, on the evening of 12 October 2003, a detective attached to the State Drug Investigation Group (SDIG) received information from an informant that the same drug trafficker had taken a bag containing a large amount of money and drugs to a particular address, being the property next door to the woman.

The next morning, 13 October, Henderson made a number of phone calls. Two of these, at 9.18 am and 9.26 am, were to an extension at an area at Police Headquarters where then Detective Senior Constable YZ was working. Immediately after these calls, YZ made checks on the police computer in respect of the drug trafficker. He then phoned another police officer, within the State Drug Investigation Group, and told him, '*If you take out a search warrant and go around there* [giving the address next door to the woman] *you'll find drugs*.' YZ did not mention the possibility of money.

The raid

Police officers attached to the SDIG executed a search warrant on the woman's neighbours later that day, 13 October 2003. During the course of the search, a sports bag was located by police in the back yard of the property. When located, the bag held a quantity of marijuana in Tupperware containers, and a bottle containing iodine.

Inquiries have ascertained that police officers arrived to conduct the search at about midday on 13 October. At 12.14 pm, a call was made to the woman by Henderson, who was again using the Arunta account of Prisoner BA. (The call was recorded.) Henderson spoke with a male associate, who was present at the woman's residence.

At the outset, Henderson explained that he was using BA's Arunta account and that it would be '*very hard to talk*'. He complained that '*it's happening at the worst time … me divert system is down between 12 and one*'. (The implication is that the administrative staff who might otherwise have transferred Henderson's call were on a lunch break.)

Henderson spoke with his male associate while the woman was sent to retrieve the sports bag from her shed and while the contents of the bag were revealed. (Evidence was given to the CMC that the bag was subsequently thrown over the fence from the woman's property into the neighbouring back yard, where it was found by police.)

The recorded conversation between Henderson and his criminal associate was as follows:

Henderson: Get it?

Associate: Nah.

Henderson: Where is it?

Associate: Still out there.

Henderson: Can't get down there?

Associate: One of the boys fucken cornered her at the fence.

Henderson: Eh?

Associate: One of the boys cornered her at the fence. You know what I am saying?

Henderson: Hold on. One of the boys …

Associate: One of our boys.

Henderson: One of our boys.

Associate: ... and he started talking to her.

Henderson: Alright.

Associate: So she kinda like had to fucken delay it a bit. And he's out there in fucken, their shed.…

Henderson: Where's [the woman] now?

Associate: She's outside. She's coming in.

Henderson: Alight. I'll stay on the phone.

Associate: … Great. Yeah hang on. Hang, I'd just like to know, they're fucken chatting. … They just fucken watched her fucken bring it in here.

Henderson: That's alright. Don't worry about it.

Associate: Okay? That's alright?

Henderson: Mmm.

Associate: I'm glad you think it's alright. (Laughter) Alright.

Henderson: What's in this fucken bag?

Associate: It's pretty heavy, apparently.

Henderson: Go on. Open it up. I'm all ears.

Associate: … I can't see what they're doin'.

Henderson: Well get [another named associate who was present] to keep a watch on them.

[Background chatter.]

Associate: They don't want to open it around at the moment because fucken there's all this shit going on. It's a bit difficult.

Henderson: Listen. Tell 'em I said now's the time to open the bag.

[Background noise.]

Associate: Mate?

Henderson: Yeah.

Associate: We're on a gold fucken field.

Henderson: Eh?

Associate: We're on a gold field.

Henderson: What is it?

Associate: A bit of money.

Henderson: How much?

Associate: Well, it's hard to say.

Henderson: Give me a round figure.

Associate: Roughly, maybe five, ten grand. And we don't want to be standing round here too much longer.

Henderson: Pack it in something else. Now!

Associate: Yep. Alright. They're doing that. … They're going to pack it up …

Henderson: Hey?

Associate: We're just gonna pack it up, take it, and go.

Henderson: Listen. Get it. I'm staying on this line until you're almost out of there.

Associate: Okay.

Henderson: Put it in something smaller. Now! … Let me know when you've got it secure in something that can't be seen. Make sure it's out of that fucken bag.

…

Associate: Ya there?

Henderson: Yeah.

Associate: And green!

Henderson: Ah, Jesus Christ.

Associate: Yeah, fucken Tupperware container full of it.

Henderson: Alright. Listen to me. Listen to me. What have you got there now to put it into another bag?

Associate: Well whatever [the woman] can give us.

Henderson: Tell [the woman] to give you something now. A bag of any sort. A zip-up bag or something.

Associate: … A bag. Mmm.

Henderson: Alright. Listen. This is what I want you to do. Listen to me very carefully.

Associate: And there's a piece, too.

Henderson: There's a piece?

Associate: Yeah.

Henderson: Take the fucken piece. Oh, Jesus Christ. Get the piece in a bag.

Associate: Any bag?

Henderson: Any — get it in a bag … Listen, how much green's there? How much green's in the Tupperware thing?

Associate: Got about four Tupperware containers full.

Henderson: Alright. We're giving that to the coppers. Alright!

Associate: Alright.

Henderson: We're giving that to the coppers.

Associate: Alright.

Henderson: Alright. Now you listen to me very carefully. Get [the woman] on the phone.

Associate: … Here she is.

Henderson: [Name of woman]?

Woman: Yes.

Henderson: Listen to me carefully. … I'm gonna give the greenery to the coppers, right. Let them take it. What I want you to do for me right now. And don't stop, don't delay. I want (you) to take the piece and hide it, hide it, hide it in ya fucken, hide it in ya cupboard there somewhere.

Associate: (In background) I'll do that.

Henderson: Alright? Hide it in the mattress or something, alright. Do that now. I don't want youse to have a piece on you when you walk out of there. Go and do that now and I'll come back to youse in a few minutes … Listen, [Associate]?

Associate: Yeah.

Henderson: I want you to pack that money up. I want [the woman] to put that piece away. Now. And I want you to pack that money up … Say again?

Associate: [Unintelligible.]

Henderson: No, no, no. Don't worry about that for now. I'll come back in a few minutes. [Name of woman] are you listening to me?

Woman: Yes.

Henderson: I want you to go and take that piece now and hide it. Alright.

Woman: Yes.

Henderson: Alright. You go and do that now. [Associate] as soon as you're finished. I'm coming back in a few minutes. I want you to take yourselves …

[Background chatter.]

Associate: What was that?

Henderson: [The woman] is going to go hide the gun, right?

Associate: Yeah.

Henderson: I want you to fucken, I want you to take the money, and [the woman] and yourselves, and get the fuck out of there.

Associate: Yeah.

Henderson: Alright. Just make sure the money's concealed on youse. Or in something. I'm gonna come back in a few minutes. Just do that. But, listen to me. … I want the bag, I want their bag that they had it in — put the pot back in it and back in the box. I'll come back in a few seconds. … It's gonna cut out.

Associate: Where do you want the box …

[Call automatically terminated at 8.00 minutes duration – at 12.22 pm.]

The available evidence suggests that Henderson was directing events as they were occurring at the woman's residence. Furthermore, consistent with his initial instructions, the sports bag was later located by police (with a quantity of marijuana) at the rear of the neighbour's property — less the firearm and the money.

After the bag was found, the male owner of the property arrived home to be detained by the police and shown the bag and its contents. The owner observed that the money was missing but he did not complain to the police about this, as he assumed that the police had taken it.

The firearm

The telephone conversation between Henderson and his male associate on 13 October 2003 contains a clear reference to a firearm being found in the bag retrieved by the woman. The transcript also records Henderson insisting that the firearm should be removed from the bag, and secured.

In his evidence to the CMC, BA said that he understood the firearm in question was a .357 revolver.

The CMC's investigation of QPS property records has revealed that a .357 revolver was recovered by Detective Senior Constable YZ on 13 October 2003 (i.e. the same day as the drug raid) from a nearby service station situated within 200m of the woman's residence.

YZ was the officer whose extension was called by Henderson at 9.18 am and 9.26 am, and whose username made the computer checks on the drug trafficker. It was YZ who telephoned the State Drug Investigation Group to suggest a drug raid on the residence.

Detective Senior Constable YZ subsequently resigned from the QPS. He is currently employed by another law enforcement agency, and resides in another state.

QPS records show that the now-former Detective Senior Constable YZ made a CRISP entry on 13 October 2003 reporting that, on the basis of information passed to him by an anonymous telephone caller, he attended at the service station and recovered the revolver.[1]

Telephone call charge records for YZ's mobile telephone service suggest he was in the vicinity of the woman's residence at 3.39 pm that afternoon. Other telephone records reveal that his mobile telephone received calls that afternoon from Henderson (i.e. calls made from prison but diverted through QPS extensions) at 2.13 pm, 3.07 pm, and 3.22 pm.

The clear inference is that Henderson arranged for Detective Senior Constable YZ to collect the revolver.

Assessment of the evidence

The circumstantial evidence points to the fact that then Detective Senior Constable YZ was the link between Henderson and the conduct of the police raid of 13 October 2003. YZ has links to a number of aspects of Operation Capri, and is referred to throughout this report. As stated above, he is now employed by another law enforcement agency. The very best that could be said of YZ's involvement with the events described in this segment is that he allowed himself to be used by a prison informant. The evidence concerning former Detective Senior Constable YZ has been referred to his present employer.

The available evidence points to Henderson receiving at least $48 500 in bank notes from the sports bag. It is unclear precisely how much money was in the bag, although there is some evidence it may have contained more than $250 000. Acting on instructions given by Henderson by telephone from prison, an associate disbursed the monies received by Henderson to various individuals by means of Australia Post money orders, and by purchasing motor vehicles. This aspect of the investigation is canvassed in segment 5 of the report.

1 The anonymous caller was said to have passed information linking the firearm to armed robberies and home invasions. Despite this information, and having retrieved the revolver, YZ took no steps to have ballistic tests performed which might have linked the firearm to offences, but, instead, made arrangements for the revolver to be returned to its registered owner.

SEGMENT 5: PAYMENTS MADE TO POLICE OFFICERS

Time frame: October 2003 – March 2004

The segment summarises evidence suggesting that certain police officers – principally Detective Sergeant OT – accepted gifts of cash and other property from Henderson. It also shows how those officers' involvement with their informant extended well beyond that of a professional relationship for law-enforcement purposes.

> ***I don't know at the time, I don't know what I was thinking, to be honest. I don't know what an objective person would think [of this transaction] but it would be fairly negative I'd imagine.***
>
> **— Detective Sergeant OT, interview, 21 February 2008**

Focus of the investigation

By the time Operation Capri concluded, the recordings of over 6000 of Henderson's prison telephone conversations had been analysed. This number included the calls that had been recorded as part of the official Arunta system, as well as the telephone conversations that avoided routine recording, but were otherwise lawfully intercepted by the AFP as part of an unrelated criminal investigation.

At an early stage of that analysis process, it became apparent that Henderson had access to funds for which there was no obvious legitimate source. (At that point, the CMC was unaware of the raid and theft of 13 October 2003 referred to in the previous segment.) The evidence suggests that between 1 January 2001 and 31 December 2007, Henderson had had access to, and had disposed of, at least $100 272.17. During the same seven-year period, Henderson's legitimate 'earnings' as a prisoner amounted to $7500.

Moreover, the evidence points to Henderson having directed payments — most of them relatively modest — to a number of police officers, but principally to Detective Sergeant OT.

Between 1 October 2003 and 10 March 2004, Henderson spent at least $7855 on gifts (of cash or other benefits) for OT. (OT claims that some of that figure was used on purchases made on Henderson's behalf.)

This segment of the report focuses on evidence about:

- how OT received a number of money orders from Henderson in late 2003;
- how OT accepted financial assistance from Henderson for the purchase of a motor vehicle in late 2003–early 2004;
- the circumstances in which OT made purchases on Henderson's behalf in early 2004;
- how OT dealt with a sum of about $5000 received on Henderson's behalf; and
- deposits and withdrawals in connection with a TAB betting account operated by OT between 11 February 2003 and April 2006.

While this segment focuses upon Detective Sergeant OT's financial dealings with Henderson, it also canvasses evidence suggesting that other police officers (who are no longer subject to disciplinary action) also accepted cash and gifts from him in the context of an inappropriate police–informant relationship.[1]

1 Evidence of payments to then Detective Senior Constable YZ, who is now employed by another law enforcement agency, is not detailed in this report, but has been conveyed to the relevant agency.

What the investigation revealed

Henderson's relationship with 'Amazing'

Analysis of Henderson's recorded telephone calls revealed that he was assisted in managing his finances by an elderly Gold Coast woman who performed voluntary work as a prison visitor and counsellor with a church-based organisation. Henderson referred to the woman as 'Amazing', and, for convenience, that pseudonym is used in this report.

Amazing passed away in early April 2005. Shortly after her death, Henderson wrote a letter to his other female associate, M, describing his relationship with Amazing, and explaining how her passing had affected him. Henderson wrote, in part, that Amazing had maintained an '*underworld contact with me*' and had done *'all my shopping and banking.*'[2]

Henderson's source of funds

Segment 4 of this report examined evidence suggesting that Henderson obtained a large amount of cash through a theft he directed from prison on 12–13 October. While it is unclear precisely how much money Henderson acquired at that time, between 19 October 2003 and 5 April 2004, and with the assistance of Amazing, Henderson dispersed over $49 000. Among the recipients of these funds were serving police officers — Detective Sergeant OT being the principal beneficiary.

Henderson's payments to Detective Sergeant OT

$1500 money order – 18 November 2003

On 31 October 2003, Detective Sergeant OT prepared a report in support of Henderson's attempt to secure a transfer within the Queensland Corrections system.[3]

A little over two weeks later, at 8.07 am on 18 November 2003, Henderson telephoned OT's private residence. The call duration was just short of seven minutes. Calls to OT's residence had been nominated by Henderson as 'legal', and therefore were not recorded.

Twenty minutes later, Henderson telephoned Amazing and, in the course of conversation, gave what appear to be coded instructions for the purchase of a money order payable to OT's wife, care of the Cleveland Post Office.

At 11.18 am, an electronic money order in the sum of $1500 was purchased from Biggera Waters Post Office. The name of the payee was identified as that of OT's wife, and the payee's address was given as the Cleveland Post Office. The money order records the purchaser as being OT, and the address provided is a mobile telephone number – being the mobile service of Amazing.

At 11.25 am, less than 10 minutes after it was purchased, the money order was redeemed at Cleveland Post Office by OT's wife (who produced her driver's licence as identification).

Detective Sergeant OT was questioned about this issue both in an investigative hearing and subsequently, during an interview conducted by the CMC as part of the police disciplinary process. He said he could recall an occasion where his wife had received a telephone call from Henderson, who had advised he was sending money for Christmas presents.

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2 In early 2007, Amazing's son provided to the CMC a suitcase he had located in his mother's house following her death. The suitcase contained a number of documents that appear to have emanated from Henderson.

3 The report grossly exaggerated Henderson's assistance to OT. In his evidence to the CMC, OT conceded he had 'flowered it up a bit'.

OT acknowledged that his wife collected the money, but asserted it had been used to purchase clothing for Henderson, with the balance being returned to Amazing.

According to OT, no notes were made of his receipt of the money, and he did not report it. He was unable to produce any records or other evidence to the CMC to support the claim that he had expended the money on purchases for Henderson.

The following passage is taken from OT's disciplinary interview:

> Q. … Can you explain to me why you didn't leave the money order at the post office and arrange for it to be cancelled?
>
> A. No, I can't explain why. That's what I should have done.
>
> Q. What did you tell Henderson in relation to this money order?
>
> A. I told him that I'd spent it on stuff for me.
>
> Q. What did you tell him you spent it on?
>
> A. Ah, I forget. I don't know. I told him I bought things for the kids and, something from – what did I tell him I bought for me – I forget. But I told him I'd spent it, and I don't know if [Amazing] even told him that the money went back.
>
> …
>
> Q. Did you think it was inappropriate that Henderson would — a prisoner would give you $1500?
>
> A. Yes.
>
> …
>
> Q. What do you think an objective person would think of this transaction?
>
> A. I know exactly what an objective person would think of it.
>
> Q. Which is?
>
> A. Well below the standard expected. Well below.

Telephone conversations between Henderson and Amazing not only contain no mention of OT returning the money, but indicate that Amazing was the person who purchased clothing for Henderson at that time. (In fact, the evidence shows that Amazing had provided OT with clothing to send to Henderson in Rockhampton.)

$100 money order – 26 November 2003

Arunta telephone records show that Henderson called Detective Sergeant OT (at home) on a number of occasions over 25 and 26 November 2003.

At 9.01 am on 26 November 2003, Henderson made a telephone call to an extension at the Armed Robbery Unit. The call, which was of almost nine minutes duration, was diverted to the mobile telephone of Amazing. (Having been diverted through the ARU line, there is no recording of the conversation.)

About 90 minutes later, a money order in the sum of $100 was purchased at the Helensvale Post Office. Records show that the nominated payee was OT, and the purchaser purported to be OT's wife. (The purchaser gave a mobile telephone contact belonging to Amazing.)

The money order was redeemed at the Cleveland Post Office by OT (using his driver's licence as identification) at 9.58 am on 29 November 2003. Henderson had made a number of telephone calls to OT's residence earlier that day.

Detective Sergeant OT made no official record of receiving this money. He told the CMC the money was used for a joint betting arrangement that he and Henderson conducted through OT's TAB betting account. (Financial records reveal that OT transferred $100 from his bank account to the TAB account on 2 December 2003.)

OT's operation of the betting account is canvassed elsewhere, however it is noted that he did not keep any record of the betting arrangement he claims to have had with Henderson. Certainly, there is no evidence of Henderson receiving any dividend, or of any ongoing calculation by OT of the balance of Henderson's 'investment'.

$600 money order – 10 December 2003

In a telephone call recorded on the Arunta system at 8.39 am on 10 December 2003, Henderson gave instructions to Amazing concerning the purchase of five money orders.

The manner in which Henderson conveyed the instruction is itself instructive, suggesting he was concerned not to reveal that he was paying money to police officers.

Henderson said that he was about to make a telephone call to give instructions to 'Amazing' (logically, and in light of her subsequent conduct, this was clearly a reference to Amazing herself). Thereafter, the conversation between Henderson and Amazing was conducted in such a way that Amazing was referred to as a third party. A transcript of the relevant parts of the conversation is reproduced:

Henderson:	How are ya, Sweetie?
Amazing:	Yeah, not too bad. How are you?
Henderson:	Good. Listen, you'll be coppin' a ahh ahm, or I should say ah um, um ahhh
Amazing:	Yeah I know.
Henderson:	Amazing [laughter] ---
Amazing:	[Laughter] Okay.
Henderson:	Too early in the morning for me.
Amazing:	[Laughter]
Henderson:	Ah, Amazin' will be coppin' a call in about ten, ten minutes.
Amazing:	Okay.
Henderson:	Ahm, ah on her ah, on her line.
Amazing:	Alright I'll let her know.
Henderson:	On her other line.
Amazing:	Huh huh
…	
Henderson:	… I take it that, ah, Amazing's what, gonna do this tomorrow or — ?
Amazing:	Ah, either, she'll probably do it, tomorrow I think … [over talking]
Henderson:	Yeah.
Amazing:	I know she's pretty busy today but, she probably will do it tomorrow. She may have time today. I don't know.
Henderson:	Alright. Well I'll I'll just ah, I'll just ah, be guided by whenever I get a message back from her as to ah, as when it's done, so I'll just ah, I'll pass on the message, you know, to, to the appropriate people.
Amazing:	Yeah that'll be fine.
Henderson:	Ah, have you got a pen and paper there?
Amazing:	Always.
Henderson:	Alright, … can more or less work this side of it out now.
Amazing:	Hmm hmm.
Henderson:	Err, 200 to ah, [OT] from ah, [OT's wife]. Same as last time.
Amazing:	Hmm hmm.

Henderson: … Ahh, wait oh wait there. Sorry. I gotta change that round, ah, cause I gotta get him to do something, ah – ah yes sorry, sorry, sorry, sorry, sorry. Just let me work it out here. … Let me work it out. … No. Yeah. Ah six — six across to, ah six across to [OT] from [OT's wife].

Amazing: Right.

…

Henderson: There may be there may be a little bit I, I, a little bit more I gotta do tomorrow.

At 11 am the same day, a $600 money order was purchased from Oxenford Post Office – again, by a person purporting to be OT's wife, who nominated both an address and mobile telephone number associated with Amazing.

The money order was negotiated by OT at Cleveland Post Office later that day.

Again, Detective Sergeant OT made no record of his receipt of this money. He initially told the CMC he could not recall how the proceeds were used: save that some may have been used to purchase flowers for M,[4] and some to place joint bets. He asserted that none of the money was used for personal purchases.

The CMC's investigations later revealed that on 11 February 2004, OT himself had purchased two money orders at the Victoria Point Post Office: one in the sum of $400 payable to Henderson, and another for $200 payable to another prisoner.

When confronted with this evidence surrounding the purchase of the money orders, Detective Sergeant OT claimed that the $600 received by him in December 2003 had been used to purchase the two money orders. He also agreed that having purchased the money orders, he sent them to Wolston Correctional Centre using the name 'R Carroll' – an alias known to be used by Henderson.[5]

Detective Sergeant OT contended there was nothing sinister in his adoption of the alias, and said he had used the name merely 'a joke'. However, he conceded that the use of the alias had the effect of preventing Corrective Services from making a proper assessment of the legitimacy of the funds being sent to the two prisoners.

The following passage is taken from OT's disciplinary interview, and concerns OT's acceptance of the $600 money order:

Q. Where did the funds come from? Like, where did he get the money?

A. I don't know.

Q. What questions did you ask Henderson about the source of the funds?

A. I don't know if I asked him any questions.

Q. What checks did you make to ensure that the source of the funds was legitimate?

A. I don't know if I made any checks.

Q. Did you make any official report about this occurrence?

A. No.

Q. Did you think you were obliged to? Like, within the Police Service policies?

A. Yes.

4 There is evidence that OT purchased some flowers for Henderson's associate, M, two months later, in February 2004.

5 The money orders having been purchased by 'R. Carroll', which the CMC knew to be an alias, inquiries were made to establish the identity of the true purchaser. Investigations revealed that Detective Sergeant OT had conducted two EFTPOS transactions at the Victoria Point Post Office at the very time the money orders were purchased. When this evidence was revealed, OT conceded he was responsible for purchasing the money orders using the false name.

Q. So why didn't you?

A. I don't know.

Q. Did you make any notation, any document, official or otherwise, of this event?

A. No.

Q. Why not?

A. I don't know.

Q. What do you think an objective person would think of this transaction, and your explanation for it?

A. [Sighs] I don't know. It'd certainly be in a very negative view, that's for sure.

Telephone conversations between Henderson and Amazing do not support OT's assertion that the $600 received by him on 10 December 2003 was intended for the purchase of two money orders — nor, for that matter, for the purchase of flowers. Henderson's instructions to Amazing were clear: $200 was a gift for OT, and $400 was for OT to purchase 'a birthday present' for 'a member of M's family'.

Further, given the arrangement Henderson had with Amazing, there is no logical reason for him to have called upon OT to 'recycle' his own money as OT suggests. If Henderson wanted access to money, or wanted his money sent to another inmate, he merely needed to task Amazing.

$200 money order – 29 December 2003

Henderson telephoned Detective Sergeant OT's residence on seven separate occasions on 28 December 2003. Each of the calls was made in a way that evaded being recorded.

At 5.34 pm on that day, Henderson telephoned Amazing using the Arunta account of another inmate, and gave her instructions regarding making certain payments: one of which was for OT 'at Cleveland'.

At 9.25 am the next day, on 29 December 2003, a money order in the sum of $200 was purchased at the Helensvale Post Office by someone purporting to be OT's wife (who otherwise nominated Amazing's telephone number). The payee was nominated as OT.

The money order was duly redeemed at the Cleveland Post Office that same afternoon of 29 December 2003. (On 28–29 December 2003, Henderson made a total of nine telephone calls to OT.)

When questioned about the matter, Detective Sergeant OT claimed to have no specific recollection of what he did with the proceeds, surmising that he may have used the money for the joint betting account, or to purchase items for M, or members of her family.

Again, no record was made by OT to evidence his receipt of Henderson's money.

The fact that OT made no deposits into the TAB betting account until the following February suggests it is unlikely this money order was used to fund the gambling arrangement. (OT pointed to a deposit of $182 made into the account on 26 December 2003 as evidence the money order had been used for gambling; however, that deposit pre-dates his receipt of the money order by three days.)

Purchase of a motor vehicle

Through November and December of 2003, Henderson was involved in negotiations for the purchase of four second-hand motor vehicles from a motor dealership in Brisbane:

- On 20 October 2003, a Holden Barina was purchased in the sum of $14 000 for a member of M's family.
- A Toyota Corolla was purchased for $4000 on 23 October 2003 on behalf of the woman who had assisted Henderson in stealing the drug proceeds.
- On 10 November 2003, Henderson paid $13 119 to purchase a Holden Rodeo for a criminal associate.
- Finally, on 4 January 2004, Henderson contributed to the purchase price of a Mitsubishi Triton utility (registered number 647-EDC). The vehicle was registered in OT's name.

The Triton utility had been initially acquired by the motor dealership on 26 November 2003 for $4000. After performing repair work to prepare it for sale (at an outlay cost of $650), on 28 December 2003, the Triton was advertised for sale at the asking price of $6450. The advertisement, which contained a photograph of the Triton, described the utility as being *'in well above-average condition'*.

On 31 December 2003, Henderson made a number of telephone calls to OT's residence.

At 3.31 pm, he used the Arunta account of another prisoner[6] to conduct a telephone conversation with Amazing. Henderson asked Amazing to telephone the motor dealer, explaining:

> … there is a 1991 Triton tray ute for about six and half grand. It's for one of the blokes in the job that's interested in it. Can you just give him a call and tell him you're a friend of mine and ask him if he can hold the ute until he hears from me because I've got to put him onto the bloke … Tell him to hold it until he hears from me.

At 4.01 pm, Henderson telephoned OT's residence — a call of 10 minutes duration.

The motor dealership provided the CMC with relevant documentation in respect of the subsequent sale of the Mitsubishi Triton. The contract of sale indicates it was prepared on 1 December 2003, with final payment and delivery taking effect on 6 January 2004. The final sale price was $5800.[7]

The CMC has ascertained that, on 5 January 2004, a $2600 cash deposit was paid into the motor dealer's bank account, and this sum was duly applied to the purchase price of the Mitsubishi Triton.

The cash deposit was transacted at the Helensvale branch of the National Australia Bank — which is consistent with the transaction having been conducted by Amazing. Indeed, in a telephone conversation with Henderson six days later, Amazing gave a break down of the transactions involving Henderson's money. She said, in part, *'… we sent two-six to somebody, if you remember'*.

It was also ascertained that earlier, on 18 November 2003, Amazing had made a cash deposit of $1000 into the bank account of the motor dealership. Again, this transaction was conducted at the National Australia Bank at Helensvale.[8] The $1000 sum was eventually applied to the purchase of the Mitsubishi Triton on 6 January 2004 — meaning that Henderson contributed $3600 to the sale price of $5800.

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6 In the course of his conversation with Amazing, Henderson claimed he was running short of telephone money – which might explain his need to use the Arunta account of another prisoner.

7 The contract records the market value of the vehicle being as $5625. The balance of the sale price comprised on-road costs.

8 According to the office manager, the motor dealership credited the $1000 to a client account operated in a name the CMC recognises as the name of a member of M's family.

The principal of the motor dealership informed the CMC that Detective Sergeant OT personally collected the Mitsubishi Triton on 6 January 2004, and paid the balance of the purchase price with cash and a personal cheque. This is supported by the dealership's paperwork, including the Vehicle Registration Transfer application. (According to the principal, OT would have been required to produce personal identification – usually a driver's licence — in order to complete the transaction.)

When questioned about this matter by the CMC, Detective Sergeant OT denied any knowledge of either the $1000 deposit (on 18 November 2003) or the $2600 payment (on 5 January 2004). He claimed, in effect, that he had paid only $2200 for the motor vehicle, but was unable to produce any documents to evidence this claim.

OT asserted that the vehicle was in poor condition, and that he on-sold the vehicle after 12 months for $2000. (He produced a document that purported to evidence his on-selling of the vehicle for $2000.)

Detective Sergeant OT alleged that the motor dealership's records must have been fabricated – and he denied that the signature on the purchase agreement was his.[9] He also claimed that the documents indicating the vehicle had been sold to him for $5800 were false, but could offer no reason why the motor dealership would need to fabricate the documents.

The claim that the motor dealer's documentation had been fabricated (to show a higher purchase price) lacks logic. While a motor dealer might wish to represent a sale at a lower price to avoid taxation and stamp duty obligations, it is difficult to see any logical advantage in falsely inflating a purchase price.

Further, on OT's version, the sale price was almost $2500 less than the price paid by the motor dealer in acquiring the vehicle and preparing it for sale. (After repairs, the vehicle 'owed' the dealer $4649.) The principal of the motor dealership, and his staff, informed the CMC that it is an invariable practice of the business not to sell vehicles for less than cost.

Finally, the transaction should be considered in light of what has been otherwise exposed of the relationship between Detective Sergeant OT and Henderson.

The available evidence infers that Henderson contributed $3600 towards the purchase of OT's utility.

Money collected by OT from the AFP

On 5 March 2004, Australian Federal Police agents removed Henderson from custody at Capricornia Correctional Centre.[10] Discovering the sum of $5155 secreted in Henderson's bag, the federal agents determined to register the bag and contents in the AFP's drug and property register in Brisbane until inquiries could be conducted in respect of the source of the money.

When questioned by the AFP about his possession of the money, Henderson claimed the cash had been given to him by his female associate, M, to cover legal expenses. There being no evidence to the contrary, the AFP acceded to Henderson's request that the bag and contents (then in Brisbane) should be handed over to Detective Sergeant OT.

According to AFP records (and the recollection of the AFP agent who dealt with him), OT took possession of the bag and contents (including $5155) on 9 March 2004.

9 It is true that the signature of the purchase agreement bears little resemblance to OT's usual signature. The CMC determined, in light of the fact that no criminal charge was likely to eventuate in this matter, there was little point in having the handwriting forensically examined. Accordingly, there is no forensic evidence on the point.

10 This sequence of events is covered in segment 6.

On 10 March 2004, the sum of $3500 was deposited into the trust account of a solicitor then acting for Henderson, meaning that $1655 was unaccounted for.

The CMC interviewed Detective Sergeant OT about his involvement in this matter in February 2008, and sought to have him account for the balance of the $5155 he had received from the AFP on Henderson's behalf.

OT denied that he had received *any* money from the AFP, and claimed to have no knowledge of the $3500 deposit into the solicitor's trust account.

The AFP's property receipt in respect of this transaction (bearing his signature), was produced to OT. While he identified his signature, OT claimed he had no memory of signing the item or receiving the property.

OT conceded that such an event — given that it involved a relatively large sum of money — would be memorable.

Operation of the TAB account

Operation Capri revealed that Detective Sergeant OT operated a TAB betting account into which money belonging to Henderson was deposited.

Investigations showed that OT made application to open a 'Telebet' account at the Holland Park TAB on 11 February 2003. (He produced his driver's licence, police identification and Medicare card to meet the required identification threshold.) The application was approved, and an account was activated, with an initial cash deposit of $10.

As at the time of the CMC's inquiries into the operation of the account, the last activity had been a transaction on 16 April 2006, which had left the account with a credit balance of 60 cents.

Analysis of the account's operation reveals it was used as a cash deposit/withdrawal facility.

This is demonstrated by the following transactions:

- Having established his betting account on 11 February 2003 with a deposit of $10, there was no further transaction conducted until 28 February 2003, when OT deposited $315 in cash. The following day, he placed two bets each worth $5. The next two transactions involved cash withdrawals of $100 (8 April 2003) and $225 (17 April 2003) — leaving a balance of $4.20.
- On 12 October 2003, OT deposited $500 into the account. On the same date, he placed seven small bets, and then withdrew $480 — leaving a balance of $15.90.
- On 7 March 2004, OT deposited $220. Seventeen small bets were then made, before a withdrawal of $195 on 17 March — leaving a balance of $2.70.
- On 6 August 2004, a $200 cash deposit was made at the Cambridge Hotel, Rockhampton. The investigation revealed this sum was deposited by an employee of the Rockhampton law firm then retained by Henderson (see segment 6). A series of bets were placed during August and September, before OT withdrew $225 on 23 September 2004 — leaving a $1.40 balance.
- On 27 November 2004, the sum of $390 was deposited. The deposit was followed on the same day by eight small bets. Thereafter, on 3 December 2004, $320 was withdrawn from the account — leaving a balance of $2.40.

The operation of the TAB account was an issue raised with Detective Sergeant OT by the CMC.

OT asserted that he had opened the betting account before he came to be associated with Henderson, his intention being to have the occasional bet without his wife's knowledge. In fact, the evidence shows OT had an association with Henderson as early as 2002.

According to Detective Sergeant OT, the use of the betting account to facilitate joint bets was something that evolved, as opposed to being planned. OT explained that a practice of Henderson telephoning him spasmodically to pass on tips progressed to a stage where Henderson called with tips every Saturday, and OT placed bets – ostensibly for both of them, jointly.

It was conceded by OT that the money from Henderson had been paid into the account via money orders sent to him (OT) and, on the one occasion, by means of the deposit made by Henderson's solicitor in Rockhampton. Detective Sergeant OT acknowledged that no winning dividends had ever been returned to Henderson, and that it was his (OT's) belief that his contribution to the joint bets would have been greater than Henderson's. OT said he was unaware of anybody else paying money into the TAB account because he could not remember ever checking the statements of account.

As to the episodes where a sum of money was deposited, only to be subsequently withdrawn, Detective Sergeant OT said that he probably had 'parked' money in the account.

Transactions undertaken by Detective Sergeant OT for Henderson

In January – February 2004, OT was involved in a number of transactions in which a financial benefit flowed from OT to Henderson. These are listed as follows:

- On 15 January 2004, OT spent $112 on flowers sent to M. (The money was debited directly from OT's bank account.)
- On 11 February 2004, OT used cash to purchase the two money orders using the alias 'R. Carroll'.
- On 18 February 2004, OT purchased flowers for $150 for a member of M's family. (Again, the money was debited directly from OT's bank account.)

The total cost to OT was $812.

In his interview with CMC investigators, Detective Sergeant OT claimed to have funded these purchases from the $600 money order he redeemed on 10 December 2003.

However, the recorded Arunta telephone conversations indicate that, on 14 January 2004, on Henderson's instructions, Amazing organised for $400 to be given to OT specifically for the purchase of the flowers (on 15 January 2004), with the further expectation that OT would pass on the balance of the money to M (to contribute to the cost of an airfare for her travel on 16 January 2004).

Similarly, a telephone conversation between Henderson and Amazing on 28 January 2003 suggests that Amazing met with OT on or about that date, prior to her intended departure on vacation during February 2004. (It is possible – but there is no direct evidence on the point — that Amazing provided OT with sufficient funds to attend to Henderson's needs during her absence.)

Even if the $812 he spent on purchases for Henderson came from his own pocket, it is open to conclude Detective Sergeant OT still received over $7000 in cash benefits from Henderson between 17 November 2003 and 7 August 2004.

Payments and gifts to other police officers

Baby clothes

In the course of a telephone conversation on 28 October 2003, Henderson asked Amazing to do some shopping on his behalf for 'a bloke in the job' who had recently had a baby.

The next day, Amazing informed Henderson that she had spent $85 for the child (whom she referred to by name, along with the baby's parents – both of whom were then serving police

officers). Henderson then tasked Amazing with sending the gifts and a card 'priority paid', adding that he wanted her to endorse the card:

> Loyalty and love always.
>
> The General.
>
> PS. [Baby's name] new notorious Uncle, Uncle Lee.

In later conversations, Henderson and Amazing discussed the nature of the gifts that had been purchased for the baby. Amazing told Henderson she had purchased two fluffy toys, and two bibs.

Henderson also asked Amazing to telephone the child's father, and advised her where to locate the correct mobile telephone number. (She later confirmed that she had spoken with the father, who was '*absolutely delighted*' by the gifts.)

The baby's father, a now-former police officer, was examined by the CMC during an investigative hearing. His evidence was that following the birth of his baby daughter he had received a doll from Henderson. He claimed he immediately put the doll into a charity bin, and did not declare the receipt of the gift. The former officer's evidence was that the doll would have been valued at about $20.

The officer has since resigned from the QPS, meaning it is no longer possible to pursue disciplinary action against him.

Money orders to Detective Sergeant AS

Operation Capri identified evidence suggesting that, on the morning of 26 November 2003, Amazing purchased four money orders on Henderson's behalf at Helensvale Post Office.

One of the money orders was purchased in the name of Detective Sergeant OT's wife, and another, in a name very similar to that of Dectective Sergeant AS's wife.[11]

A search undertaken by the CMC of Henderson's jail cell uncovered a Christmas card sent by AS's family to Henderson in 2003. The card bears a handwritten entry by AS's wife in the following terms:

> To Dear Lee,
>
> Wishing you a merry Christmas and a better 2004.
> Thanking you for the generous Christmas money for myself and the baby.
> Always wishing you the best.
>
> Kindest regards,
> (Signed) xx

Detective Sergeant AS's wife was examined about this issue before a CMC investigative hearing. Her evidence at that time was that she knew of Henderson through her husband and had spoken with him by telephone on between one and two dozen occasions. She knew Henderson as 'The General'.

She further asserted that neither she nor her husband had ever received anything from Henderson. In respect of the Christmas card she sent to Henderson, the following exchange occurred:

> Q: Now, in your writing it says, 'Thanking you for the generous Christmas money for myself and the baby. Always wishing you the best. Kindest regards, …?
>
> A: Yeah.

11 The third money order was purchased in Henderson's own name, and the fourth was purchased in the name of one of Henderson's fellow prison inmates.

Q: Now, what's that refer to?

A: Don't even remember, being honest. Wouldn't have a clue.

Q: Do you remember ever receiving any money from 'the General' at all?

A: Never.

Q: Or from M?

A: Never.

Q: You don't recall any money being received in 2003?

A: Never.

Q: Or 2004?

A: Never.

Q: Or [AS] receiving any money … ?

A: Never.

Q: … from either of them?

A: I seriously, I don't even know why — I don't even know whether, from memory, we were supposed to receive something and we never did or I can't even remember because I never received money from 'the General'.

Q: Can you explain why you've written in the Christmas card, 'Thank you for the receipt of the money'?

A: No. That's what I can't — I — I wouldn't know why I've written that.

Q: You can't offer any explanation at all as to why you might have mentioned money?

A: Well, I'm not sure if my explanation is right.

Q: Well, I don't think you've given an explanation yet?

A: Well, the one that I'm thinking. I'm not sure whether my husband said the General is going to give us some money, or M is going to give us some money for the baby, so say thank you. He thinks that we're going to get some money from M, something like that …

Q: That's not what the Christmas card says, though. The Christmas card is thanking the recipient, Mr Henderson, for the gift of the money?

A: Yeah, I know. But that's what I'm saying. I can't remember. Like, I remember the General saying to me that he would organise a gift for the baby, and things like that, on the phone, but I don't remember receiving any money for it. The only gift I remember was the one that M gave me for my second child.

Q: That's in 05?

A: Yeah.

In addition to the $500 money order, the evidence also revealed that at about 11 am on 10 December 2003, a total of five money orders were purchased from Oxenford Post Office by someone purporting to be OT's wife. One of the money orders, in the sum of $50, was purchased in the name of AS. Other money orders were purchased in the names of other police officers, including OT, and YZ, the former Queensland police officer now employed by another law enforcement agency.

At 08.39 that same morning, Henderson had had a telephone conversation with Amazing in which he gave instructions for the purchase of a money order for AS, '*for their Christmas Party*.' Henderson also said that the money order should come to AS's wife, at Spring Hill.

For his part, Detective Sergeant AS gave evidence to the CMC that he could remember receiving a money order on one occasion from Henderson's associate, M. He said that this was in the sum of $1000 and was by way of reimbursement for money he had personally spent on behalf of Henderson.

The CMC was unable to locate evidence of the $1000 money order referred to by AS. However, the evidence does identify that, on 14 March 2005, a sum of $1000 was deposited into Detective Sergeant AS's home mortgage account. (The circumstances of that payment are canvassed in segment 8.)

Discussion of the evidence

Insofar as OT is concerned, the investigation revealed evidence suggesting he received the following sums:

18 November 2003	$1000	(Paid to the motor dealership.)
19 November 2003	$1500	(Money order collected by OT's wife.)
29 November 2003	$100	(Money order collected by OT.)
10 December 2003	$600	(Money order collected by OT.)
29 December 2003	$200	(Money order collected by OT.)
5 January 2003	$2600	(Paid to the motor dealership.)
9 March 2004	$1655	(Balance of money AFP handed to OT.)
6 August 2004	$200	(Deposited into OT's TAB account.)
Total	**$7855**	

The explanations proffered by Detective Sergeant OT to explain the payments to him need to be viewed in light of his personal circumstances.

OT is neither immature nor inexperienced. He became a police officer in September 1986 and served for over 22 years.

As a police officer, OT served in various uniformed and plain-clothed roles, including several years of service with the State Crime Operations Command. Even more significantly in terms of his appreciation of police responsibilities, he served with the Criminal Justice Commission.

OT's claim that he refrained from querying Henderson *'to keep him thinking that we had that level of trust'* is no justification for his conduct, and does nothing to address the suspicion that rightly attaches to the various transactions to which he was party.

Given his service history, it is incomprehensible that Detective Sergeant OT would not have been well aware that his relationship with Henderson had progressed beyond the bounds of propriety. This much is also evidenced by the steps he took – or failed to take – to ensure transparency in their dealings. OT was prepared to adopt and use the alias 'R. Carroll' to effect money transfers, and made no record of monies paid to him by Henderson, or held by him for Henderson.

In those circumstances, and in light of what has been exposed of OT's preparedness to assist Henderson with unlawful call diversions, and his willingness to conduct what – by his own admission – was a joint banking facility, it is easy to conclude that OT was well aware of the improper nature of their relationship, and was anxious to conceal it.

Consideration of criminal and disciplinary proceedings

The CMC determined not to refer the evidence against Detective Sergeant OT for consideration of criminal prosecution, for the reasons given in the Introduction to this report. The evidence was therefore referred to the QPS for consideration of disciplinary action in respect of his actions in:

- improperly receiving financial benefits in excess of $7000 from Henderson; and
- improperly operating a TAB betting account jointly with Henderson.

In the result, OT resigned from the QPS, meaning that disciplinary action was not possible or necessary.

The evidence points to Detective Sergeant AS, and another officer (i.e. former Detective Senior Constable YZ) having also received various sums from Henderson.

As those two officers have resigned from the QPS, disciplinary action is no longer possible or necessary.

SEGMENT 6: AN UNAUTHORISED INVESTIGATION

Time frame: January–September 2004

In 2004, police officers at Rockhampton CIB allowed Lee Owen Henderson to pose as an underworld crime figure with connections to corrupt police, supposedly to assist those police officers to progress an investigation of a potential large-scale importation of cannabis. Given the nature of Henderson's role, the *Police Powers and Responsibilities Act 2000* imposed an obligation on police to obtain authorisation to conduct the investigation. No authorisation was ever given for the conduct of the investigation, and a belated application for approval was rejected on the basis that Henderson was unsuitable. During the investigation, Henderson was removed from custody on multiple occasions and evidence suggests that police failed to adequately monitor him during those removals.

> ***Q. Who was running this job, you or Henderson?***
>
> ***A. Well, I was the overviewer. Henderson wasn't running the job … Yes, it was his idea … [but]I really resent that [inference] — that Henderson was running the show.***
>
> ***Q. … So it was of no concern to you … that a life prisoner had arranged for $1000 to come to himself … at the post office?***
>
> ***A. … [O]nce again, Lee had gone outside his … and he thought of something that I hadn't. Okay, trying to make himself look like a rich punter and it didn't mean — I didn't look at it that, yes, he was a lifer arranging a $1000 … I didn't look at it in that aspect.***
>
> **— Questioning of Detective Inspector AN, CMC hearing, 25 August 2006**

Background to the investigation

In early November 2003, Lee Owen Henderson was transferred to the Capricornia Correctional Centre at Rockhampton. At the time of his transfer, Henderson was registered as an informant with both the Australian Federal Police and QPS.[1]

On 7 November 2003, Detective Sergeant OT of Cleveland CIB contacted Detective Inspector AN at Rockhampton, and discussed the possibility of police officers at Rockhampton 'sharing' Henderson as an informant.[2]

Detective Inspector AN, who would shortly afterwards become the Regional Crime Coordinator for the Central Region, was at that time performing duties as a 'project officer' at Rockhampton. Another inspector (since retired) was then the Regional Crime Coordinator with responsibility for management of informants.[3]

According to AN, at some stage after the contact from Detective Sergeant OT, he mentioned to the Regional Crime Coordinator there was a 'source' at Capricornia, but he did not mention Henderson by name, or the nature of OT's call.

1 In November 2003, Henderson was still registered as an 'active' informant to Detective Sergeant AS of the Armed Robbery Unit. He was 'de-activated' by AS on 9 December 2003.

2 This was notwithstanding the fact Henderson was never registered as an informant to OT. Detective Inspector AN seemed unaware of this fact.

3 The Regional Crime Coordinator performed the role of Regional Informant Registrar.

Inspector AN told the CMC that he conducted checks to confirm that Henderson was a registered informant, but was unable to say when he conducted those checks. Certainly, no inquiry appears to have been made of the State Informant Register, either to confirm Henderson's then classification or status, or to identify his case officer.[4]

AN also claimed that in the week or so after OT's call, he spoke with a number of Brisbane-based police officers who claimed to have previously dealt with Henderson. According to Inspector AN, those officers considered Henderson to be a reliable source, although one warned that Henderson needed to be tightly controlled.

In any event, on 21 November 2003, Detective Inspector AN and a colleague, Detective Sergeant ON, visited the Capricornia Correctional Centre to speak to and assess Henderson's suitability as an informant. No written record of the visit was made (as was required), nor was any advice provided to the Regional Crime Coordinator.

Thereafter, police officers at Rockhampton commenced regular contact with Henderson. Between January and October 2004, Henderson was removed from the Capricornia Correctional Centre on multiple occasions, with some removals extending over more than one day.

Henderson was also permitted to adopt an assumed identity: 'Reb Carroll', a person portrayed by Henderson as an underworld crime figure. To give authenticity to the assumed identity, police purchased a pre-paid mobile telephone service in the name of 'Reb Carroll'. A substantial quantity of clothing and personal effects was also purchased on Henderson's behalf, and stored at the Rockhampton Police Station in a locker specifically allocated for the purpose, and bearing Henderson's nickname, 'The General'.

What the investigation revealed

In late January 2004, certain Rockhampton-based detectives began removing Henderson from custody, taking him to locations around Rockhampton and Yeppoon. It appears the police officers engaged in this conduct ostensibly so that Henderson could assume the 'Reb Carroll' persona and, by using the pre-paid mobile telephone, make calls to supposed criminal associates with a view to obtaining evidence of criminal conduct with which 'Reb Carroll' was associated.

Henderson's activities during his removals were largely unsupervised, and the CMC was unable to find any evidence to suggest that any positive result came of the investigations conducted using his false identity.

Henderson's removals – January/February 2004

Between 23 January and 5 February 2004, police officers at Rockhampton removed Henderson from custody on three separate occasions.

The failure by police officers to maintain proper records means that it is impossible to identify with certainty the actual basis for Henderson's removals: two were conducted under the provisions of the *Corrective Services Act 2000*, and one by means of a magistrate's authority pursuant to the PPRA. In the case of the PPRA removal, the stated purpose for the removal was to enable Henderson 'to assist police in relation to investigations into an indictable offence' (which suggests the removal was conducted on the wrong statutory basis).

On none of the three occasions did police officers comply with requirements to record information in the QPS custody index, adding to the overall absence of any auditable record trail.

4 Such an inquiry would have revealed Henderson was registered to Detective Sergeant AS, not OT.

The relevant removal orders point to Henderson assisting in three separate police investigations: Operation Charlie Buxton, Operation Charlie Cashbox, and Operation Alfa Mayflower. However, apart from the mention of the operational names in the order, there is no evidence that Henderson actually assisted in any of the three nominated investigations.

When questioned by the CMC about the reasons for Henderson's removals, relevant police officers could not agree which particular investigation Henderson had worked on during each particular removal, but did agree about where Henderson was taken on each occasion. However, their claims are unable to be corroborated and, indeed, are contrary to other evidence.

Of particular concern is evidence suggesting that during the initial three removals, Henderson:

- made telephone calls which were not monitored
- set up a voice mail account – his access to which was never subsequently monitored
- was permitted to consume alcohol
- was assisted in setting up a personal web-based email account.

Police were warned about Henderson

On 31 January 2004, Detective Sergeant ON contacted the Far Northern Regional Crime Coordinator at Cairns, in an endeavour to verify information (about an unrelated matter) that had been provided to Rockhampton police by Henderson.

It transpired that the Far Northern Regional Crime Coordinator was aware of Henderson's previous dealings with law enforcement, and was immediately disparaging and dismissive of Henderson and the information Henderson had given to police in Rockhampton. He warned in very strong language that Henderson was unreliable and was not a person to be trusted.

Notwithstanding the warning, Detective Serveant ON and his colleagues at Rockhampton facilitated Henderson's further removals from custody.

The genesis of Operation Charlie Zita

Earlier in January 2004, Henderson's female associate, M, had told him about a tobacco farmer at Mareeba who was then facing charges for offences against Commonwealth excise laws. Those charges had arisen from the farmer's alleged possession and production of 'chop chop' (i.e. illicit tobacco on which no excise had been paid). M informed Henderson that when federal authorities had searched a property belonging to the Mareeba farmer, an unregistered concealable firearm had been located, for which the farmer now also faced a further (Queensland) charge.

M told Henderson she had been approached by the Mareeba farmer, who was hopeful M might assist him to respond to the various Commonwealth and State charges.

On 11 February 2004, police officers from the Rockhampton CIB organised Henderson's removal from custody and permitted him to attend a local city hotel where, as 'Reb Carroll', he met with his solicitor and the Mareeba farmer. This meeting was not monitored by police, but later events indicate that during the meeting Henderson claimed that, for a fee, he could '*get rid of*' the charges pending against the farmer.

Henderson also made arrangements to meet with M and the Mareeba farmer on 27 February 2004, at Yeppoon. In an effort to achieve his removal from custody for that meeting, Henderson told the Australian Federal Police that the Mareeba farmer had sought his assistance in relation to a proposed importation into Australia of a large quantity of Papua New Guinean marijuana. (In fact, their later dealings point to Henderson encouraging the Mareeba farmer to join in a venture for the importation of what the farmer believed would be tobacco.)

One inference open on the evidence is that Henderson fabricated the claim that the Mareeba farmer planned to import marijuana in order to ensure law enforcement officers would take him seriously as an informant – and thus justify his on-going removals from custody. In essence, Henderson was playing both sides: encouraging the Mareeba farmer to sponsor the importation of 'chop-chop' tobacco, while at the same time, giving law enforcement officers the impression 'Reb Carroll' could be their inside man in the planning of a major drug importation.

Henderson informed AFP agents that the Mareeba farmer wanted to meet with 'Reb Carroll' to discuss the importation of marijuana, and the AFP decided to launch a formal investigation into the farmer.[5] Significantly however, so far as Henderson's immediate plans were concerned, the AFP declined to remove him from custody.

This meant Henderson faced a dilemma: if he could not achieve a removal, he could not make the meeting at Yeppoon.

Henderson contacted the then former Detective Senior Constable YZ, with whom he had dealt the previous October (see segment 4). YZ had, by February 2004, commenced duties with another law enforcement agency, and was based outside Queensland.

Notwithstanding, YZ travelled to Rockhampton and facilitated Henderson's removal from custody on 26 February and 27 February 2004, transporting him to Yeppoon for the meeting with the Mareeba farmer.

Later events indicate that during the Yeppoon meeting, the Mareeba farmer handed Henderson at least $7000 cash. YZ later deposited $2000 of that sum into Henderson's prisoner trust account, and at least $5000 was placed into a bag containing Henderson's personal effects, which was deposited into the locker maintained for him at Rockhampton Police Station.[6]

Within a very short time, the AFP discovered Henderson had been removed from custody by YZ, and that he had met with the Mareeba farmer. In turn, AFP agents removed Henderson from custody and questioned him about the Yeppoon meeting. The agents had earlier retrieved the bag of Henderson's personal effects from the Rockhampton police station. Upon discovering that $5000 was secreted in Henderson's bag, they decided that the bag and its contents should be lodged as an exhibit in the AFP's registry at Brisbane while further inquiries were made as to its source.

Henderson later told the AFP the $5000 had been given to him by his female associate, M, and that it was intended to pay legal expenses. He asked that the money and his bag of personal effects be given to Detective Sergeant OT. Unable to discredit Henderson's claim, the AFP duly returned the bag. On 9 March 2004, the bag — and more particularly, the $5000 cash — was delivered to Detective Sergeant OT's residence by an AFP officer. The next day, OT deposited $3500 into the trust account of a legal firm retained by Henderson. OT has not accounted for the balance. (This issue was canvassed in segment 5.)

On 10 March 2004, Henderson was again removed from custody by YZ (employed by another law enforcement agency) for the purposes of possible investigation of the same proposed marijuana importation about which Henderson had alerted the AFP.

Within 48 hours, the AFP discovered YZ's involvement with Henderson, which suggested that at least two law enforcement agencies were examining the same matter. On 12 March 2004, Henderson was questioned by the AFP about his conduct. By letter of 16 March 2004, Henderson advised the AFP that he was henceforth working exclusively for the other law enforcement agency. In his letter, Henderson boasted, '*I can make an operation out of nothing …*'.

5 It was this investigation which led ultimately to the discovery of Henderson's call diversions, and gave rise to Operation Capri.

6 Evidence as to the former police officer's conduct has been referred to his current employer. It is inappropriate to provide further detail at this point.

On 18 March 2004, the AFP de-registered Henderson as an informant.

On the same day, Henderson received advice from the other law enforcement agency (i.e. the agency for which YZ now worked) that it did not propose to further investigate the importation matter.

The wheels fast falling off his scheme, it appears Henderson then took Detective Inspector AN into his confidence, relaying details of the proposed importation of marijuana from New Guinea. (Unbeknownst to Henderson, the AFP was continuing to monitor the Mareeba farmer and the alleged marijuana importation.)

The CMC is unable to establish with precision what Henderson told AN, but instead of referring the alleged breach of federal law to the AFP (as was required by QPS policy), Detective Inspector AN commenced his own investigation of the matter. Thereafter, by diverting Arunta calls, Queensland police officers assisted Henderson to maintain telephone contact with the Mareeba farmer, and thus continue arrangements for the importation.

Withdrawal of firearms charges against the Mareeba farmer

For reasons that remain unclear, Rockhampton police officers permitted Henderson to promote to the Mareeba farmer the claim that he (Henderson) was working with corrupt police officers.

In this regard, in April 2004, Henderson suggested that it would assist his cover story if Rockhampton police arranged for the withdrawal of the charges then faced by the Mareeba farmer.

Detective Inspector AN duly contacted federal authorities and inquired of the chances of the federal excise charges being discontinued. He was advised the charges would not be withdrawn.

In an Arunta call to M on 12 June 2004, Henderson indicated he had enlisted the support of Detective Sergeant OT in order to see what could be achieved with the state firearms charges. OT, he asserted, believed something could be arranged, but had warned that it would be necessary to avoid the Far Northern Regional Crime Coordinator (who knew of, and had earlier warned Rockhampton police about Henderson).

On 17 June 2004, Detective Sergeant OT contacted the officer in charge of the Mareeba CIB, explaining that he wanted to arrange the withdrawal of the state firearms charges. OT is alleged to have said he was working on a major investigation into organised crime, and the withdrawal of the charges would assist his informant to gain credibility with the crime syndicate being investigated.

When told that the matter was one that would normally go through the Far Northern Regional Crime Coordinator (i.e. the officer who had warned against using Henderson), OT is said to have told his Mareeba counterpart not to approach the Regional Crime Coordinator, explaining that the informant had previously been 'burnt' by that officer, and would refuse to provide any further assistance if that officer was involved. OT, it is alleged, also claimed that he had had a personality clash with the Regional Crime Coordinator, and neither he nor the informant wanted that officer to get any credit for the job when it concluded.

The Mareeba officer subsequently spoke to the relevant police prosecutor, discovering that a similar request had been separately made via the Rockhampton CIB.

In that regard, on the previous day, 16 June 2004, Detective Inspector AN had approached the Assistant Commissioner George Stolz of the Central Region, seeking support for the withdrawal of the charges at Mareeba. AN informed his Assistant Commissioner that the Mareeba farmer was a large importer of marijuana from New Guinea, and was associated with senior members of a Rockhampton-based outlaw motor cycle gang. It is alleged that AN argued that the withdrawal of the charges would assist the Rockhampton police in relation to the investigation of the links between the Mareeba farmer and the outlaw motor cycle gang.

When Assistant Commissioner Stolz suggested the matter be directed to the Far Northern Regional Crime Coordinator, Inspector AN is said to have countered that the matter needed to be kept 'tight', and the preferred approach was one directly to the Assistant Commissioner for the Far Northern Region. A call was duly made to Cairns, and in the absence of the Far Northern Assistant Commissioner, the matter was discussed with the Chief Superintendent who, in turn, spoke to the District Inspector at Mareeba, thus bypassing the Regional Crime Coordinator.

Ultimately, consultation occurred between the Chief Superintendent, the District Inspector, and the officer with whom Detective Sergeant OT had spoken, with a view to facilitating the withdrawal of firearms charges.

By that time, the principal concern was determining how best to achieve the withdrawal of the charges so as to not arouse suspicion. The police prosecutor subsequently gave as justification for the withdrawal that the evidence was considered insufficient to support the prosecution.

In reality, the various senior officers and the officer in charge of the Mareeba CIB had been misled both by Detective Inspector AN and Detective Sergeant OT. They, in turn, had presumably been duped by Henderson, who was the person effectively controlling what was occurring.

Having disposed of the state charges, Henderson continued to discuss with the Mareeba farmer the possibility of making the federal charges 'go away'.

In a recorded telephone conversation between Henderson and the Mareeba farmer on 9 July 2004, the farmer complained about the additional cost, pointing out that he had previously paid money, but that only the state charges had '*disappeared*'. Henderson responded by explaining that he (Henderson) had made the mistake of thinking all the charges were state-based, but that he had now found a 'bloke' who could deal with the federal matters.

Henderson said he could get rid of the federal charge for an '*extra eight*', and explained that he had previously given a person '*2500 … to get rid of that other thing*'.

Later still, in the course of a meeting at Yeppoon on 28 July 2004, Henderson and the Mareeba farmer spoke further about the outstanding federal charges, with Henderson again saying he had paid '*25 hundred to make the gun shit and all that go away, and I didn't mind that 'cause I knew you spent $5000 fighting the c...t …*'. Henderson also explained that he had arranged for the federal charges to be adjourned for six months, which would give them time to '*set up the deal*'. He told the farmer that the '*guy*' only wants '*eight grand*'.

AN's dealings with the AFP

Concerned at the nature of the evidence being gathered by means of the telephone interceptions, on 11 May 2004, an AFP agent contacted Detective Inspector AN and inquired whether Queensland police officers were using Henderson as a covert source in an investigation into a proposed marijuana importation. According to the AFP agent, Inspector AN denied Henderson was being so used, and also denied Queensland police officers were conducting any such investigation.

The AFP agent has also alleged that Inspector AN was advised the AFP had recently de-registered Henderson as an informant, and was also warned that the AFP considered Henderson to be '*untruthful, uncontrollable, and a liability*'. Inspector AN is said to have given an undertaking to the AFP that Rockhampton police would advise the AFP if Henderson provided information about Commonwealth matters.

For his part, when questioned about this matter by the CMC, Detective Inspector AN denied the AFP agent's assertions, including the claim he had been telephoned by the AFP agent and warned about Henderson's reliability. AN's official diary records that he did, in fact, receive a telephone call from the AFP agent on the day in question.

The AFP continued to monitor the activities of the Mareeba farmer and remained privy to telephone communications between the farmer and Henderson. In reality, what the AFP was actually monitoring were activities conducted as part of an 'unauthorised investigation' being conducted by Rockhampton CIB.

As part of that investigation, Detective Sergeant ON removed Henderson from custody on 20 May, 27–28 May, and 16 June 2004.

On 27 May 2004, Henderson was taken by police to Yeppoon, where he was permitted to meet with the Mareeba farmer, the farmer's brother, and a Rockhampton-based solicitor who had been retained by Henderson. So far as the Rockhampton CIB was concerned, the purpose of the meeting was to advance Henderson's negotiations with the Mareeba farmer about the proposed marijuana importation.

The gathering was not electronically monitored and Henderson was unsupervised. Henderson later de-briefed Detective Inspector AN, Detective Senior Sergeant DS and Detective Sergeant ON. Those officers appear to have accepted and acted upon Henderson's account of what had taken place.

Operation Charlie Zita

On 24 June 2004, the Rockhampton CIB's investigation into the marijuana importation being planned by the Mareeba farmer was given an operational name: Operation Charlie Zita.

At about the same time, the AFP became concerned that, contrary to Detective Inspector AN's earlier assurances, it appeared that Queensland police officers were involved in some fashion in the investigation of the proposed importation. Not only had Inspector AN not contacted the AFP as he had undertaken to do, but the AFP had ascertained that a number of Henderson's telephone calls to the Mareeba farmer had been made from prison, with the calls being diverted through QPS telephone numbers.

The AFP continued monitoring the Mareeba farmer's communications. In one intercepted telephone conversation (described above), Henderson told the farmer that $2500 had been paid to a Commonwealth officer to ensure the firearms charges were withdrawn, and that a further $8000 would be required to take care of the Commonwealth tobacco-related charges.

Henderson also said that a Commonwealth officer in Melbourne would assist to facilitate the importation, in return for a share in the proceeds.

Henderson was removed from custody by Detective Sergeant ON on 23 July 2004, and was permitted to make a number of telephone calls to the Mareeba farmer with a view to planning a further meeting at Yeppoon on 28 July 2004.

No QPS records exist of the contact between Henderson and the Mareeba farmer (but the CMC is aware of what was transpiring because of the AFP telephone interceptions).

Between 23–27 July 2004, Henderson engaged in telephone conversations with the Mareeba farmer in the lead-up to the planned meeting at Yeppoon.[7] None of these calls was monitored by Rockhampton police, although the AFP's telephone interceptions of the conversations show that Henderson offered to pay for the farmer's airfare to Rockhampton and, to this end, the CMC has ascertained that Henderson arranged for a money order in the sum of $1000 to be sent to him (Henderson), for collection at the Yeppoon Post Office.[8] (The AFP's telephone interceptions also reveal that Henderson skited to the Mareeba farmer about how he could achieve a full day's leave from prison, and that he had arranged for a nice venue with a '*six million dollar view*' on the Yeppoon beachfront.)

7 Inspector AN told the CMC he had authorised a payment of $150 to Henderson's prison trust account so that Henderson could telephone the Mareeba farmer and complete final negotiations from inside prison.

8 He had the wife of a prison associate arrange the money order.

Meanwhile, Rockhampton police officers arranged the hire of a room at a Yeppoon beachfront resort and, in order to monitor the meeting between Henderson and the Mareeba farmer, fitted the room with audio and visual surveillance devices. Extensive arrangements were put in place for security over the room and the meeting participants.

Henderson was removed from custody the day before the meeting, and was transported to Yeppoon to 'familiarise' himself with the venue. That afternoon, police officers took Henderson to the Yeppoon Post Office, where one of the officers identified himself as a police officer and arranged for the collection of the money order addressed to Henderson. The money order was duly negotiated, and the proceeds handed to Henderson, who informed police he intended using the $1000 as '*show money*' for the investigation. Henderson eventually handed $500 to the Mareeba farmer as a reimbursement for the cost of his airfare to Rockhampton.

The next day, Henderson spent several hours in the company of the Mareeba farmer. Detective Senior Sergeant DS and Detective Sergeant ON monitored the meeting and an audio recording was also made. A typed transcript of the audio recording was later prepared.

That transcript reveals that it was Henderson who was dictating the terms of the proposed importation. The transcript suggests that the Mareeba farmer understood Henderson was planning to import illicit tobacco, not marijuana. The farmer sounded confused and concerned when Henderson made a reference to marijuana – immediately pointing out that he thought they were planning to import tobacco, and explaining that he did not have the capacity to import marijuana.

Shortly after the meeting, the transcript was reviewed by a QPS intelligence officer, who told the CMC that he had immediately expressed alarm at the fact that it appeared Henderson was running amok, and that it was not the Mareeba farmer but Henderson who was soliciting the commission of a crime.

Notwithstanding the transcript of the meeting, and the intelligence officer's warning, from late July 2004, Detective Inspector AN, Detective Senior Sergeant DS and Detective Sergeant ON set about preparing an application for permission to commence a 'controlled operation'[9] in respect of the proposed importation. As part of that process, a formal application was forwarded to the State Crime Operations Command, seeking approval for an on-going investigation into the matter.

Much of the information identified by the officers in support of their application was sourced from the meeting of 28 July 2004. However, the transcript of the meeting does not support their principal assertion: that the Mareeba farmer was planning a major importation of marijuana.

Assessment of Henderson's reliability

In determining whether or not to approve the application for a controlled operation, officers from State Crime Operations Command travelled to Rockhampton to make an assessment of Henderson's reliability. On 20 August 2004 they interviewed Henderson and, in less than an hour, formed the opinion he was unreliable, untruthful and unsuitable as a human source. For that and for other reasons, permission to conduct the controlled operation was denied.

AFP investigation

On 14 September 2004, the AFP executed a search warrant on premises occupied by the Mareeba farmer. Coincidentally, on the very same day (and at the very time of the AFP's raid) Henderson had been removed from custody by police officers from Rockhampton CIB and was

9 Because it was envisaged that it may be necessary for Henderson to participate in the commission of a criminal offence in order to facilitate the investigation, it was necessary to seek formal approval to conduct the investigation as a 'controlled operation', within the meaning of the *Police Powers and Responsibilities Act 2000*.

in the process of making telephone calls to his associates — supposedly to gather information about possible criminal activity. (In reality, Henderson's activities were not monitored, and he was making calls to persons of his choosing.)

Henderson made a number of telephone calls that day to the Mareeba farmer. Some of the calls were made while AFP officers were on the farmer's property, and all calls were monitored as part of the AFP's telephone interceptions of the farmer's telephone service. In the course of his conversations that day with the Mareeba farmer, Henderson promised the farmer he would find out what he could about the AFP investigation and report back.

The next day, 15 September 2004, Detective Sergeant ON informed Henderson that the AFP was investigating the Mareeba farmer, and instructed Henderson not to interfere.[10] In other words, Operation Charlie Zita was over.

On 16 September 2004, the AFP intercepted a telephone call between Henderson and the Mareeba farmer. In the course of that call, Henderson passed on details of the AFP's investigation, implying the information had come to him from a Queensland police officer. The Mareeba farmer remonstrated with Henderson that he (Henderson) had failed to provide any prior warning of the AFP's actions in executing the search warrant two days previously.[11]

In a letter dated 26 October 2004, Henderson wrote to Detective Sergeant OT, Detective Inspector AN, Detective Sergeant ON and others, advising that he was going to 'retire' as an informant. The letter cited what Henderson claimed were his successes as an informant, and explained that his reason for 'standing down' was the lack of support he was receiving from the QPS in terms of securing his future.

In October 2004, the AFP discontinued its investigation of the Mareeba farmer. The evidence of apparent misconduct by Queensland police officers was disseminated to the CMC, and became the catalyst for the CMC's Operation Capri.

Operation Bravo Camp

A further case study on Henderson's activities at Rockhampton is Operation Bravo Camp.

In addition to his 'work' on what became Operation Charlie Zita, Henderson was also removed from custody throughout the period January – October 2004, supposedly to assist police in other investigations in the Rockhampton area.

For example, on 20 May 2004, Henderson spent the day at Yeppoon. The evidence suggests he had been removed from custody for the purposes of both Operation Charlie Zita and Operation Bravo Camp. His role in the latter investigation was to make telephone calls with a view to liaising with a known local drug dealer.

A contact advice report was prepared by police on this occasion. It records that Henderson told police the local drug dealer had expressed an interest in purchasing marijuana from him (Henderson).

However, with one exception, no other record, official or otherwise, was able to be located by the CMC to confirm Henderson's activities with police on 20 May. The CMC was left to rely upon the recollections of the officers who spent the day with Henderson.

Continued next page >

10 According to a record created by Detective Sergeant ON.

11 This call was made by Henderson from prison, via a diversion through a QPS extension. No recording would exist of it except that it was intercepted by the AFP.

> Continued from previous page

The one exception is a QPS custody index that records that Henderson was lodged at Yeppoon Police Station at 10.00 am, and released from the station at 3.30 pm. However, one of the police officers involved in his removal conceded to the CMC that Henderson had not been lodged as recorded, but that the entries in the custody index were made only to give legitimacy to Henderson's presence in Yeppoon.

Rockhampton police arranged for Henderson's further removal on 27–28 May 2004. According to the police involved in the removal, Henderson was driven around Rockhampton and made a number of telephone calls to the target of Operation Bravo Camp.

(The order authorising his removal from custody permitted Henderson '*to be questioned re. his knowledge of an armed robbery that occurred at Mackay on 8 May 2000.*' Henderson was never a suspect for that offence. However, on the morning of 28 May 2004, he was used by Rockhampton police as an 'interview friend' for a fellow prisoner who had been removed from custody to participate in a 'clear up' interview which involved the Mackay armed robbery offence.)

Little exists by way of official records, however the CMC located a tape recording of some telephone calls made by Henderson on 28 May 2004 from a public telephone. It appears Henderson made the tape recordings himself, while engaged in the telephone conversations. No police officer can be heard on the recordings (although Henderson announces the presence of two officers — despite the fact that the recording purports to have been made inside a public telephone box). Given the content of the third recording on the audio tape, it is difficult to imagine that any police officer was present, or that any police officer ever listened to the audio tape.

According to Henderson's introductory remarks, the third in a sequence of calls was made at 2.55 pm to the target of Operation Bravo Camp. During the ensuing conversation, Henderson directly warned the target that he was the subject of a police investigation. Henderson suggested that the target '*be aware of it, and try 'n stay outta Rocky for the time being, and just keep your head low.*' Henderson also informed the target of some of the police strategies, and remarked that '*if anything else comes up in relation to you, I'll pass it on to [names an associate] 'n he'll pass it on to you.*'

Henderson told the target that he (Henderson) would watch the target's back if the target was prepared to do him a favour later. The target agreed. Henderson gave the target the number of the mobile telephone that had been supplied to him by police for use by 'Reb Carroll'.

A contact advice report was completed by one of the officers who had dealt with Henderson that day. It records that Henderson had informed police that he had been contacted by the target, who '*wanted to attend to some business.*' Henderson had told police that the target had advised he would be absent from Rockhampton for two weeks, and that upon his return he would meet with Henderson.

Clearly, the contact report is at odds with the telephone conversation that had taken place between Henderson and the target.

In light of the tip-off given by Henderson to the target, it is hardly surprising that the investigation was unsuccessful, and no charge was ever brought against the target arising out of Operation Bravo Camp.

Telephone money and other benefits provided to Henderson

Rockhampton police officers first provided money to Henderson around 7 January 2004. On that date, approval was given for a deposit of $90 into Henderson's prison trust account — on the basis that Henderson was making telephone calls in an effort to identify and provide information to police.

There is no evidence to support the assertion that Henderson was making telephone calls for or on behalf of police, much less that any of the telephone calls he made were likely to result in his obtaining relevant information. No contact reports were prepared, no crime intelligence report ever submitted, and no note of any information was made in any running sheet,

notebook or diary. Detective Inspector AN conceded that nothing of value had ever come from any information Henderson might have provided to Rockhampton police.

It also appears that the request for money on 7 January 2004 was the first occasion on which the existence of a 'source' at Capricornia Correctional Centre was made known to the then Regional Crime Coordinator. Notwithstanding, that officer sought no detailed explanation, and did not make any inquiry to ascertain the identity of the 'source', his status as an informant, or whether appropriate records were being kept.

On 20 January 2004, the then Regional Crime Coordinator approved further expenditure to purchase the pre-paid SIM card for use by Henderson. The SIM was purchased in the false name of 'Reb Carroll'. The CMC endeavoured, without success, to explore the circumstances in which the SIM card had been purchased, as no police officer was able to offer a detailed explanation.

According to the then-Regional Crime Coordinator, although asked to approve the purchase, he was not informed that the SIM card was registered in the name of 'Reb Carroll'. (However, the former Regional Crime Coordinator told the CMC he recalled there had been some discussion about the subscriber's name, and he had authorised the purchase of the SIM card so that Henderson could assist police in an investigation codenamed Operation Charlie Buxton. However, the CMC's inquiries revealed that the purchase occurred well before the commencement of Operation Charlie Buxton, and it was a matter in which Henderson had no involvement.)

Detective Inspector AN, who subsequently assumed the role of Regional Crime Coordinator, told the CMC it was his belief the SIM card had been purchased in the name of a police officer, and claimed to have no knowledge of the fact that the false name had been used, nor did he know that Henderson was using that false identity when making telephone calls.

As part of Operation Capri, in May 2006 the CMC inspected a personal locker at the Rockhampton Police Station. The locker (no. 46) had been set aside for Henderson, and bore the identifier, 'The General'.

The locker contained an extensive wardrobe and personal items, including:

- Black suede jacket
- Black leather jacket
- Denim jacket
- 2 pair blue jeans
- Black long trousers
- 3 long sleeve shirts
- Tie
- 2 t-shirts
- White 'Colorado' v-neck shirt, with blue and black trim
- 2 pair black socks
- 4 pair underpants
- Running shoes
- Black 'Florsheim' FLS shoes
- Black & red velcro wallet
- Black 'Amorni' wallet
- False NSW birth certificate in the name of 'Revell Carroll'.[12]
- 'Baleno' watch
- Towel
- 2 x belts (black/grey)
- Sunglasses
- Biro
- 2004 diary
- Kodak Max HQ unused disposable camera
- 4 x 'Crimestoppers' magnets
- Various toiletries

12 The forgery of a NSW birth certificate carries a punishment of two years imprisonment: s. 59 *Births Deaths and Marriages Registration Act 1995* (NSW)

While the Rockhampton police officers who dealt with Henderson were aware that various items of clothing were kept for Henderson in the locker, none of the officers was able to explain where or how the items had been acquired, and all claimed to have no detailed knowledge of the locker's contents.

In the case of the forged birth certificate, as was the case with the SIM card, no police officer claimed to have any knowledge of the source of the birth certificate, although Detective Sergeant ON asserted that he had been told by Henderson that the certificate had been obtained from another law enforcement agency.

It is apparent that those few police officers who acknowledged having been aware of the birth certificate took no step to investigate either its source or its legal status. Similarly, while officers within the Rockhampton CIB were aware of and permitted Henderson's use of the alias 'Reb Carroll', none considered the lawfulness of this action, nor was any consideration given to the possibility that his past use of the alias might have compromised his effectiveness as an informant in future matters.

Assessment of the evidence

If accepted, the evidence regarding the activities of police officers at Rockhampton, and their dealings with Henderson, points to:

- the AFP having been actively deceived as to QPS involvement with Henderson and the investigation of the Mareeba farmer;
- the making of false representations to, and the manipulation of, senior officers to secure the withdrawal of charges against the Mareeba farmer;
- the fact that (in respect of Operation Bravo Camp), Henderson was able to 'tip off' the target of an investigation – while supposedly assisting police in the conduct of the investigation.

As with other aspects of Operation Capri, there is evidence of systemic non-compliance with QPS policies and procedures, particularly in respect of the use made of Henderson as an informant, his use of a false identity, and his involvement in an investigation that was never properly authorised and dealt with a potential breach of federal rather than state law.

However, it is difficult to ascribe any particular motivation to the various police officers who dealt with Henderson. There was no obvious *quid pro quo*, nor any apparent expectation of reward or benefit on the part of the police officers who dealt with him. At best, and to the extent those officers may have believed his 'assistance' was likely to result in some positive outcome, those officers were grossly misguided, and were manipulated by an informant to achieve his own ends.

SEGMENT 7: IMPROPER DISCLOSURE OF CONFIDENTIAL POLICE INFORMATION

Time frame: June 2003 – June 2005

This segment canvasses evidence suggesting that Detective Sergeant OT improperly accessed and provided confidential police information to a prisoner and to a journalist.

> ***… I did have doubts about one section of the information and I told him that, and I think I said something like … you know, be careful with the information or don't just give it out, or something like that, but that's the only time I ever did anything like that.***
>
> ***… I guess that I knew in part that I had some suspicions over the validity of why I was giving him that specific information.***
>
> **— Detective Sergeant OT, disciplinary interview, 28 February 2008**

Background to the investigation

The responsibility of police officers to maintain confidentiality

Police officers are constrained in how they may deal with confidential information in the possession of the QPS.

Section 10.1 of the *Police Service Administration Act 1990* makes it an offence for a police officer to improperly disclose confidential information (see box). Proceedings for such an offence must be commenced within 12 months of the offence occurring, rendering many of the cases uncovered during Operation Capri incapable of prosecution for that reason alone.

10.1 Improper disclosure of information

(1) Any officer or staff member or person who has been an officer or a staff member who, except for the purposes of the police service, discloses information that —

(a) has come to the knowledge of, or has been confirmed by, the officer or staff member or person through exercise, performance or use of any power, authority, duty or access had by the officer or staff member or person because of employment in the service; or

(b) has come to the knowledge of the officer or staff member or person because of employment in the service;

commits an offence against this Act, unless —

(c) the disclosure is authorised or permitted under this or another Act; or

(d) the information is about a person offered an opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 379 and the disclosure is made to the chief executive of the department within which the *Health Act 1937* is administered; or

(e) the disclosure is made under due process of law; or

(f) the information is not of a confidential or privileged nature; or

(g) the information would normally be made available to any member of the public on request.

Maximum penalty–100 penalty units.

(2) In prosecution proceedings for an offence defined in subsection (1), it is irrelevant that information of the nature of that disclosed had also come to the defendant's knowledge otherwise than in a manner prescribed by subsection (1).

The offence created by section 10.1 is also reflected in provisions contained in the QPS Operational Procedures Manual and the Code of Conduct — the stated view of the QPS being that '*there is no excuse for members to betray the public trust by making any unauthorised, improper or unlawful access or use of any official or confidential information*'.

A screen message alerts police officers to their obligations in this regard every time they access the police computer databases. Breach of these provisions provides a basis for disciplinary action against an offending police officer.

> A police officer's ability to access confidential information is controlled by section 17.1.10.13 of the QPS Code of Conduct, which provides:
>
> In the performance of official duties, members of the Service are granted lawful access to many sources of information, confidential or otherwise. With this access comes a requisite level of accountability and trust that the information will only be used for official purposes. It is the view of the Service that there is no excuse for members to betray the public trust by making any unauthorised, improper or unlawful access or use of any official or confidential information available to them in the performance of their duties.
>
> When dealing with official or confidential information of the Service, members are not to access, use or release information without an official purpose related to the performance of their duties.
>
> Where any member breaches this provision they must expect that the Service will initiate appropriate disciplinary or criminal proceedings. Members need to be aware that this type of activity is viewed by the Service as misconduct and any members who breach the provisions of this section will be dealt with accordingly.

What the investigation revealed

By examining the evidence offered by Henderson's recorded telephone communications, the CMC identified instances where it appears a police officer used the police computer system to conduct inquiries on the basis of information provided by Henderson. On some occasions, it appears that the officer made inquiries solely because Henderson had suggested or requested that they be undertaken.

While the CMC considered that sufficient evidence exists for consideration of disciplinary action in some cases, in others the lack of proper record-keeping by the police officer concerned means that the possibility cannot be discounted that a legitimate basis may have existed for the computer inquiries that were made. Accordingly, it would not be appropriate to recommend consideration of disciplinary action in those cases.

Comments upon the failure of individual officers to provide, and for the QPS to insist upon, a proper record of their reasons for accessing confidential information held by the QPS are discussed later in this report (see pages 110–112).

This report examines four incidents of improper use of confidential information. The first three involve checks performed (or suspected as having been performed) by Detective Sergeant OT. The fourth incident canvasses evidence of confidential information provided by OT to a journalist.

Computer checks concerning 'DP' — July and August 2004

In a telephone call to his associate 'M' at 10.53 am on 7 July 2004, Henderson spoke with a male person, 'AP', who was then visiting M's residence.

Told that AP was anxious to locate his estranged wife, DP, in order to serve her with legal papers, Henderson instructed AP to send money to his (Henderson's) solicitor at Rockhampton. Henderson said he would commence inquiries to locate AP's ex-wife as soon as the money was received, explaining to AP that the money was for telephone calls and *'drinks for the right people*' because '*that's how it works*'.

The conversation is reproduced, in part, below:

Henderson:	But listen. You want me to, you want me to obviously spend some time and you want me to find this missus of yours?
AP:	Yeah, mate, yeah, if possible.
Henderson:	And, all right. Listen, do me a favour. If I'm going to have to work through it over the weekend, cause I'll put aside, aside some time to do it.
AP:	Yeah.
Henderson:	I'll ring the appropriate people I need to ring to punch up the relevant information, if you know what I mean?
AP:	Okay —
Henderson:	And find it. Just do me a favour and just, just send some phone money down to, down to, down to me law firm and, and I'll, I'll chase it and I'll get all, I'll get everything that you need.
AP:	All right, so, so what I do exactly? I'm not sure, mate.
Henderson:	Well, just talk to, just talk to [M].
AP:	Yep.
Henderson:	She knows how to get it there.
AP:	Okay.
Henderson:	What you do is you just, you send it down, just send it down to the, you just send it down to the law firm's account —
AP:	Right.
	…
Henderson:	Just send it down to him and I'll utilise, I'll utilise, utilise that for phone calls and few drinks for the right people and --
AP:	(laughter) No worries, mate.
Henderson:	And, well, that's how it works.
AP:	Yep, no worries. I'll, I'll —
Henderson:	And —
AP:	I'll just talk to [M] and she'll sort it, she'll tell me what to do.
	…
Henderson:	Just, just do that and then if I can get, and I'll get it underway. If you can get that down there, it only takes an hour to send it.
AP:	Okay.
Henderson:	And I'll, I'll work out through our, through the whole weekend.
AP:	Yeah.
Henderson:	And into the, into the week and I'll, I'll find exactly where she is.
AP:	All right, mate, yeah. It's just, like, the rumour's going she went to WA, so I don't know —
Henderson:	Yeah, well, I've got a good mate over there. I've got a good, I've got a good brief, mate of mine over there. It won't matter, won't matter what state it is, you know I mean? I'll, I will find her. It'll just —
AP:	Yeah.
Henderson:	— it's just going to take me some legwork and I may just have to tap into a few people. You know what I mean?
AP:	Yep, yep, no worries, mate.
Henderson:	To get me up the right information.
AP:	That'll be fine, mate, hey. So if, you know, whatever, whatever it takes.
	…

AP: — as soon as I can, that'll be good to know where, what's happening, so I can give her papers mate [unintelligible]

Henderson: All right.

AP: — whatever.

Henderson: All right. Well, I'll, I'll find her. Don't worry about that.

AP: That'll be great. I'll, I'll talk to [M] and I'll organise —

Henderson: Yeah.

AP: — it for you and —

Henderson: Yeah, just, just tell [M] to, just tell [M] to get it down to me by Friday. That way I can just boot and I'll, I'll get straight into it.

AP: Okay, that sounds great.

…

Henderson: All right, mate.

…

Henderson: — just get some funds transferred down into the account and then I'll get straight onto it.

AP: Sounds good, mate.

In a subsequent telephone conversation with M at 11.53am, Henderson provided the details of his solicitor's trust account, and further discussed the issue of money.

Henderson initially demanded '*a grand*', but eventually agreed that M should tell AP to '*make it anywhere between two and five hundred*'. He also said he needed the money to '*prompt a couple of people the right way*' in order to obtain the information AP was seeking.

That both Henderson and M appreciated the inappropriateness of what Henderson was about to do is evidenced by the following exchange:

Henderson: Just tell him to send that and I'll make the calls. You know what I mean — is going to cost me a fucking fortune.

M: I know, and I said to him, just so you know, I said – 'Mate, it's best if he does it because I don't do this sort of thing.'

Henderson: Yeah.

M: I've already been charged before and it's corruption.

Henderson: Yeah.

M: Which is right.

Henderson: Yeah.

M: And, um, and I said, 'He can do it in a way that I can't.'

Henderson: Yeah.

M: And that's the truth of the matter, isn't it?

Henderson: Yeah, yeah, that's exactly right.

CMC inquiries established that a sum of $250 was deposited by AP into the trust account of Henderson's solicitor the next day, 8 July 2004.[1]

At 9.43 am the same day, Henderson made a telephone call to Cleveland Police Station. The call was eventually diverted to AP's telephone number. The call, which was about 10 minutes duration in total, was classified as 'legal', so nothing of what was said was recorded.

1 A receipt was issued by the solicitor on 9 July 2004, indicating the money had been paid by AP.

Between 10.00 am and 10.03 am (i.e. less than 10 minutes after Henderson's call to the police station) Detective Sergeant OT's user-name and password was used to access the police computer and perform various inquiries in relation to 'DP', AP's estranged wife.

No entries were made in OT's diary or notebook about these computer checks.

At 12.07 pm, the Mareeba tobacco farmer (referred to in the previous segment detailing Operation Charlie Zita) telephoned Henderson's solicitor,[2] made reference to the fact that AP had paid $250 into the solicitor's trust account, and advised that 'Reb'[3] needed money transferred into his (prisoner) telephone account as soon as possible. Inquiries have confirmed that money was transferred from the solicitor's account into Henderson's prison trust account on that day.

Henderson telephoned M at 2.23 pm, leaving the voice message, 'He will probably know Monday or Tuesday on the [DP] matter and that's already in train.'

At 3.46 pm, Henderson placed a telephone call to an extension situated in the Armed Robbery Unit (within QPS Headquarters). This call was diverted to AP. (There is no recording of the conversation because the call was initially made to a police station and fell into the category of calls that were not subject to automatic recording.)

On the next day, 9 July 2004, Henderson made a telephone call to Cleveland Police Station at 2.40 pm. At 4.46 pm, he made a telephone call to M, leaving a voice message that he had 'checked that thing for AP and there is no vehicle registered to [DP] in Queensland or throughout Australia.' Henderson also gave details of DP's last known residential address.

The information conveyed by Henderson in the course of that telephone call to M corresponds with the nature of the inquiries made using Detective Sergeant OT's user-name.[4]

About a week later, on 14 July 2004, Henderson made a telephone call (at 10.40 am) to the Cleveland Police Station. A short time later, the call was diverted to the Mareeba tobacco farmer (and was thereafter the subject of lawful interception by the AFP). In the course of the call, Henderson told the Mareeba tobacco farmer to make sure AP got 'the full name and registration'.

At 11.08am, Henderson made another call to the Cleveland Police Station, and, yet again, the call was diverted to the Mareeba tobacco farmer (and was lawfully intercepted by the AFP). During the ensuing conversation, the Mareeba tobacco farmer told Henderson that AP was on his way with the details. Henderson and the farmer shared a laugh over the fact that AP had been told Henderson was a '*private investigator*'.

On 16 July 2004, Henderson called M on a number of occasions, and M conveyed further background information on DP, including the registration number of her last-known motor vehicle, and the fact that DP had a new boyfriend, named 'TH'.

In the course of a telephone conversation made to M at 11.38 am on 20 July 2004, Henderson complained this was the cheapest favour he had ever done. He referred to AP having paid $250, but said he intended to ask for a further $500.

At 12.25 pm that day, Henderson called the Cleveland Police Station. The call was terminated at 12.31 pm.

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2 This call was lawfully intercepted by the AFP.

3 A reference to 'Reb Carroll' – a pseudonym for Henderson.

4 The CMC is aware that between 10.00 am on 8 July and 4.46 pm on 9 July 2004, Henderson had made telephone calls to a number of police officers. However, Detective Sergeant OT is the only police officer to have performed computer checks about DP.

At 12.27 pm (i.e. while Henderson was on the line), Detective Sergeant OT's user-name was used to conduct checks of the QPS computer on the registration number previously identified to Henderson as belonging to DP's former motor vehicle.

Between 12.28 pm and 12.31 pm, OT's user-name was also used to explore traffic infringement notices issued for that motor vehicle, including a ticket that had been issued to TH (DP's 'new boyfriend').

Again, nothing of these computer checks is recorded in OT's notebook or diary.

The following morning, at 11.25am, Henderson called the Cleveland Police Station, and the call was subsequently diverted to the Mareeba tobacco farmer (and was lawfully intercepted by the AFP).

In the course of this call, Henderson announced he had 'found that vehicle'. He explained that the vehicle had been sold to a motor dealer, and that only one month previously TH had been 'booked' while driving the vehicle. Henderson identified the address featured on TH's traffic ticket, and suggested it might be an old address. (He offered to *'get the exact date and where it was that they got the ticket'*.)

Henderson suggested that AP should visit the motor dealer to see if he could identify whether the car had been traded for another vehicle. He said:

> … we might be able to find out cause they probably traded it in to buy another vehicle. You know what I mean? ... So you know, if the old Reb was up there, mate, I'd be going down to the [motor dealer] spieling a story that this was my fucken car, etcetera, etcetera, and it got fucken stolen and fucken blah, blah, blah. And find out what car they traded it in for. But anyway, I will, if worst comes to worst, mate, I will get one of my friends down in Brisbane, in the job, to make the inquiry with that mob.

The evidence discloses that DP proved elusive, and Henderson's efforts to locate her continued through August and September 2004. Henderson indicated to the Mareeba tobacco farmer as late as 6 September 2004, that *'his mate'* was doing a *'warrant check'* and had *'put in a bodgie report so he could get the additional information.'*[5]

On 14 September 2004, the AFP discontinued its interceptions of the telephones used by the Mareeba tobacco farmer, with the consequence that the CMC was unable to ascertain what information, if any, was ultimately conveyed about DP's whereabouts.

For its part, the CMC was itself unable to locate DP.

5 Other than the computer checks conducted by Detective Sergeant OT, there is no evidence of any other Queensland police officer making any relevant inquiry about DP or TH.

The evidence suggests that on 8 July, and again on 20 July 2004, Detective Sergeant OT conducted checks of the QPS computer databases with a view to locating information relevant to DP.

On 6 August 2004, at Henderson's direction, $200 was withdrawn from the solicitor's trust account and deposited into OT's TAB betting account.

When the CMC questioned him about this payment, Detective Sergeant OT denied that the money represented payment for the searches conducted for DP. Instead, OT claimed the $200 represented Henderson's contribution to an informal joint betting arrangement, whereby the two would regularly place small bets on horse races. According to OT, the money was gradually spent on unsuccessful bets.

Detective Sergeant OT's explanation does not fit the account history – which reveals no history of betting of the type described by OT. Indeed, the $200 was left untouched in the account until 23 September 2004, when a single cash withdrawal of $225 was made.

The suspicion must remain that the $200 was payment to OT for the information he obtained for Henderson.

The available evidence confirms that Henderson's endeavours to locate DP had no legitimate law enforcement purpose. Furthermore, the failure of Detective Sergeant OT to keep any record of his searches points to an acknowledgment by him that the searches served no official purpose.

The CMC recommended that consideration be given to disciplinary action against Detective Sergeant OT in respect of this matter.

On 24 August 2004 when, in conversation with M, Henderson asserted that '*his source*' wanted a guarantee that AP would not '*do anything stupid*' with the information that could lead back to '*the source*'. In a telephone conversation with the tobacco farmer on 25 August 2004, Henderson said that his '*mate*' was concerned about how the information was likely to be used. Henderson explained that his source wanted to be informed if something was going to happen, so that he (the source) '*could cover his back*.'

When interviewed by the CMC about this matter in February 2008, Detective Sergeant OT said he could recall a conversation in which he had warned Henderson to be careful with the information he (OT) was providing. OT conceded that he would have been prudent to have made a note of the checks he had made, but could not offer any reason for not doing so. He denied the suggestion that there was no valid purpose for conducting the checks, but was unable to identify the basis for them.

Computer checks concerning 'AB' — August 2004

At 1.47 pm on 3 August 2004, a telephone call made by Henderson to the Cleveland Police Station was diverted to the Mareeba tobacco farmer.

In the course of the ensuing conversation (lawfully intercepted as part of an AFP investigation) the tobacco farmer asked Henderson to conduct a background check on 'AB', who was referred to as a 50-year-old Sicilian believed to be residing interstate.

By way of further explanation, the tobacco farmer told Henderson that it was proposed to give AB a '*flogging*' because he had threatened one of the tobacco farmer's friends. The concern was to first ascertain whether AB had '*a crew*' protecting him.

At 4.03 on 9 August 2004, Henderson telephoned and spoke to someone at the Cleveland Police Station.

Shortly after Henderson's call, at 4.11 pm, the police computer was accessed using Detective Sergeant OT's user-name, and various checks were conducted in relation to AB.

At 4.21 pm on the same day, Henderson again telephoned Cleveland Police Station and conducted a conversation for several minutes before his call was diverted to the Mareeba tobacco farmer (from which point it was intercepted by the AFP).

In the course of his conversation with the tobacco farmer, Henderson spoke of the checks that had been conducted on AB, asserting that the name had been run through the *'national computers'*, that AB had been identified as a member of a Victorian-based Italian family, and that AB was the subject of restraining orders.[6]

The CMC confirmed that Detective Sergeant OT made no reference to the computer checks in his official police notebook or diary, nor was any entry made in any intelligence databases about any information OT might have legitimately received from Henderson about AB.

The CMC interviewed OT about this matter on 28 February 2008. He claimed to be unable to remember receiving any information from Henderson about AB, but suggested he must have conducted the computer checks based upon information that had been provided to him by Henderson. He could not recall passing any information back to Henderson.

As explanation for his failure to record any details of that information, OT merely claimed that Henderson had provided him with a great volume of information over time. He conceded that by failing to record it, such information was effectively *'lost'*.

The evidence supports a conclusion that Detective Sergeant OT conducted checks of the police databases on the basis of a request initially made of Henderson by the Mareeba farmer. The circumstances also suggest that information gleaned by OT found its way back to the tobacco farmer.

The fact that OT made no record of the matter supports the inference that his inquiries had no law enforcement purpose.

The CMC recommended that consideration be given to taking disciplinary action against OT in respect of this matter. His resignation meant that such action was no longer necessary.

Computer checks concerning 'SM' — January–April 2005

During their telephone conversations on 24 December 2004, M asked Henderson to assist in locating 'SM', who, it was said, owed money to a woman called 'B', who was a friend of M.

M explained to Henderson that B had lent SM the sum of $10 000 and he had only repaid $2000. M asked Henderson whether *'someone might be able to check him out'*.[7]

In a telephone call later that day, Henderson informed M (and through her, to B) that he would check out SM, but that it would not occur until after Christmas. Henderson promised he would find SM and might be able to arrange for someone to *'pay him a visit'* for *'a quiet chat'*.

The next relevant mention of SM came in a telephone call Henderson made to M on 28 February 2005. Henderson said he would talk to his *'big mate'*[8] and would also call *'Baby Face'*[9], who, according to Henderson, was then on leave for *'two more weeks.'*[10]

6 Henderson's claims were consistent with checks that are known to have been performed.

7 She made specific mention of OT's Christian name.

8 Believed to be a reference to Detective Sergeant OT.

9 A reference to Detective Sergeant AS.

10 Detective Sergeant AS was on leave 19 February – 11 March 2005.

It is apparent from a number of subsequent calls to M that Henderson was experiencing difficulty reaching his police contacts.

During a telephone call on 3 April 2005, Henderson and M discussed '*B's thing*'. Henderson said he had the matter in hand, and made the comment, '*When have I ever not located someone I want to find?*'

In the course of the same telephone call, Henderson also spoke to B, assuring her '*there's never been a person in this country that I can't find.*' He added that SM '*won't be so fucken smart when he finds out who's looking for him*'.

Ultimately, on 15 April 2005 Henderson promised M that he would '*hunt down SM this weekend*', because he had the '*right people in the right offices working on the weekend*'.

At 11.34 am the next day, Saturday, 16 April 2005, Henderson made a telephone call to the Cleveland Police Station. The call lasted almost 10 minutes.

At about the same time, Detective Sergeant OT's user-name was used to access the QPS computer and conduct various searches in respect of SM. (The QPS computer timings do not precisely coincide with the telephone records; however, the timings are sufficiently proximate to suggest that the checks were made while Henderson remained on the telephone.)

At 11.51 am, Henderson telephoned M, asking when he should call back to speak to B. Henderson said, '*I have some good news. I found him.*'

At 12.07 pm, Henderson again spoke to M, conveying details of SM's address, and indicating that he would '*get back to what vehicle he's got and all the rest of it soon*'.

On 21 April 2005, Henderson called M and was able to speak with B. He discussed with her the option of making a criminal complaint about SM's conduct, but suggested that this would not be the best option. Instead, Henderson said, '*… maybe I steer the right people in … and go down there and say, "Listen, you piece of shit. This woman did the right thing by you, helped you out. There's going to be all sorts of drama for you and we'll just give you a vision of what sort of drama it's going to be for you".*'

When interviewed about this matter by the CMC, Detective Sergeant OT accepted that he would have conducted the computer checks on SM, but denied that he would have been told that M was trying to locate SM to retrieve money.

No diary, notebook or other entry concerning the computer checks was made by OT, so no official record exists to substantiate the legitimacy or otherwise of OT's actions.

The available evidence points to Henderson having been advised of SM's address, and, in turn, providing that information to M. Detective Sergeant OT claimed not to be able to remember whether or not he communicated SM's address to Henderson, although he asserted that had he done so, it would have been because Henderson had convinced him (OT) of the need to do so.

The available evidence suggests that OT's computer checks served no law enforcement purpose.

The CMC recommended that consideration be given to disciplinary action against OT in respect of this matter, however his resignation meant that such action was no longer necessary.

Discussion of issues

The evidence suggests that, on occasions, Henderson used the confidential information provided to him by OT for his own criminal purposes, or otherwise conveyed it to his criminal associates.

Operation Capri was able to expose this conduct because Arunta recordings exist in the case of many (but not all) of Henderson's telephone calls from prison, as well as the limited telephone interception material that had emanated from Australian Federal Police investigations. Pieced together, the disparate recordings illustrate the extent of Henderson's dealings in confidential police information.

Because a large proportion of the telephone calls made by Henderson from prison were placed to police stations, and were thus classified as 'legal', the calls were not subject to routine recording under the Arunta system. Therefore, one must infer from the circumstantial evidence the nature of the exchanges likely to have taken place between Henderson and those police officers to whom he spoke.

The unrecorded conversations also included a very large number of telephone calls that were unlawfully diverted to third parties by complicit police officers. The effect of this practice is that (with the exception of calls intercepted by the AFP) whenever Henderson spoke to his associates by means of a telephone call diverted through a police station, no recording was made of the conversation.

Consequently, while Operation Capri has identified some instances where Henderson appears to have improperly accessed and used confidential police information, the 'gaps' in the evidence caused by the non-recording of particular telephone conversations means that, without testimony from Henderson, no criminal prosecution would be possible.[11]

Evidence of confidential information provided to a journalist

The CMC received the assistance of the Australian Crime Commission (ACC) in the early stages of Operation Capri.[12] The ACC's assistance involved, in part, use of authorised telephone interceptions between 14 March and 21 April 2006.

One of the telephone lines intercepted by the ACC was the personal mobile telephone service of Detective Sergeant OT.

The intercepted calls to that line included seven conversations, on 26–27 March 2006, between OT and a television journalist.

In those conversations, the television journalist sought, and OT provided, confidential police information about a murder investigation then being conducted out of the Cleveland Police Station. Moreover, the telephone interceptions revealed that, having provided the confidential information, OT received a carton of beer from the journalist in circumstances where it may be inferred that the carton of beer was intended as a payment for the confidential information.

By way of brief background, at the relevant time OT was a Detective Acting Senior Sergeant, and was in charge of the Cleveland CIB. He was also both the nominated manager of the major incident room, and performing a media liaison role in respect of the police investigation into the murder of an elderly lady at a retirement home near Cleveland, on 18 March 2006.

11 The CMC considers that no criminal prosecution would be possible where the matter would be dependent upon evidence from Henderson or his close associates.

12 This occurred at a point when the evidence (as identified during the AFP's telephone interceptions) gave rise to a suspicion that Queensland police officers may have been corruptly involved in planning for the drug importation referred to the previous segment.

On the afternoon of 26 March 2006, police commenced an interview at the Cleveland CIB with a 16-year-old suspect, whose fingerprints had been identified on what was thought to be the murder weapon. The youth was formally arrested in relation to the murder at 5.28 pm that afternoon.

At 6.31 pm, OT received the first of the seven telephone calls from the journalist (who called again, at 7.26 pm and 9.51 pm.)

During these conversations, the journalist sought and was given confirmation by OT as to the progress with the investigation. The journalist was also given confirmation that once he had been charged, it was proposed to transport the youth away from the Cleveland Police Station to a detention centre. This was to occur late in the evening, and OT informed the journalist of the likely time of that movement, and indicated from which door of the police station the accused was likely to emerge.

The plan for the youth's movement was relevant because, as was clear from his comments to OT, the journalist was anxious to obtain video footage of the accused emerging from the police station. The information provided by OT prompted the journalist to ensure a cameraman stayed in the vicinity of the police station (and near the relevant door). The cameraman was thus able to capture footage of the accused being driven away from the police station. That footage was subsequently broadcast by the journalist's employer with a screen banner claiming it as 'exclusive'.

The following morning, the journalist telephoned OT on four further occasions: at 7.55 am, 10.18 am, 10.32 am and 10.33 am.

During the first call, he thanked OT for his assistance the previous evening, and confirmed that the video footage had been obtained. He then sought, and OT provided, information pertaining to the aspects of the offence and the personal circumstances of the accused, the accused's family, and the victim's family. This included information that had not to that point been officially released by the QPS, and which may be regarded as confidential information. (Some of the information concerning the accused and his family could never be released publicly, given that the accused was a juvenile and the proceedings were to be conducted in the Childrens' Court.)

The journalist then again thanked OT for his help and added that he had *'a carton to drop down'*.

The remaining three calls evidence the journalist's efforts to deliver the carton of beer to OT.

In the call at 10.32 am, for example, the journalist explained he was having difficulty getting the carton to OT because other journalists were present in the vicinity. He asked OT whether he (the journalist) could drive somewhere to meet OT, because he did not wish to be seen with the carton of beer. In the following call, at 10.33 am, OT directed the journalist to a carpark near the CIB office, where OT said he wait by the door.

The evidence of these telephone conversations having been formally disseminated to the CMC by the ACC, a separate investigation was conducted in respect of the actions of OT and the journalist.

Both were called to and examined before an investigative hearing. Information and other evidence was obtained from the journalist's employer.

In the course of his evidence to the CMC, Detective Sergeant OT conceded having received the carton of beer and other benefits (including, on another occasion, 10 tickets to a rugby league match) from the journalist.

However, both OT and the journalist denied that the carton of beer (which, according to the journalist, had been supplied by his employer) was intended as a payment for the provision of confidential information.

The journalist's evidence was of a general nature: he claimed that he felt compelled by his obligations as a journalist not to answer questions which might necessitate the volunteering of information that might directly or indirectly disclose the identity of a confidential source. He therefore '*declined*' to acknowledge the circumstances attaching to the provision of the carton of beer, stating only that he had in the past given '*goods in kind*' to police officers as a '*goodwill gesture*'.

The journalist also rejected the proposition that the gift of the carton of beer, to which he had been referred in evidence, was intended as a payment for the provision of confidential information, and rejected the notion that OT's actions were undertaken on the understanding that some sort of consideration would be forthcoming.

Consideration of criminal proceedings

Section 87(1) of the *Criminal Code* makes it an offence (Official corruption) for a person such as a police officer to corruptly ask for, receive, or obtain any property or benefit of any kind on account of anything already done or omitted to be done in the discharge of the officer's duties. A person who corruptly gives, confers or procures, or promises or offers to give or confer the property or benefit commits the same offence (section 87(2)).

The CMC was cognisant of the low monetary value of the benefits received by Detective Sergeant OT. After informal consultation with the then Director of Public Prosecution, it was determined that the matter was not one in which a criminal prosecution would be justified. (But for his resignation, a recommendation would have been made that disciplinary action be considered against Detective Sergeant OT.)

The conduct of both OT and the journalist was at best, improper.[13]

Furthermore, their behaviour suggests a brazen attitude toward the giving out of confidential police information to journalists. This should be a concern to the QPS.

13 And a breach of their respective codes of conduct.

SEGMENT 8: PAYMENT OF A REWARD TO HENDERSON

Time frame: 27 January – 14 March 2005

This segment of the report examines circumstances in which police officers sought and obtained for Henderson a $5000 reward, supposedly in recognition of the assistance he had given to law enforcement. Operation Capri identified evidence suggesting that Detective Sergeant AS provided false and misleading information in support of the recommendation that Henderson be paid the reward, and there is evidence that Henderson subsequently arranged for $1000 to be deposited into AS's bank account.

> ***…when I found out there'd been money deposited into my account I nearly fell over, because it, that'd be the most stupidest thing to do is get someone put something directly in your, into your bank account because, it's obviously there and physical, I had no clue whatsoever.***
>
> **— Detective Sergeant AS, disciplinary interview, 28 November 2008**

What the investigation revealed

Operation Capri's review of Arunta recordings of Henderson's telephone conversations revealed that he had received a monetary reward from the QPS, and that a portion of the reward money may have been paid back to the police officer who had sought the reward on Henderson's behalf.

Inquiries confirmed that, in January 2005, Detective Sergeant AS had sought the payment of a $10 000 reward — the highest possible — for Henderson.

Detective Sergeant AS prepared a three-page application which cited Henderson's purported assistance to police in the investigation of offences involving nine offenders. The application was submitted through the chain of command to the Reward Evaluation Committee (Reward Committee) of the State Crime Operations Command.

On 21 February 2005, the Reward Committee assessed the application against criteria listed in the State Informant Management System (SIMS) Policy. The criteria include:

- the type of action undertaken by the informant (e.g. whether the informant agrees to act as a witness in court proceedings or simply provides information leading to the identity of an offender)
- the number of offences solved as a result of the information
- whether or not the informant has received any other payments, favours or promises (either in connection with the investigations mentioned in the application, or not).

No written record was prepared of the Reward Committee's consideration of Detective Sergeant AS's submission, but an audio recording was made of the deliberations.

On 21 February 2005, a recommendation was made to the Assistant Commissioner, State Crime Operations Command, that payment of a reward of $5000 to Henderson be approved. The Assistant Commissioner endorsed the recommendation and referred it to the Deputy Commissioner who, on 25 February 2005, approved the payment of $5000 to Henderson.

The evidence, if accepted, suggests that the information contained in AS's submission was misleading, particularly in the sense that it greatly exaggerated the extent of Henderson's assistance to police, and omitted reference to other payments and favours previously received by him.

Detective Sergeant AS's application asserted, in part:

> 6. … [Henderson] has produced results that have exceeded even my own expectations. This individual has the unique ability to gain the trust of fellow inmates and convince them to clear up outstanding criminal offences …
>
> 7. … [Henderson] has directly contributed to the solving of outstanding serious criminal offences. In all instances the offenders have contacted the reporting officer, after speaking with [Henderson], and requested a meeting where they expressed a desire to clear their outstanding matters. As a result, all offenders participated in electronically recorded interviews and made full taped admissions to their involvement in outstanding offences.
>
> 14. Throughout my entire association with [Henderson] he has never asked or received favours from the Police Service. It appears his motivation for assisting law enforcement is purely in the interests of justice.
>
> 17. A perusal of jobs highlighted as being directly attributable to the efforts of Henderson include murder, armed robbery, unlawful wounding, unlawful use of a motor vehicle, arson and numerous deprivations of liberty. All of these offences would have gone undetected and unsolved without the contributions of Henderson. …

Assessment of the evidence

The evidence identified during Operation Capri suggests that:

- Henderson could not possibility have had any involvement in the investigation of at least four of the nine matters identified by AS, and the claim that Henderson provided assistance in other matters is also dubious. (Of the four matters, AS was the arresting officer in only one. The arresting officers in the other three cases were examined by the CMC and claimed to have no knowledge of Henderson providing assistance. The accused person in the matter in which AS was arresting officer claimed Henderson had nothing to do with his case – and explained that Henderson wasn't even at the same prison. Likewise, the other three offenders told the CMC that Henderson had nothing to do with influencing their decisions to confess to police regarding their crimes.)
- AS also exaggerated the outcome of investigations by inaccurately identifying offences for which the various offenders had been convicted, and omitting reference to recommendations that had been made for early parole, and instances where sentences imposed on an offender had been suspended either wholly or in part.
- AS had stated that throughout their association, Henderson had never asked for or received favours from the QPS. The available evidence records that over the relevant period, Henderson had received at least $1380 from a reward fund managed by the ARU — supposedly for the provision of information in relation to various armed robbery offences. At least $470 of that reward had been personally paid to Henderson by AS.
- AS failed to disclose that in February 2003 he had provided a 'letter of favour' (i.e. a personal reference) on Henderson's behalf to the Director-General of Queensland Corrective Services.[1]

There is little room for AS to have been mistaken about what he wrote in the application. Apart from his failure to refer to the earlier personal reference he had provided on Henderson's behalf, and the payment of prior reward monies, in some of the cases in which he (falsely) nominated Henderson as playing a part, AS had himself been the arresting officer and may be safely presumed to have known that the claim of Henderson's involvement was untrue.

1 The letter supported Henderson's application to be re-classified as a low-security prisoner, and suggested Henderson had been personally responsible for the apprehension of numerous offenders. QPS policy in relation to reward applications specifically required Detective Sergeant AS to disclose information about this letter of favour in the reward application.

Disbursement of the reward proceeds

The $5000 reward was paid to Henderson on 8 March 2005. On his instructions, the money was deposited into a bank account operated by his associate, M.

Funds were then disbursed from the account as follows:

- 11 March 2005 — A money order drawn on Australia Post was used to pay $1000 into Henderson's prison trust account.
- 14 March 2005 — $1000 was deposited into an account of one of Henderson's associates.
- 14 March 2005 — $1000 was deposited into a home loan account operated jointly by Detective Sergeant AS and his wife.
- 18 March 2005 — $1000 was deposited in favour of Henderson into the trust account of Rockhampton solicitors.
- 18 March 2005 — $800 was deposited into another account operated by M.

From 7 to 18 March 2005, the Arunta system recorded numerous telephone calls in which Henderson spoke of the reward and his intentions as to its disbursement.

On 7 March 2005, after being informed that the reward had been approved, Henderson telephoned M and instructed her to contact AS and tell him:

> …that I love him for what he's done and tell him that I greatly appreciate it and … tell him he's got a surprise coming in the mail.

During the course of that call, Henderson boasted:

> … I'll be the only crim in jail that's raised eighty grand this year and spent the whole fuckin' lot ...

Later that day, M told Henderson that she had advised AS that a gift was on its way.

Henderson also instructed M to send $1000 to 'Babyface'[2] in an envelope with a card:

> … I want a card put with it … just put down there, 'I've always regarded you … as one of my best mates and also the best partner I've ever had. Here's a little gift of thanks for you and [AS's wife] to help out with little [child's name]. Love always, The General'. … I want it to be a surprise for Babyface when he turns up but you just find a really nice mateship card and no fuckin' money orders, no nothin', so there's no record.

The evidence discloses that Henderson's initial plan was to have M deposit the 'gift' at a Red Hill Post Office, that address having been nominated by AS. However, by 14 March 2005, the plan had changed, and M attended the Earlville Branch of the Westpac Bank where she made an over-the-counter deposit of $1000 directly into AS's home loan account. The transfer was processed and AS's account was credited on the same day.

Call charge records reveal that, during the period in question, M made a number of telephone calls to AS. Of course, no recordings exist of these calls, or of the telephone conversations Henderson may have had with AS via QPS telephone diversions.

In evidence to the CMC, M acknowledged having transferred money to Detective Sergeant AS, but otherwise gave conflicting accounts of her conduct.

In his testimony to the CMC, AS admitted that M had given him approximately $1000 at some time in early to mid-2005. However, according to AS, the money represented repayment of expenses incurred by AS on Henderson's behalf. AS asserted that the payment of these expenses had fallen outside his normal police duties, and had included the purchase of presents at Henderson's direction for M's daughter.

2 A reference to AS.

According to AS, on one occasion he was advised by M that a money order was waiting for him at the Spring Hill Post Office. AS said he collected the money, and kept it, claiming he had no direct knowledge of the origin of the money, other than the fact it had come from M.

AS otherwise denied receiving money from Henderson or M, and said he was unable to recall M ever depositing money into his home loan account. He could not recall supplying M with details of his bank account, and told the CMC:

> [T]here's numerous times when something like this could have happened, but as far as me giving her bank account details, I didn't, I don't know, and that is the honest truth. I wouldn't have a clue about any of my banking account details which makes that, that, transactions, highly unusual.

AS's wife was also examined about this issue, but claimed to have no knowledge of the $1000 deposit into the home loan account.

Consideration of criminal and disciplinary proceedings

Detective Sergeant AS resigned from the QPS and therefore, no basis exists for disciplinary action against him.

For a number of reasons, it is the CMC's view that the public interest would not be served by the pursuit of criminal charges in respect of AS's involvement in securing the $5000 reward, and his subsequent receipt of $1000. This is principally because there is no direct evidence of AS's dealings with Henderson or M. Any criminal prosecution against him would require evidence from Henderson or M – neither of whom is likely to be regarded as a credible witness.

As M had acted as a mere conduit in disbursing the money to AS, it was considered that criminal proceedings against her in that regard were not warranted.

SEGMENT 9: OPERATION DELTA FAWN

Timeframe: June – September 2005

Operation Capri investigated the circumstances in which Henderson claimed that a fellow prisoner had made a 'jailhouse confession' to a murder. Henderson subsequently gave evidence as a prosecution witness in proceedings against the fellow prisoner. The evidence gives rise to a suspicion that certain police officers at Rockhampton colluded with Henderson in order to conceal the true circumstances of Henderson's role in the police investigation.

> ***… I didn't ask for much, only a safe place under a palm tree on the farm … Mentally I'm strong and focused … and I will be ready and prepared for the (onslaught) in court! … I need to look and feel right and that's what makes me perform and perform well! … The DPP should knock in with $200 a month for phone calls for me to Victoria to stay in touch with family. It's the least they could do …***
>
> **— Henderson, in a letter to a Rockhampton police officer, 7 October 2005**

Background to the investigation

By monitoring his Arunta calls, the CMC became aware that Henderson had begun referring to himself as a key prosecution witness against two persons who were facing prosecution for murder. In particular, the recordings revealed that Henderson was hoping to secure an early release from custody as a result of the assistance he was providing to the QPS in those two prosecutions.

Because of the nature of the other allegations then being investigated, the CMC decided to investigate Henderson's claims as part of Operation Capri.

That further investigation focused on the actions of two Rockhampton-based police officers who, in mid–2005, appeared to have tasked Henderson to elicit 'jailhouse confessions' from two suspects in three murder investigations conducted by the QPS, namely Operations Delta Caste, Delta Gamin and Delta Fawn.

In respect of the criminal prosecution proceedings that stemmed from the Delta Fawn investigation, there is evidence pointing to an attempt to conceal from the courts the true extent of Henderson's role in the various murder investigations.

In that regard, a brief of evidence was referred by the CMC to the Director of Public Prosecutions. The two police officers and Henderson were each charged with attempting to pervert the course of justice. The charge against Henderson was dismissed after the committal proceedings. Both officers have been committed to stand trial.

So as not to prejudice the criminal proceedings against the two officers, this segment contains relatively scant detail.

Operations Delta Caste and Delta Gamin

To appreciate the significance of Henderson's involvement in Operation Delta Fawn, it is useful to have some understanding of his role in two earlier QPS murder investigations: Operation Delta Caste and Operation Delta Gamin.

These QPS investigations had been conducted in the few months preceding Operation Delta Fawn, and had culminated in the charging of a man for the murders of Edmund Payne and Nicole Lieske, who had both been killed near Rockhampton in May 2005.[1]

The offender had been arrested by police in connection with Payne's murder in May 2005, after he had confessed to the offence. However, it was not until 25 September 2005 that he was charged with the murder of Lieske (although he had been a suspect almost from the time of his arrest in May).

Although he was interviewed in respect of Lieske's murder on a number of occasions between May 2005 and 5 July 2005, the offender had consistently told police he had merely disposed of her corpse – having discovered her already deceased body. He maintained this version until 6 July 2005, when it seems he made various admissions to Henderson at the Capricornia Correctional Centre.

The offender then subsequently made admissions to police during a formal interview process, which meant it was unnecessary for Henderson's involvement as a witness to be exposed.

The evidence is unclear as to the precise role played by Henderson, but there is little doubt how he saw himself.

Following his arrest in respect of the Payne murder, the offender was initially held in the Rockhampton Watch-house, before being transferred to Capricornia Correctional Centre on 6 June 2005. There he was placed in the same area as Henderson until shifted to another cell on 15 August 2005.

On 7 June 2006 — the day after the offender's arrival at the prison — Henderson was recorded on the Arunta telephone system referring to the arrival within the prison of '*Mr Murderer*', and the fact that he had a '*high-profile guest in his unit*'. Henderson also commented that he had been spoken to '*on the quiet*' about the matter, and added that this was '*a project*' put together especially for him.

Later that day, Henderson stated in another telephone conversation that he was getting on well with '*Mr Murderer*', and that '*Mr Murderer*' had told him he '*shot the guy once and then put a few more into him*'.

Henderson also commented he was still to contact Detective ON to get a briefing and see '*what the game plan is for this bloke*'. The call activity report for Henderson's Arunta account shows that a call was subsequently made to the Rockhampton CIB, along with two 10-minute calls to Detective Sergeant OT at Cleveland. Having the status of 'legal' calls, these conversations were not recorded.

An entry in OT's diary for 7 June 2005 confirms he received '*2 x phone calls from "The G"*'[2]. An entry for 9 June reads: '*Phone call from "G" re murder investigation*'. The entry also contains reference to Detective ON.

Records for Henderson's Arunta account and the ad hoc log of Henderson's diverted calls maintained at the Cleveland Police Station reveal that Henderson maintained regular telephone contact with Rockhampton detectives from the time of the offender's incarceration on 6 June 2005 until 21 June 2005.

1 Operation Delta Caste was the name given to the investigation of Payne's murder, while the murder of Lieske was investigated as Operation Delta Gamin. (Lieske had disappeared after the discovery of Payne's body. It is suspected the Lieske was murdered because she had knowledge of the offender's involvement in the killing of Payne.)

2 A reference to 'The General' – Henderson's nickname.

On 14 July 2005, the offender and Henderson were moved to a reception cell within the prison, where a listening device had been installed by the QPS to monitor and record their conversations. A transcript of the recorded conversation reveals that numerous admissions were made by the offender to Henderson about the murders of both Payne and Lieske, and that Henderson encouraged the offender to tell everything when interviewed by police later that day.

Again, the Arunta records and the Cleveland Police Station log of calls suggest that Henderson made a number of telephone calls that day (14 July 2005) to Detective Sergeant OT at Cleveland and Detective Sergeant ON at Rockhampton.

Nothing of Henderson's involvement with the offender found its way into the briefs of evidence in Operations Delta Caste or Delta Gamin. (While there is some dispute as to the reason for this,[3] nothing turns on the issue so far as this report is concerned.) The significance of it is that Henderson's actions were not disclosed.

This brings us to Henderson's involvement in Operation Delta Fawn.

Operation Delta Fawn

On the morning of 6 August 2005, the body of an adult female was discovered at her residence, just north of Rockhampton. The evidence suggested she had been murdered during the previous day. Local detectives, later joined by Homicide Squad officers from Brisbane, commenced an investigation of the murder. This was codenamed Operation Delta Fawn.

On 11 August 2005, one HI was charged with the woman's murder after being interviewed by Homicide Squad officers. (HI was eventually convicted of the offence.)

In the course of admitting responsibility for the murder, HI claimed he had been counselled to commit the offence by the murdered woman's de facto husband. On the basis of his claim (and indeed, while HI was still being interviewed by Homicide officers), the murdered woman's partner was arrested by officers from the Rockhampton CIB and charged with murder. (Hereafter he will be referred to as 'the accused'.)

Later that day, HI and the accused found themselves sharing a cell in the Rockhampton Watch-house. The accused was subsequently transferred from the Rockhampton Watch-house to the Capricornia Correctional Centre a few days later, on 15 August 2005. (HI remained at the watch-house until granted bail on 26 August 2005.)

From the time of his arrival at Capricornia Correctional Centre (and until Henderson was transferred from Capricornia to the Townsville Correctional Centre on 30 September 2005), the accused shared the same cell block as Henderson — that is, the very same cell block Henderson had shared with the offender in the earlier Delta Caste/Delta Gamin matters. (Indeed, that offender had been moved out of the cell block specifically to make room for the accused.)

3 The confessional evidence said to have been elicited by Henderson did not find its way into the prosecution brief of evidence. One reason given to the CMC for this was that the audio recordings of the conversation between Henderson and the accused were inaudible and incapable of being transcribed. However, contrary to this assertion, the CMC received evidence from an administrative support officer employed by the QPS to the effect that the audio recordings were sufficiently audible for her to prepare transcripts of the relevant conversations. Efforts to locate the recordings proved fruitless. The CMC did not further explore this issue, as it is considered not capable of productive investigation.

Significance of HI's confession

When interviewed by Homicide officers on 10 August 2005, HI not only admitted murdering the woman, but advanced the claim that he had been counselled to do so by her partner. (He later offered differing accounts about the murder, and about the accused.)

Homicide officers involved in the investigation told the CMC that HI's interrogation was monitored by detectives from the local Criminal Investigation Branch who, on the basis of HI's initial confession, acted of their own volition to arrest and charge the accused.

Homicide officers involved in the investigation expressed their frustration to the CMC about the actions of the CIB, claiming that the accused's arrest had been premature, and had taken place without consultation and before HI's interrogation was complete.

This resulted in a situation where the accused was charged solely on the basis of having been implicated by a co-offender: evidence that, at that point, would not be admissible. This may have provided the motivation for what followed.

Henderson's involvement in Operation Delta Fawn

According to prison records, the accused arrived at the jail's reception centre at 7.30 am on 15 August 2005, at which time he underwent routine processing. In line with a request that he be accorded protected status — meaning that he would not be placed with the general jail population — arrangements were put in place for the accused to be housed in 'secure accommodation'.

At 9.36 am, Detectives DS and ON entered the main gate of the prison. The prison's records show they departed the main gate at 10.29 am.

At 11.00 am, the offender from Operations Delta Caste and Delta Gamin was transferred from Cell 18 within the prison's Secure Unit 'S2' to another area of the prison. At 12.30 pm, the accused was assigned Cell 18. This put him in the same unit as Henderson.

In a statement later taken from Henderson by ON, Henderson described first meeting the accused that day after he came to the unit. He claimed that the accused made admissions to him about his involvement in the death of his de facto wife. Henderson stated that he had decided to ring Detective ON because he was *'freaked out'* and *'became concerned that [the accused] was trying to set me up as it is not normal for anyone to open up to someone they don't know about such a serious matter'*.

Henderson's communication with police

As part of its investigation of the matter, the CMC analysed a number of audio recordings of conversations that occurred between Detective ON and Henderson in the period 16 August to 17 September 2005.

The evidence suggests that the Detective ON's purpose in making these recordings was to ensure there was an accurate account of the contact between police and Henderson. Essentially, the recordings would have been available to negate later suggestions of any impropriety by police — for example, criticism that police had improperly schooled or offered rewards to Henderson to secure his assistance.

However, no recording exists of any contact on 15 August 2005 — despite the evidence that Detectives DS and ON were inside the prison for about an hour on that morning.

In the course of the first known (because it was recorded) telephone conversation on 16 August 2005, the following exchange occurred:

Henderson: Hello.

ON: How are you going, brother?

Henderson: How is everything?

ON: What do you reckon? How did ya …?

Henderson: I've just got a couple of things to take care of and chase up, mate, and I will get back to you shortly as soon as I've got a few messages back.

ON: No worries, mate. Is someone near you?

Henderson: Yeah.

Henderson and Detective ON continued with general chitchat, before ON suggested that Henderson should make a further call when he was able to speak freely.

ON: Can you talk yet, mate, or what?

Henderson: No, mate

ON: How much longer do you reckon, mate?

Henderson: Um, give me about 5 or 10. I know that if I could see your face through the phone I know you'd have a smile of admiration.

ON: Mate, do you want to give us a buzz back when you get a chance or …

Henderson: Yeah, I will, mate, as soon as I possibly can.

ON: Well, you ring back and I'll have that message for you by the time you ring back.

Henderson: Alright, mate

ON: Bye.

Later the same day, the pair had a further telephone conversation, which included this exchange:

ON: How are you goin', mate. Can you talk now?

Henderson: Yeah, I can talk now, brother. Where do you want me to start?

ON: Mate, from the beginning, mate. How did you get him to talk to you and how it all worked out, mate …

Henderson then explained the circumstances in which the accused had come to speak with him after the '*screws brought him down to me*'.

Henderson: … I walked up and down and had coffee with him and what I did was this, 'If you're asking for a legal opinion you're goin' to have to fuckin' give me a rundown of exactly what happened, what's goin' on and what the coppers have done and what your fuckin' mate may have told them. And that way I'll work out how bad a fuckin' position you're in.' So he's gone and told me exactly what happened …

Detective ON then informed Henderson not to further engage in conversation with the accused until he (ON) had a chance to get back with specific instructions.

Two significant features arise from the telephone conversations of 16 August 2005: firstly, in neither conversation was the accused mentioned by name, yet it is clear that both Henderson and ON had a mutual understanding as to the identity of the person about whom they were speaking. Secondly, the tenor of the conversation (particularly ON's question, '*How did you get him to talk to you?*' suggests that Henderson had already been tasked in that regard (most probably during the visit to the jail by Detectives DS and ON the previous day).

A further insight into the true meaning of the earlier exchanges, and Henderson's role with the accused, is offered by the following exchange (recorded in the same conversation):

Henderson: I think in the last month or so I've earn't and carried myself well.

ON: You're doing good, mate.

Henderson: On two now.

...

ON: Alright, mate, keep your head down.

Henderson: Happy?

ON: Yeah, mate, real happy.

Henderson: I told you right from the start you're a good man to me and I promised you I'd do this shit for you.

ON: Okay, mate, you done well.

Henderson: Thanks, mate.

ON: See you later. Bye, mate.

The police visit to jail on 15 August 2005

As indicated above, Detectives DS and ON entered the main gate of the Capricornia Correctional Centre at 9.36 am on 15 August 2005. No mention of this visit appeared in the statements of DS, ON or Henderson, which were later prepared for and supplied to the court during the committal proceedings against the accused.

ON subsequently admitted to the police prosecutor that he and Detective DS did see Henderson at the prison that morning, that they told him the accused was on his way to the prison, and instructed him to obtain information from the accused.

Henderson's further dealings with the accused

At 10.30 am on 17 August 2005, Detective ON travelled to the Capricornia Correctional Centre and formally sought and obtained Henderson's consent to use a listening device to record conversations with the accused.

This process was itself recorded on audiotape. (Again, the purpose of the recording was to counter the potential for criticism of ON.)

The tape records ON's guidance to Henderson in relation to conversations he might seek to have with the accused.

As part of this process, ON had Henderson assert that he had initially contacted police of his own volition in relation to the admissions made by the accused on 15 and 16 August 2005. Significantly, ON also had Henderson state that there had been no prior prompting or request from police to speak with the accused:

ON: Okay. I just have to explain a few things to you. On Tuesday the 16th of August you contacted myself at the Rockhampton CIB with information that you state was provided to you by inmate known to you as [name identified]. Is that correct?

Henderson: That's correct.

ON: The information that you say was provided was in relation to an offence of murder and conspiracy to murder and that is information that was provided to you without any instructions or request by police or any other persons in authority. Is this correct?

Henderson: That's correct.

ON: So this information was provided to you without me asking you to obtain it or any other person asking you to obtain it. Is that correct?

Henderson: That's correct.

ON: And by 'person of authority' this includes any other prison staff here?

Henderson: That's correct.

On 18 August 2005, a recording was made of a conversation between Henderson and the accused that took place in a cell in the correctional centre's reception store.

The procedure adopted appears to be identical to that used to facilitate Henderson's conversations with the offender in the earlier Delta Caste/Delta Gamin matter: that is, Henderson was removed from his cell and taken to the reception store under the auspices of a 'removal'. (Police also obtained a magistrate's order to authorise the accused's removal from custody for questioning about an unrelated matter.)

The audio recording made on this occasion was ultimately not relied upon in the prosecution proceedings brought against the accused. The explanation for this — offered to the court during the course of committal proceedings — was that the recording was of such poor quality it was unintelligible.

Contrary to the advice given to the court, a partial transcript of the conversation had been prepared — apparently by ON. That document was discovered by CMC investigators during a search conducted at the Rockhampton Criminal Investigation Branch. Although obviously incomplete, the transcript not only confirms that the recording had been sufficiently audible for a transcript to be produced, but also reveals that no clear admissions had been made by the accused to Henderson. The transcript suggests that Henderson attempted a thorough interrogation of his fellow inmate.

On 1 and 2 September 2005, further attempts were made to record conversations between Henderson and the accused. Again, these audio recordings were not relied upon in the proceedings against the accused, supposedly because of the poor quality of the recordings.

Notwithstanding that the audio recordings offered no corroborative support, a witness statement was nonetheless prepared for, and was signed by, Henderson. In that statement, Henderson alleges that the accused made various specific admissions of guilt in the course of their conversations.[4] The statement contains no reference to the partial transcript of the conversation of 18 August 2005, which contradicts the assertion that the accused made admissions.

Henderson's witness statement

In October 2005, Detective ON removed Henderson from the Townsville Correctional Centre and took him to Rockhampton for two weeks to finalise the preparation of Henderson's witness statement. That statement, adopted by Henderson, contains the following passages:

> 251. As I have previously mentioned I have spent the large majority of my adult life in prisons through out Australia. I believe that I am well known and well respected in the Melbourne criminal world and throughout the Queensland prison system. I have always been loyal to my mates and stuck by the old criminal code 'never give your mates up.'
>
> 252. Prior to this event, I have never even considered wearing a wire for police and I have never provided statements against any of my former criminal associates as I am well aware of what the penalty in the criminal world is for doing this.
>
> …
>
> 255. I have not been threatened by the police or any person to provide this statement. At no time I have been [sic.] given any inducements or promises to provide this statement and I have not been given nor asked for any favours.

To the extent that Henderson's statement implies that he had never previously worked as an informant for police, it is demonstrably false.

Indeed, it was only one month prior to his dealings with the accused that Henderson had been actively used in support of the police investigation of the earlier Delta Caste/Delta Gamin

4 The CMC gained access to Henderson's witness statement when, on 25 May 2006, its investigators entered the Rockhampton Police Station and seized a number of items pertaining to police dealings with Henderson.

murders. Furthermore, as has already been outlined, Henderson had 'assisted' Rockhampton police in the conduct of what had come to be known as Operation Charlie Zita.

Henderson's motivation and expectations

In the course of Operation Capri, the CMC also seized two letters from the Rockhampton Police Station. The letters were located in the top drawer of a desk in an office occupied by Detective DS. Dated 7 October 2005, the letters were sent by Henderson to DS and ON respectively.

Henderson's letter to DS:

> I'm here settled and doing the best I can, and trying to secure the numbers to survive, [DS], don't make me regret all of this, I've done my bit, every time and always got it right, I don't care how you resolve my position do what ever has to be done … I've got a long haul and hell to go through at Committal, and at Trial, I'm going backwards not forward and you know all this is not fair, if it gets worse for me, I'll end up in solitary confinement to survive, to testify you want me to do these courses, then you get DSC[5] to organise a quick start now, and have time frames, to get me clear, as the trials end … I don't want to hear, what can't be done …, I want to hear things are being fixed, I never once said to you it's too hard to do or fix or did I fuck up or leave you with it, don't let me down …???? I'm marked and once it's in statement form, and committal transcript form, I'm fucked and it's all off to Victoria … I'll be healthy fit and well as I can be, for committal and do my bit just do yours for me now!
>
> I'm looking forward to seeing you and [ON] again, soon! Just keep me topped up with phone money, to keep me comfortable up here, Fuck, I've saved the DPP and Public's over ½ million in cases over the past 5 yrs. I've recruited a hard crew to body guard me …, and I'm having to look after them, for that, just ensure you address these issues before you next see me … !
>
> Legal Applications at Committal: (1) Not to publish or media report in any form, my name, age or sentence or prison that I'm held in no TV footage of any sort to be shown of me and none of my evidence to be reported in the media! This will slow a lot of drama for me this is what legal applications have be won at committal and trial, on the basis of me not getting out of jail any time soon!
>
> … When I have to come down for court, no more long trips! No more prison screws. I've had it! I'm serious! Fly me down, fly me back with our Rocky team, I stay at the watchhouse not the jail, at nights! I don't want to see the back of any vans, screws or jails,! That has to be over now. I'm your witness, Loyal to You's, look after me, and lets go to the 6 million dollar view and the rock pool, unit 8 [smiley face]. Remember [the Mareeba tobacco farmer], wired for sound loved it there it's out of sight and relaxing, prior and just after committal, I may not see any other help or privileges till after trial!
>
> That's based on all that's happened to me so far, doesn't install a lot of faith or trust in that I'll have any better life inside it's worse already thanks to the DPP! I'll still with ya … but show me my faith in you's isn't badly misplaced by the shit that's happened to me already OK! …???

Henderson's letter to Detective ON:

> … thought I would write a quick letter, before you fly up to see me, I've settled in, I've got 4 of the hard boys, recruited to watch my back, this is all costing me a lot of favours I hope you know that ….
>
> … like I said I'll be there at committal but [DS] needs to do his bit for me, I didn't ask for much, only a safe place under a palm tree on the farm, so I'm not having to do battle any more, I've earnt my right to have peace!
>
> No more fucken long road trips either, no more trips with the screws either
>
> Townsville jail is no more than 10 mins from Townsville CIB! ….

5 A reference to the Department of Corrective Services

> … Mentally I'm strong and focused … and I will be ready and prepared for the (on-slaught) in court!
>
> Any of what you do for me now, in as (R & R) before and just after the committal and trial will help, it's not me you have to worry about, just know I'll do my job, lets hope everyone else does there's for me, When you come up leave all my good stuff hopefully still pressed and smelling clean, in those lockers! But bring my black over night bag, with the toiletries, spare jeans and tops for the 7 days up here, I do, and am very thank full to you for making sure all my stuff is clean and polished ect, I'd do it and more for you … ! You need to understand that's me, that's how I am, I need everything right clean and pressed I need to look and feel right and that's what makes me perform and perform well!
>
> Just know I'll not let you down QPS better not let me down and this farm shit needs to be resolved! OK … so I'll see ya when you get here there's no one that can see ya when you come to pick me up in the car, 95% of the screws here don't know me and don't see where I live!
>
> I'm worried about mum in Melbourne, but I'll just have to hope there drama stay's targeted at me and not them! The DPP should knock in with $200 a month for phone calls for me to Victoria to stay in touch with family it's the least they could do seen as they caused this early stage drama! Take Care…

Disclosure obligations

Having charged the accused with murder, the QPS had a statutory obligation to ensure that the prosecution proceedings against him were conducted fairly.

Section 590AB of the *Criminal Code* acknowledges the fundamental obligation of the prosecution to give an accused person 'full and early disclosure' of evidence the prosecution proposes to rely upon in the proceedings, and all things in the possession of the prosecution that 'would tend to help the case for the accused person'.[6] (A thing is 'in the possession of the prosecution' if it in the possession of the arresting officer.)

In simple terms, because Henderson was to be used as a witness in the prosecution of the accused, it was important that the accused's legal representatives were provided with a full account of Henderson's circumstances, including evidence as to the basis upon which he had been tasked with (or had volunteered for) engaging with him.

Detectives DS and ON had a clear legal obligation to advise the prosecution of the circumstances in which the accused's alleged confession was obtained.

If the police officers were to rely upon evidence from Henderson, his background and his motivation to assist law enforcement were clearly issues central to his credibility as a witness. Full disclosure should have been made of the fact that Henderson had previously been used by law enforcement agencies as an informant.

This was particularly important in this prosecution, because Henderson's claim that the accused had confessed to him in prison was central to the prosecution case — without the evidence, the prosecution case would be based solely upon the uncorroborated evidence of a co-offender who has provided different accounts of the crime.

Instead of complying with their obligations to make full disclosure, there is evidence suggesting that Detectives DS and ON, both experienced police officers, set about disguising the true

6 Section 590AB: **Disclosure obligation.** (1) This chapter division acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth. (2) Without limiting the scope of the obligation, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of — (a) all evidence the prosecution proposes to rely on in the proceeding; and (b) all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to the public interest, that would tend to help the case for the accused person.

nature of Henderson's role. In this regard, the evidence points to their failing to make disclosure of Henderson's background in assisting law enforcement, and downplaying and denying the circumstances in which Henderson had been 'tasked' to speak with the accused.

When giving evidence at the committal proceedings against the accused, Detective DS stated that it was an oversight on his part that he failed to mention in his statement of evidence the visit with Henderson early on 15 August 2005.

ON stated that he deliberately excluded mentioning it, as to do so would identify Henderson as an informant. This was despite the fact that Henderson was being called as a prosecution witness, to give evidence of his informing.

Assessment of the evidence

In November 2007, the CMC referred a report on this aspect of Operation Capri to the Director of Public Prosecutions for consideration of whether the evidence was sufficient to warrant criminal prosecution.

Upon advice from the DPP, a charge of attempting to pervert the course of justice was instituted against Detectives DS and ON, and Henderson. Following a recent committal hearing, the charge against Henderson was dismissed. Detectives DS and ON have been committed to stand trial.

DISCUSSION

> ***Good ends … can be achieved only by the employment of appropriate means. The end cannot justify the means, for the simple and obvious reason that the means employed determine the nature of the ends produced.***
>
> **— Aldous Huxley**

The episodes of police misconduct outlined in this report exhibit the following features:

- Some acts of misconduct arose in areas of inherently high-risk policing, such as the handling of informants.
- Some acts of misconduct appear to have emanated from basic character flaws in individual police officers, and reflect opportunism, ignorance, laziness and incompetence.
- Most of the acts of misconduct occurred in an environment in which supervision was wanting.
- Some acts of misconduct had their origins in aspects of policing culture, such as a belief in some parts of the QPS that 'the end justifies the means' (i.e. that successful results will ultimately justify or excuse bending the rules), and the tendency for sub-cultures to form within specialist squads (in this case the Armed Robbery Unit).

The discussion briefly focuses on each of these factors in turn.

Misconduct in areas of inherently high-risk policing

As shown by Operation Capri, a number of police officers either failed to recognise, or chose to ignore, the dangers posed by:

- forming and conducting inappropriate relationships with informants
- failing to properly manage 'experienced' criminals
- failing to treat confidential police information with appropriate sensitivity.

Each of these areas is one of high risk in terms of potential for misconduct.

Forming and conducting inappropriate associations with informants

Inappropriate associations between police officers and informers have historically featured in investigations into police misconduct and corruption.[1]

Commissioners Fitzgerald, Wood and Kennedy all highlighted the complexities that arise in working with human sources, and the danger of inappropriate associations developing between informants and the police officers who handle them. Such relationships can threaten not only the personal integrity of individual police officers, but the reputation of the police service and the entire criminal justice system.

In 1994, the NSW Independent Commission Against Corruption identified risks associated with the use of informants, which included:

- The relationship between a police officer and an informer can potentially become too close, resulting in either an improper association or a loss of objectivity by the officer, which ultimately compromises both the officer and the police service;
- The fact that such relationships are conducted covertly (supposedly in order to protect the informer) increases the risk of corruption or improper conduct, or the perception of both, making it difficult for officers to dispute allegations of misconduct;

1 See Fitzgerald 1989, ICAC 1994, Wood 1997, Kennedy 2004, OPI 2007, 2008a.

- Inaccurate information provided by informants can result in police time and resources being wasted, and miscarriages of justice.[2]

It is open to conclude that each of these risks was realised in the episodes of misconduct exposed by Operation Capri.

Central to much of what was exposed is the fact that the relationship between certain police officers and the prisoner Henderson extended well beyond the bounds of a professional association intended to serve the purpose of assisting law enforcement.

The association with him extended to the point where police officers saw no impropriety in conducting personal dealings with Henderson: they exchanged Christmas cards with him, ran personal errands for him, gambled with him, and maintained a wardrobe for him (complete with a police tie).

Beyond that, the evidence also suggests that police officers allowed their relationship with Henderson to lead them inexorably into misconduct. In this regard, as events progressed, they:

- unlawfully diverted and directed others to unlawfully divert Henderson's telephone calls (segments 3 and 4)
- accepted money and gifts from Henderson including, in the case of one officer, part of a reward which had been obtained on Henderson's behalf by that officer (segments 5 and 8)
- intervened to have criminal charges against Henderson's associate discontinued, lying to their superiors to achieve that outcome (segment 6)
- provided confidential police information to Henderson – which he then conveyed to his associates (segment 7).

Eventually the officers' dealings with Henderson led to the (alleged) subversion of investigative and judicial processes (segment 9).

The QPS as an organisation had in place the State Informant Management System (SIMS policy). The SIMS policy is designed to regulate the interaction between informants and their handlers. Had the policy been followed, the risk of an improper association forming is unlikely to have been realised.

Failing to properly manage experienced criminals

Henderson, like many of the prisoners who feature in this report, may rightly be regarded as a seasoned criminal. He knows the system and its weaknesses. As the various segments of this report demonstrate, despite warnings from colleagues in the QPS and other agencies that he was not reliable and was uncontrollable, certain police officers continued to deal with him. Moreover, when dealing with him (and indeed, with all of the prisoners they removed from custody) those officers failed to follow the most basic informant management procedures.

In the course of disciplinary proceedings against some of officers for the improper removals of prisoners (see segment 2), one submission advanced on behalf of an officer argued that the various prisoners had successfully conspired to bring false allegations against police. As unlikely as that proposition is, the fact it needed to be raised at all underscores the very point made by this report: namely, that by ignoring policy and procedures those officers exposed themselves and, by extension, the QPS, to allegations of misconduct and impropriety.

By simply failing to keep detailed diaries and official records as they are required to do the police officers rendered it impossible to refute the allegations of misconduct against them.

2 *Investigation into the relationship between police and criminals*, ICAC, 1994

Failing to treat confidential police information with appropriate sensitivity

The CMC, like the CJC before it, has undertaken numerous misconduct investigations where it is alleged, or a suspicion arises, that police officers have improperly accessed and released confidential information.

In too many instances, incomplete or non-existent records have made it impossible to confirm whether or not individual officers had acted appropriately, or had engaged in misconduct. In particular, and as demonstrated again by Operation Capri, in the absence of some contemporaneous record noting the 'reason for transaction', it is often not possible to ascertain why an officer performs a computer check. Where suspicion is aroused concerning that computer check, one is left in the unsatisfactory position of having to rely on the officer's memory or, failing memory, acceptance of the officer's claim that the computer check was undertaken for legitimate purposes.

The QPS has been repeatedly alerted to this unsatisfactory state of affairs. In 2000, the CJC examined this issue as part of Project Piper, a review of the information security policies, procedures and practices of the QPS. Project Piper culminated in the publication of a report, *Protecting Confidential Information*.[3]

The CJC recommended, inter alia:

> **Recommendation 6.11 – Reason for Transaction**
>
> 6.11.1 That the Queensland Police Service order that all members must record a reason for access for each transaction made on the corporate/mainframe computer systems, either through mandatory computer entry, police notebook entry, or some other systematic documentation process, except where:
>
> – a series of transactions are logically linked, in which case a single reason for the multiple transactions will afford an appropriate level of accountability
>
> – where other official police documents provide evidence of an appropriate reason for the transaction
>
> – where the duties of an officer require an unusually high number of transactions in relation to information that would routinely be processed (e.g. a traffic police officer performing vehicle-registration checks).
>
> The last proviso should not apply to those members accessing sensitive information, such as intelligence databases.
>
> 6.11.2 That, where transactions are conducted on behalf of another member, the requesting member be required to record a reason for the request through mandatory computer entry, police notebook entry, or some other systematic documentation process.
>
> 6.11.3 That, where transactions are conducted on behalf of another member, the person conducting them asks the requesting member the reason for their request and their name, and records that information through mandatory computer entry, police notebook entry, or some other systematic documentation process.

As the CJC's report noted:

> 'The purpose of a requirement to record reason for transaction is not only to investigate officers suspected of improperly accessing computer systems, but also to provide an effective means of exonerating those who have been wrongly accused of such misconduct. It is unrealistic to expect officers to recall the reason for a transaction that they conducted some time ago. The lack of a requirement to record reasons for transactions does not serve honest QPS members well and only provides a convenient defence for those involved in misconduct, official misconduct and corruption.'

3 *Protecting confidential information; a report on the improper access to, and release of, confidential information from the police computer systems by members of the Queensland Police Service, (Operation Piper)*, CJC, November 2000

The CMC in 2009, like the CJC in 2000, still holds that view.

The recommendations put forward by the CJC in 2000 had followed an exchange of correspondence with QPS that began in 1994, wherein the CJC consistently urged the QPS to adopt a system whereby the 'reason for transaction' was recorded in a manner capable of audit.

In its submission to the Project Piper Inquiry, the QPS raised a number of objections to a 'reason for transaction' requirement. Attached to this report as Appendix 2 is an extract of the CJC report which sets out those objections and the CJC response to them.

It is interesting to note that the New South Wales Police Service had initially raised similar objections to a joint ICAC–NSW Ombudsman report recommending the implementation of a requirement to record reasons for transactions. However, by the time of the Piper Inquiry, the New South Wales Police Service had implemented such a process. The CMC understands that the process is still in place and, over ten years later, is working well to assure only proper access occurs.

The QPS never fully accepted the CJC recommendations as contained in the Project Piper report. The problems exposed by Operation Capri will continue to arise until such time as those recommendations are fully implemented.

Since Project Piper, the QPS has introduced a new information retrieval system, known as QPRIME. The new system offers a suitable mechanism by which the QPS could ensure that the 'reason for transaction' is captured, but it is not enforced as a mandatory requirement.

Users of QPRIME must complete a 'reason for access' entry on the system. To do this, a selection from a drop-down menu may be highlighted (with pro forma explanations such as 'inquiry', 'investigation', 'security check', 'quality assurance' and 'freedom of information'). While there is an additional remarks field to enable further information to be recorded about the reasons for access, it is not a mandatory field.

Therefore, while a user of the QPS data base is required to record a reason for the inquiry, this may be (and routinely is) limited to nominating an explanation such as 'inquiry', without further information. That type of explanation is as good as meaningless, and does nothing to address the concerns exposed as far back as Project Piper.

If further demonstration was required, Operation Capri confirmed that some police officers think nothing of improperly accessing QPS information systems. Moreover, Operation Capri has highlighted the link between improper access to the system and release of confidential information, and wider misconduct, including criminal behaviour.

As outlined in segment 7 of this report, Detective Sergeant OT facilitated — at Henderson's request — at least three separate checks in respect of a number of private citizens. This information enabled Henderson to act as an information broker, with the information provided to him by police ending up with his criminal associates. OT knowingly supplied the information to Henderson, without any idea of how it was likely to be used, and with minimal thought to the possible consequences of that use.

There are obvious risks associated with the release of confidential information. Operation Capri confirmed that confidential police information continues to be a valuable commodity to those who would make improper use of it. In itself, this presents a high risk for the QPS in terms of the potential for loss of public confidence and trust, and exposure to potential civil liability.

Not only is the release of confidential information by a police officer a breach of an officer's authority, it is also a serious breach of trust. As stated by the CJC:

> While the motivation and reasons for committing this type of misconduct may vary, it is still fundamentally an invasion of privacy and a breach of the law and the trust of those individuals whose personal details are being improperly accessed and/or released.[4]

There are very good reasons to insist on strict controls and accountability with respect to the confidential information that is available to police officers. While the current system prevails, the QPS is unable to assert that the privacy of the people of Queensland is protected against misconduct. The system provides only limited protection against a breach of privacy, especially if a police officer is minded to misuse the database. This will remain the case while the mechanism by which that officer's actions might be audited remains inadequate.

The QPS advised the CMC that, during the month of May 2009, QPRIME was used by over 10 500 users, from 7500 terminals. QPRIME was accessed a total of 344,614 times (an average of 11 117 times each day). Almost 3 million searches were conducted. Over 8 million records were opened, over 5 million records were updated, and over 2 million new records were created.

These statistics were identified to support the QPS argument that it would be inconvenient for users to record reasons beyond those contained in the drop-down menu.

However, the QPRIME system has the capacity to mandate the recording of the type of information that is routinely required from users accessing the database of the New South Wales Police Service. While it might be an inconvenience, it is the CMC's opinion that there is no convincing reason why similar requirements should not govern the operation of QPRIME.

While they do not, on the basis of past experience, including Operation Capri, the CMC has no confidence in the capacity of the QPS to protect the privacy of information in its databases.

Misconduct and individual police officers

The importance of individual integrity on the part of each and every member of the QPS cannot be overstated. No amount of education, training, or policies and procedures will ensure compliance with duty and responsibility by the lazy, incompetent or unethical police officer.

The CMC accepts that little more can be done, policy-wise, to prevent misconduct when individual officers, whose duty it is to comply with policy or procedure, choose to ignore their responsibilities to the police service and to the community they are meant to serve.

However, even greater damage is done when an officer's supervisor, in turn, condones or even encourages the non-compliance; the cycle becomes self-perpetuating and 'slippage' — the incremental relaxation of procedural and ethical standards — is the inevitable consequence.

Misconduct and supervision

In the CMC's view it is unacceptable that non-compliance with policy or procedures by police officers should be routinely ignored by supervisors on the basis that such negligence is merely poor, but acceptable, work practice.

No officer should be able to excuse their failure to keep proper records by saying that such a task is boring, onerous, or 'just paperwork' — particularly in areas of inherently high risk, such as the removal of prisoners from custody, association with informants, or paying out money for law enforcement purposes.

4 *Protecting confidential information* (2000), p. 29

Where there exists a statutory, policy or procedural requirement to create or maintain a record, the QPS must ensure that obligation is met. Shortcuts should not be countenanced. It is simply not good enough to say 'That is the way we do things around here' — as if the culture of an organisation is permanently fixed and cannot be changed or questioned.

Problems in managerial and supervisory systems and practices are not unique to the QPS or to police services in general. Recent misconduct inquiries and reviews in Australia and overseas have highlighted the need for police supervisors at all levels to demonstrate strong leadership and, in particular, to accept and be held accountable for their managerial responsibilities.

Operation Capri (and other misconduct investigations conducted by the CMC over time) has pointed out the links between shortcomings in management and the potential for misconduct.

Investigations conducted by the CMC often involve the close analysis of standard operating procedures, and scrutiny of running logs, police diaries and official police notebooks. Investigations also involve the review of management processes relevant to alleged misconduct. The CMC has previously alerted the QPS to the fact that inadequate record keeping, supervision and management is routinely encountered. Issues at management level have frequently contributed, not so much to the actual misconduct, but to the failure to detect the misconduct — or indicative behaviours — in its early stages, and to the failure to effectively manage that misconduct when it becomes evident.

The keeping of police notebooks, official diaries and related records is not something in respect of which there is a lack of policy or procedure. The instructions are basic and clear. Notwithstanding, it has been the CMC's experience that those requirements are not being met, and the non-compliance is not being rectified by those with responsibility for supervision.

This report has revealed how relatively senior-ranking police officers showed contempt for QPS policies and procedures, and indeed, were prepared to actively breach the law, to achieve desired investigative outcomes. If that is the tone from supervisors, it is no wonder subordinates see no reason to act differently.

Misconduct and the corporate culture

Research findings suggest that the 'ability to see and respond ethically may be related more to attributes of corporate culture than to attributes of individual employees'.[5] The organisation is therefore a very powerful influence which has the potential to make an ethical person act unethically or an unethical person act ethically.

Operation Capri exposed two factors in the QPS that, in the CMC's view, contributed to the misconduct:

1. The persistent belief in some areas that 'the ends justifies the means', and
2. Sub-cultures formed within specialist squads such as the ARU, which form their own rules and standards.

'The end justifies the means'

That there was a cultural belief within certain sections of the QPS that 'the end justifies the means' is demonstrated most clearly by the activities of police officers in the Armed Robbery Unit. For example, the officer in charge held the view that the results expected of the unit could not have been achieved if his officers had been forced to comply with the SIMS policy.

5 Chen, AYS, Sawyer, RB & Williams, PF 1997, 'Reinforcing ethical decisions through corporate culture', *Journal of Business Ethics*, 16, p.856, quoted in ICAC 2000.

Thus, while the 'written rule' (the respective legislative provisions, the SIMS policy, and the conditions attaching to the informant funds) adequately laid down the requirements for removing prisoners from custody, for dealing with informants, and for the payment of rewards, the 'unwritten rule' was that policies and procedures could be ignored, and that police officers attached to the Armed Robbery Unit could effectively do as they thought expedient.

These beliefs, and some other practices adopted by the Armed Robbery Unit and some officers elsewhere, point to a results-driven culture, whereby 'the end justified the means'. Acts of misconduct committed in such an environment are often referred to as 'noble cause corruption' — police officers justifying their misconduct on the basis that it achieves the desired investigative outcomes.

So insidious are the effects of this belief that, in a 2007 report, the Victorian Office of Police Integrity asserted 'noble cause corruption is the nursery of entrenched and systemic corruption', and added that 'if a police service wants to rid itself of corruption, it must attack noble cause corruption'.[6]

'Noble cause' may be an explanation offered for misconduct, but as an excuse it is unacceptable.

Internal sub-cultures: specialist squads

It may be observed that the events exposed by Operation Capri had, as their genesis, the misconduct of various police officers attached to the Armed Robbery Unit — which had been 're-established' by the QPS in 2001.[7]

This report opened with reference to a newspaper article published in 1993. Just as the newspaper article warned of the inherent dangers of law enforcement agencies rewarding habitual criminals who turn informant, the Fitzgerald Report, written four years earlier, highlighted the dangers of deploying police officers in specialist squads.

> Police in specialist squads are also more exposed to the temptation of and opportunity for misconduct. The specialist unit system has fostered and helped corruption. It masks police officers' unlawful activities. …
>
> The assignment of exclusive responsibility for the investigation of a particular type of criminal offence makes the members of that squad attractive targets for corruption, and places corrupt police in an ideal position to organize crime and prevent its detection by other police. The task of investigating or policing any particular type of criminal code should not, in all but a few cases, be the exclusive concern of a particular unit.
>
> … The establishment of special squads has limited the opportunities for general police to enhance their skills while providing management with opportunities for avoiding their responsibilities. …[8]

Fitzgerald's warning led to the disbandment of the then-Armed Hold-up Squad, and other select specialist squads.

The CMC does not advocate the abandoning of all specialist police squads. The value of collective specialist expertise in areas such as the investigation of homicide is accepted. However, it must be recognised, as Fitzgerald did, that as a basic premise, police in specialist squads are more exposed to the temptation of misconduct, and that the level of exposure will be influenced by the type of crime being investigated.

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6 *Past Patterns – Future Directions. Victoria Police and the problem of corruption and serious misconduct*, OPI, February 2007.

7 Formerly the Armed Hold-up Squad.

8 Fitzgerald report, p.240

Some crime areas are intrinsically more prone to corruption. The CMC suggests that the investigation of armed robbery offences is one area in which the QPS should be reluctant to re-activate a specialist unit without first ensuring that it will be stringently supervised.

The CMC points in this regard, to recent experience in Victoria, where the Armed Offenders Squad (the then incarnation of the Armed Robbery Squad) was disbanded following evidence of serious misconduct.

In a report on the outcome of its investigation, the Victorian Office of Police Integrity examined features of that State's Armed Offenders Squad that are not dissimilar from those that were evident in the operation of the Armed Robbery Unit in Queensland (albeit that the serious misconduct at the centre of the OPI investigation involved the soliciting of confessions by way of bashings rather than benefits).[9]

The OPI report explored how 'such blatant misconduct and disregard for organisational policy escape[d] the attention and intervention of Squad management.' In that regard, it pointed to evidence of:

- inadequate day-to-day supervision
- absence of stable leadership and a lack of diligent supervisors
- recruitment of squad members in a flawed process that relied on the personal preferences of senior squad members
- failure of squad managers to adhere to or enforce instructions.

The parallels with issues identified during Operation Capri are obvious.

The OPI concluded:

> The Armed Offenders Squad should be regarded as a cultural relic within Victoria Police. Too many of its members believed that "the end justified the means" … The Squad, through a lack of appropriate monitoring and accountability within Victoria Police, was allowed to develop its own culture, out of step with the organisation's direction. …

Again, the sentiments expressed by the OPI apply equally to the Armed Robbery Unit of the QPS.

Conclusion

The problem exposed by Operation Capri is not the absence of appropriate legislation, policy or procedure, but the wilful failure of individual police officers to comply with the requirements imposed by that legislation, policy and procedure, and the acquiescence in that non-compliance by those tasked with supervising the individual officers.

Accordingly, there is no quick fix or panacea; no simple policy or procedural change to plug the hole. (Subject, of course, to what has been previously recommended regarding controls on the access to confidential information.)

Rather, what is required is a fundamental reaffirmation to individual police officers and their supervisors of the value of maintaining professional standards: the recognition, at every level and across all ranks, of the imperative to comply with procedures, act with integrity and be accountable for their actions, and of the need to be vigilant in maintaining standards.

9 *The Victorian Armed Offenders Squad – a case study*, OPI, October 2008

In his introductory message to the April 2009 edition of the *Queensland Police Bulletin*,[10] Commissioner Atkinson commented:

> Maintaining professional standards in an organisation as large as the QPS is a complex task but is also of the upmost importance. The Service has a good reputation and we are fortunate to have strong community support. That support, however, is predicated upon trust, efficiency, courtesy and professionalism and can easily and quickly be damaged. …

The CMC endorses those observations.

Indeed, maintenance of public confidence in the QPS is not merely important, it is central to the Service's capacity to do its job.

The Commissioner's theme was continued by Deputy Commissioner Stewart, who wrote in the same publication:

> Events in our history have made clear the damage that may be done to the reputation of our organisation when attention is focused on the few who have failed to carry out their duties with diligence and integrity. Many of us can recall the difficulty imposed on carrying out our duties when community support was at a low.

It is now twenty years since the Fitzgerald Inquiry. In that time, there has been enormous change to the QPS. The Service today is markedly different to that which existed at the time of the Inquiry. The people of Queensland are, generally speaking, entitled to have the fullest confidence in the capacity and professionalism of the QPS.

However, episodes of conduct such as that exposed by Operation Capri risk irreparable harm to the hard-won respect the QPS now enjoys. That risk exists whether or not the conduct crosses the line of acceptable behaviour and results in criminal or disciplinary outcomes. It is enough that cutting corners and poor supervision leave room for suspicion.

The people of Queensland and all honest police officers have a right to be concerned and, to the extent that it will be adversely affected by the revelations herein, the QPS a responsibility to win back public confidence.

That is the challenge for the QPS.

10 Published quarterly by the Media and Public Affairs Branch of the QPS

APPENDIX 1:
Text of 'Supergrass' article
(*Gold Coast Bulletin*, July 1993)

Supergrass Liar: The Rise And Fall Of Lee Henderson

Top Gold Coast cop Laurie Pointing is stepping down with grave misgivings about the ability of the Queensland police and society to arrest the soaring serious crime rate. His fears stem largely from a concern that too many hardened criminals are not being asked to pay their debt to society because of early release from jail. Sentenced to up to 12 years for violent crime, they are serving only two or three years before they are back on the streets preying on society. It is a concern shared by freelance writer Bernie Matthews who has spent months on a cost-benefit analysis of the national growth industry of rewarding habitual criminals who turn informant by unlocking their cells and giving them a 'fresh' start. His investigations strongly suggest that, as with disgraced supergrass Lee Owen Henderson, the cost is far too high …

If the National Crime Authority and the NSW police had not been taken in by Lee Owen Henderson's lies, a young Gold Coast mother would still be alive to watch her two children grow up.

Tragically, however, Tracey Dovey is dead. Henderson, serving a life sentence for her murder, is in a Brisbane jail where, thankfully, his continuing spiel of lies is cutting little ice with the Queensland police or the jail authorities who have made it clear they intend to keep him behind bars as long as they legally can.

However, the unpalatable fact remains that Henderson represents a new breed of criminal who knows no honour and would shop his best mate or even his own mother to buy his freedom.

In NSW, where the now totally discredited Henderson traded the deceits of a twisted imagination for the key to a prison gate, the supergrass has more clout than the parole board.

Henderson began his criminal career in Melbourne pimping and bludging off prostitutes before migrating to Sydney where he quickly became known to the NSW police. Within months of his arrival in Sydney he was arrested on a charge of conspiracy to murder.

On October 23, 1996 while on remand in Sydney's Long Bay Jail, Henderson took a prison guard hostage during a riot. He subsequently received five years imprisonment for his part in the rebellion.

Henderson was transferred to Goulburn High Security Unit where he first turned informer by dogging on his mates. Unfortunately for Henderson, there are no secrets in the NSW prison grapevine. His clandestine messages and letters, in which he made wild accusations against so-called underworld figures, and excerpts from the official investigation into his allegations, were intercepted and copied by trustee prisoners working in the prison administration block.

In one document, Henderson claims knowledge of criminal 'clicks' (cliques) with a lengthy list of names and crude diagrams supposedly indicating inter-association among the gangs. In copies of letters smuggled out of prison, he boasts of his exploits and courage inside and outside of jail.

It was this type of basically useless information and Walter Mitty-like belief in his own legend, all of which was ridiculed from the outset by hardened criminals and experienced police who 'knew the score' which so endeared Henderson to the NCA as a 'valued informant'.

Indeed, the names Henderson lists in his so-called 'clicks' could have been gleaned from newspaper articles or books published before the authorities began taking his allegations seriously.

Henderson further impressed law enforcement agencies with a concocted story about Sydney underworld identity and former Australian Labor Party numbers man, Tom Domican. He even agreed to testify against Domican, but later retracted his evidence by saying 'I was forced into giving evidence by a screw (prison guard).'

Domican was subsequently cleared of all related charges.

The litany of lies continued with Henderson next attempting to barter false information for freedom by accusing a Sydney police officer, Gary Spencer, of being responsible for the murder of high-profile prostitute Sallie Ann Huckstepp.

Huckstepp's body was found in a duckpond in Sydney's Centennial Park in January 1986. Although she had drowned, an autopsy also revealed a lethal overdose of heroin in her body.

Henderson claimed to have authentic tape recordings of Spencer plotting and discussing the murder. The tapes were subsequently revealed as phoney. No one has ever been charged over the death of Huckstepp, whose murder remains unsolved.

It cost the Alpha Task Force – a joint NSW and Federal Police operation – valuable time and money to discover that the tapes accusing a fellow officer had been manufactured by Henderson in the prison library.

His 'reputation' as an informant was, of course, subsequently destroyed by a member of that task force, Detective Inspector Barry Dunne, who warned the Fitzgerald Inquiry in 1989 not to be led down the fantasy path by Henderson. Dunne told the Inquiry that 'easily $2 million' had been spent by the task force during a six month investigation which ended with the discovery that Henderson had fabricated complex allegations of police corruption.

Back in 1988, however, when Henderson was acquitted of the conspiracy to murder charges which first landed him in Sydney jail, the supergrass still had some sympathetic ears among law enforcement agencies.

In fact his defence at the trial in which he was acquitted rested largely on the claim that his murder plans were fantasies designed to improve his chances of collecting information for the NCA. In the end, the jury accepted that Henderson had never plotted to kill anyone.

Freedom, however, was still, for the moment, denied Henderson who remained in custody pending an application by Victorian police for his extradition. Suddenly he was at it again – accusing a cell constable, Chris Gamble, of attempting to recruit him to murder a motorist supposedly making waves over a booking.

Gamble was suspended and Henderson mysteriously freed on bail on the outstanding Victorian charges. Gamble, who was later cleared, has good cause to reflect on both events.

On August 27, 1988, Henderson was picked up, presumably on a bail violation by Sydney police. He avoided arrest by supplying 'information' about the murder earlier that day of a Kings Cross barman, Mark Rogers.

Later that day the paths of Henderson and the police crossed again. Questioned at the scene of a traffic accident, Henderson was found to have a sawn-off shotgun in his possession. He was charged with unlawful possession of the firearm and also with causing a public nuisance by telling lies about the Rogers murder.

Once again Henderson was mysteriously granted bail and according to the grapevine, told to get out of NSW. Fatefully, he headed for Queensland and the Gold Coast.

On November 21, 1988 – just two months after Henderson had been ushered out of Sydney – Tracey Dovey was murdered in her Burleigh Park home.

Five weeks later Henderson who, by then, was in custody on charges to which he eventually pleaded guilty of extortion and kidnapping Gold Coast businessman Joseph Patrick O'Sullivan, was charged with the young woman's murder.

At the subsequent murder trial evidence was given that Henderson gave Dovey a 'hotshot' – a lethal heroin overdose – before partially strangling her and then raping the dying woman while her five-month-old daughter, Anna, was lying, crying, in an adjoining room.

Typically Henderson pleaded his innocence and, since his conviction and life sentence in June 1990, has kept protesting to anyone gullible enough to listen, that he was 'fitted up' with the Dovey murder.

Like so many of his fellow grasses, Henderson is a compulsive liar who will stop at nothing to ingratiate himself with police or prison authorities.

How many Tracey Doveys must be abused, tortured and killed before those authorities realise that by rewarding criminal informants with freedom that they are putting every member of the community at risk?

APPENDIX 2:
Extract from CJC Report on Project Piper[1]

'REASON FOR TRANSACTION' REQUIREMENT

During the course of this investigation and similar inquiries elsewhere, many officers claimed to have no recollection of the computer inquiry in question or the reason why it was conducted. In the case of the Nerang Police Station, the CMC was only able to go behind this response because it had conducted an extensive investigation with the benefit of documentation that it obtained by means of a search warrant. This is not always possible.

In the absence of any other means by which to prove or disprove whether access was appropriate, an investigator must accept the 'can't recall' defence. Similarly, audits of computer access can only be conducted effectively if users are required to demonstrate why they accessed the computer system.

The New South Wales experience on reason for transaction

The NSW Police Service is the only jurisdiction to implement a mandatory recording of reason for transaction Service-wide. There are some parallels between the development of that system and the history of this debate in Queensland.

In 1992, the ICAC released a report on an investigation of improper access and release of confidential government information. The investigation revealed a highly active illicit information trade that involved public servants from various government departments and agencies, including the NSW Police Service. It revealed the inadequacies of information-security management in many departments and agencies.

In May 1993, the NSW Ombudsman released a provisional report on one matter of this nature (Office of the NSW Ombudsman 1994). It was recommended that, to solve these problems, the NSW Police Service insert a 'reason for transaction' field that users would have to complete before they could obtain access to the computer system. The NSW Police Service rejected the recommendation because:

- the insertion of such a field would generate costly overheads
- people would just enter general reasons that would not assist with investigations
- corrupt individuals would not enter their real reasons for logging on.

The NSW Ombudsman considered these arguments and concluded that they did not justify rejection of the recommendation. The NSW Police Service continued to argue that a 'reason for transaction' field within the computer system for every transaction would not be cost-effective as an anti-corruption measure, particularly given that over 12 million accesses are made to the system each year. The NSW Police Service's concern was acknowledged by the Ombudsman's Office and an alternative proposal was recommended, namely that a policy be formally adopted whereby all users of the computer system will be held responsible for accesses that occur under their passwords.

1 *Protecting Confidential Information: A report on the improper access to, and release of, confidential information from the Police computer systems by members of the Queensland Police Service*, Criminal Justice Commission, November 2000 (pages 66–71)

The NSW Police Service responded by issuing a Commissioner's Notice (94/110) requiring all members to keep a written record of the reason for computer inquiries. However, a later Commissioner's Notice (95/8) served to override the mandatory nature of this requirement:

> 'The Service is conscious [of the requirement] to balance the needs of practical policing with the necessity to account for the reasons why inquiries are made. The Service is also aware it is not necessary to record the reason for every inquiry when records show the validity of the access. It is necessary, however, where practicable, for members of the Service, who have access to the computer, to record the reason for entry, particularly if they consider the inquiry might be the subject of an audit or is of a contentious nature.' (Office of the NSW Ombudsman 1995, p. 4)

The Office of the NSW Ombudsman again stated that the problem regarding improper access and release of information by police officers had not abated:

> 'In subsequent discussions, this Office was assured by police management that complaint figures relating to improper computer accesses would decline as a result of this newly-introduced re-education program targeting police culture. This has not, in fact, occurred … (1995, p. 1)'

Of concern to the Ombudsman was the fact that the NSW Police Service had rescinded its initial mandatory requirement to record reason for transaction, therefore leaving it to the subjective judgment of the member concerned as to whether supporting documentation for a transaction was required. Furthermore, the Commissioner's Notice did not carry the force of a Commissioner's Instruction for the purposes of taking effective disciplinary action against members shown to have improperly accessed computer systems. The 1995 Report of the NSW Ombudsman cited numerous cases where the subject officers did not record a reason for transaction and used the 'can't recall' defence despite the Commissioner's Notice.

Since that time, as acknowledged by the NSW Ombudsman, the NSW Police Service has taken effective initiatives for information security. The Service has commenced the move toward mandatory recording of reasons for access. On 29 July 1996, the Commissioner's Instructions were amended to include the following direction – 'Make a notebook entry recording the reason for a computer access unless it is abundantly clear from departmental records [that] the access was lawful.'

In its submissions to this Inquiry, the NSW Police Service indicated that audit and evaluation results demonstrated a high degree of compliance with personnel recording 'reasons for access' in their official notebook or duty book, and that 'Officers appear to accept responsibility to record access as part of their job and insurance against allegations of misuse of information' (NSW Police Service Submission 2000, p. 13). The NSW Police Service is also working toward electronic capture of reasons for transactions and, in the interim, has made the demands of record less by allowing:

- large jobs to be processed as a 'batch job' requiring only one entry to be recorded
- recording of a single entry in their official notebook, duty book or terminal register when a series of transactions are related
- country radio operators and, where appropriate, general support officers to record reasons in terminal registers and logs
- audio tape-recording and radio log registers, using infringement notices or information reports as reason for transaction.

…

Leasons learnt from the NSW experience

The NSW experience indicates that the NSW Police Service recognises the need to implement a system that allows effective auditing and investigation to be undertaken. In both its written and its oral submissions, the NSW Police Service conceded that requiring members to record reasons for transactions consumed more time. However, it argued that there is a clear need to

make individual officers accountable and responsible if the confidentiality of information recorded on the computer mainframe system was to be maintained. It is also important to note the futility of partially implementing an information-security strategy. If an information-security issue is to be tacked, it must be done in a comprehensive way to ensure that any foreseeable 'gaps' are removed and/or minimised.

The Queensland case

As in New South Wales, there has been ongoing debate on the issue of 'reason for transaction'. In 1994, the then Chairperson of the CJC, Mr R S O'Regan QC, wrote to the Commissioner of Police stating that the continuing high number of allegations of misuse of confidential information indicated that preventative action needed to be taken by the QPS. Mr O'Regan suggested[2] that a 'reason for transaction' field would serve as a memory for officers when audits were performed and would prevent them from telling investigators that they were simply unable to recall why they made the check in question. Mr O'Regan stated that investigations of allegations of this nature were being frustrated by such responses, which could not be shown to be false when, as is often the case, officers are required to make numerous searches of the QPS databases for legitimate purposes. Mr O'Regan went on to state that, while he accepted that no system could guarantee that abuses of that kind would not occur, any improvement should be welcomed.

The Commissioner replied that an additional field to record reasons for computer access has merit as a deterrent and could also be a useful investigative tool if implemented properly. However, the Commissioner also pointed out that if the overhead in system-processing, and user-response rate was greatly degraded, then a decision would need to be made as to which direction posed a greater risk to the QPS. The Commissioner advised that, until further information on the issue was collected, it would be inappropriate for the QPS to introduce a 'reason for transaction' requirement.

On 31 October 1994 the Chairperson wrote to the Commissioner stating the CJC's interest in the security aspects of the QPS's redevelopment of its information systems. The letter responded to the QPS's decision on the 'reason for transaction' field in the following way:

> While coded reasons [for transactions] may be questioned for their usefulness in the Courts where the standard of proof is 'beyond reasonable doubt', such information would be very relevant in Queensland where the standard of proof in Misconduct Tribunals is 'on the balance of probabilities' and useful in the open disciplinary processes used in Queensland.

Also in this letter the Chairperson commented 'that some alarming circumstances have been uncovered through the investigation of complaints to the Commission, including identification of officers in sensitive positions providing information to private investigators and commercial agents'.

On 13 December 1994 the CJC was advised that, as part of the new computer-access procedures, the new QPS computer system (called POLARIS) would provide the ability to record a reason against each inquiry made on the system. The QPS also released an internal report entitled *Requirement Analysis Specification for the Application Auditing Service* (30 November 1994), which stated that the 'user interface should include a provision to extract the reason for access from the user which should be included in the audit trail'. It was also acknowledged that such a system could be cumbersome to implement and that the 'final design of the reason function would be determined in concert with POLARIS users and representatives from the CJC and Inspectorate to ensure that it would be helpful for investigative purposes but be a minimal overhead for users'.

2 Mr O'Regan had read, and was in agreement with, the recommendation of the Office of the NSW Ombudsman (1994) for the NSW Police Service to adopt a 'reason for transaction' requirement.

On 17 January 1997 the CJC received a letter stating that there were serious concerns with the implementation of the 'reason for transaction' requirement. This concern was raised just before POLARIS Release 1 was activated at the end of October 1996 and, as a result, implementation had been deferred. That letter also invited comments for consideration for the next meeting of the POLARIS Release 1 Project Board.

On 7 April 1997, the CJC wrote stating its position and the views put forward by the then Chief Superintendent of the Commissioner's Inspectorate, Mr Jefferies. Mr Jefferies had given the following reasons for the necessity to supply reasons when using the POLARIS system:

- To improve the auditing facility that is presently available;
- To reduce the amount of time necessary to complete an investigation;
- To make all users of POLARIS accountable for their actions;
- The expected implementation of Privacy legislation in Queensland later this year will require the service to be accountable for person information that is accessed;
- Other Police Services within Australia have found it necessary to implement policies and systems which make users of police information systems accountable for all information.

The CJC did not hear further from the QPS until it received a memorandum dated 19 May 1997 stating that the POLARIS Release 1 Project Board had considered submissions in relation to the introduction of a 'reason for transaction' field and on 17 March 1997 had concluded that the facility would not add value to the POLARIS audit trail and that the investigator would still need to prove that the reason given was false. The Board did agree, however, that this requirement may need to be considered when sensitive information such as intelligence data are recorded on the system in future releases. The memorandum indicated that this recommendation had been approved by the Deputy Commissioner. It was noted in later correspondence that the POLARIS Release 1 Project Board had made its decision and recommendation before it had received the CJC submission of 7 April 1997.

On 20 August 1997 the Chairperson again wrote to the Commissioner requesting that serious consideration be given to issuing a policy directive to the POLARIS 1 Release Management Board that 'it introduce a facility to allow the recording of a "reasons for transaction" when accessing POLARIS'. It was commented that"

> The Commission still receives many complaints alleging misuse of confidential information. Also, in recent times, particularly since the inception of Project Shield,[21] there have been a number of occasions in which surveillance vehicles have been compromised, in that computer checks have been carried out on covert vehicles. It is not possible with the current audit system to ascertain whether the inquiries made were routine traffic inquiries or something more sinister.

The letter emphasised that the types of checks being observed had the potential not only to compromise current and future operations but also to place at risk the safety of operatives. It was to become apparent that this type of improper use of QPS computer systems would develop into a serious problem for Project Shield.

The Commissioner wrote back to the Chairperson on 18 September 1997;

> … as the full impact of the 'reason for transaction' facility became apparent on the usability of the system and what the facility would and would not provide in terms of system security, the Polaris User Team developed reservations as to the desirability of including the facility in Release 1. These reservations were based on the following matters:
>
> - The facility would introduce another level of bureaucracy in the usage of the system and this had the potential to adversely effect the usability and acceptance of Polaris;
> - It was expected that in a short space of time, users would enter a routine, and legitimate 'reason for transaction' that in the end would subsequently offer little to either investigators or the users as to the real reason for access;

- The onus would still rest with investigators to disprove the accuracy of the entry in the 'reason for transaction' field during any investigations;
- A very extensive security system had been developed for Polaris that enabled investigators to replay transactions undertaken by users.

However, the Commissioner did indicate that he believed it to be appropriate that the issue should continue to be reviewed in conjunction with future releases of POLARIS.

In October 1997, the CJC released its report resulting from Project Shield, entitled *Police and Drugs: A Report on an Investigation of Cases Involving Queensland Police Officers*. The report, prepared by the Honourable W J Carter QC, included many examples of police officers and civilians accessing computer databases for purposes unrelated to police work. When investigators attempted to determine the reason for the checks, 'those persons who made the checks were, not surprisingly, unable or unwilling to say on whose behalf the checks were made and for what purpose' (CMC 1997a, p. 60). Because of these investigative difficulties and the ease with which inappropriate inquiries could be made anonymously and without explanation, it was recommended that a computer security screen ('reason for access') be introduced on the QPS computer (CJC 1997a, Recommendation 7(i)).

The subsequent CJC report *Police and Drugs – A Follow-up Report* (1999a) observed that the recommendation regarding the use of a 'security screen' had not been adopted by the QPS. As noted in the report, the (then) Deputy Commissioner of Police wrote to the CJC indicating that the QPS 'would not be adopting this recommendation because it is not considered the additional field is of sufficient value to justify its inclusion'. He also adopted the QPS's previous response to the proposal in the letter dated 18 September 1997 (quoted above).

Notwithstanding the reasons put forward by the QPS to justify their stance against the CJC's recommendation, the CJC expressed the view that the benefits associated with the introduction of a security screen exceeded the costs associated with its introduction. Appendix P has an excerpt from the report outlining the CJC's comment on the QPS's decision to reject a 'reason for transaction' field.

It should be mentioned here that, during this Public Inquiry, the QPS did indicate that their new computer system, which will allow direct access to the criminal history of individuals, will require users to nominate the reason for viewing criminal-history information. The user-ID and reason for viewing will be recorded in the computer system's audit-trail holdings. Any printed documents from the system will have a 'water mark' showing the user-ID and organisational unit. In its submission, the QPS indicated that it 'would need to evaluate its [reason for transaction requirement] cost-effectiveness before considering any expansion of the system' (QPS submission 2000, p. 21).

The QPS also argued that the 'reason for transaction' requirement was a justifiable and reasonable control to implement for this particular system because of the nature of the information and the risk of misuse. The CJC does not consider criminal-charge history or personal information (e.g. address and phone number) to be any less sensitive than criminal history. Criminal-charge information is potentially more sensitive because it may be misinterpreted as the same as criminal history and remains on the QPS systems even if the individual is found not guilty.

The CJC appreciates that effective information security is much broader than a single feature such as the 'reason for transaction' requirement; however, this requirement is one critical feature of an information-security approach to dealing with the type of misconduct revealed by this Inquiry. The issue of concern is that, despite the implementation of many information-security measures, investigations and audits on access to QPS computer systems cannot be conducted effectively without the ability to cross-check against a 'reason for access' record. This was evident in this Inquiry, previous CJC inquiries and investigations, and inquiries and investigations conducted in other jurisdictions.

The purpose of a requirement to record reasons for transaction is not only to investigate officers suspected of improperly accessing computer systems, but also to provide an effective means of exonerating those who have been wrongly accused of such misconduct. It is unrealistic to expect officers to recall the reasons for a transaction that they conducted some time ago. The lack of a requirement to record reasons for transactions does not serve honest QPS members well and only provides a convenient defence for those involved in misconduct, official misconduct and corruption.

In its submission to the Inquiry, the QPS raised a number of objections to a 'reason for transaction' requirement, and each is addressed as follows:

- *A free text field or screen for 'reason for access' cannot guarantee a satisfactory or reasonable explanation of activity undertaken* – In recommending the 'reason for transaction' field, the CJC did not argue that it is a fool-proof prevention measure; no single prevention measure ever is. An effective prevention strategy combines a range of complementary initiatives aimed at minimising the occurrence of, and opportunity for, improper conduct. A 'reason for transaction' requirement will raise user awareness and provide a defence for members wrongly accused of inappropriate access, and is essential for effective investigation and audit. It is true that recalcitrant members may well enter false reasons; however, manufactured reasons will be easier to investigate and disprove than no reason at all. This of itself will serve to identify suspect members and facilitate an appropriate managerial response to the conduct of such officers (e.g. increased level of supervision). Prevention initiatives, like legislation, orders and policies, should not be cast aside because they may not be adhered to by all members. Similarly, the CJC does not consider the fact that some members may enter false reasons for transactions as a sufficient argument to discount this initiative.
- *The cost of such an initiative would be high in relation to any possible benefit* – This submission has not been supported by any meaningful costings. The QPS has also been dismissive of the hidden costs of the present system. There are substantial costs in conducting the investigations into this type of misconduct undertaken by both the ESC and the CJC. Many of these investigations fail to achieve an effective result because members do not have to account for their computer transactions. This Inquiry alone has cost thousands of labour hours for both the CJC and QPS over the last two years. This does not include the cost to the QPS for the time spent by the subject officers during working hours to conduct searches unrelated to their duties as a police officer. It must also be recognised that the costs of requiring a reason for transaction are off-set by the productivity gains that flow from information systems permitting immediate access to information that previously would have taken days or weeks to obtain and would have required significant labour hours to process. Clearly it is extremely difficult to make a fair and accurate estimate of cost-benefit given the above issues and the fact that the extent of the problem is unknown.

  Certainly, the implementation of a 'reasons for transaction' requirement can be very costly if done strictly through IT functions; however, as seen in the NSW Police Service, the combination of different media to record reasons for transactions can reduce financial cost significantly. Different systems for recording transaction can be used. For example, for more sensitive information/records, a mandatory 'reason for transaction' field built into the computer system may be most appropriate, whereas for other information/records a written record in the police notebook or some other register may be adequate. Similarly, the creation of official police records may be sufficient (e.g. check on vehicle registration verified by the issue of a speeding ticket). The decision as to the medium for recording reasons for transactions is a matter for the QPS to determine.
- *It will constitute a minor inconvenience and irritation to the vast majority of honest officers and may discourage officers from using their initiative to access information, particularly if the reason is just a hunch* – The QPS's adoption of the risk-assessment and risk-management philosophy has at times caused inconvenience and irritation, as new systems are bound to do. No doubt members have felt inconvenienced when required to enter information into an index or subjected to an inspection. However, these innovations have eventually been

accepted by members as necessary if the Service is to discharge its responsibility of ensuring that orders, policies and procedures are complied with. As noted in the submission of the NSW Police Service, members have moved from feeling inconvenienced to accepting the requirement to record a reason for transaction. The concern that member may be discouraged from using their initiative is better met by education and training rather than compromising information-security strategies. Furthermore, if members are confident of their reasons for using the computer system, even if based on a hunch, it should make no difference that a reason for transaction is required.

- *If it is to be used it should be restricted to those systems which have particularly sensitive information and where there is potential serious risk if the information were to be handled inappropriately* – In its written submission (2000, p.21), the QPS indicated that one area where a 'reason for access' screen is necessary is in the new system that gives officers access to criminal-history records. The CJC considers that criminal history, which is publicly available at the time of the court case, is of the same classification and risk level as criminal-charge histories and personal information that can be used to locate a person. If the QPS considers it a necessary security measure to record reasons for access to criminal-history records, the same necessity applies to other in-confidence information.

Like the Office of the NSW Ombudsman, the CJC firmly believes that the QPS should implement a system of accountability for authorised users accessing the QPS computer systems. There does not appear to be any effective alternative to the requirement of having members record their reasons for transactions. The method and program of implementation are matters for the QPS and must be considered as part of the strategic planning process. It is for the QPS to determine when mandatory computer fields are preferred over a written record. The QPS should also ensure that, where a search is conducted on behalf of someone else, appropriate systems are in place to identify the person who requested the search and the reasons for that search.

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