



**Joint Standing Committee on the
Anti-Corruption Commission**

**A REPORT ON THE SPECIAL INVESTIGATION
CONDUCTED BY MR GEOFFREY MILLER QC: THE
ALLEGATIONS, THE EVIDENCE, THE OUTCOMES AND
THEIR RELEVANCE TO ANTI-CORRUPTION PROCEDURES
WITHIN THE WESTERN AUSTRALIAN POLICE SERVICE**

Ninth Report
In the Thirty-Fifth Parliament

Further copies are available from -

State Law Publisher
10 William Street
PERTH WA 6000

Telephone: (08) 9321 7688
Facsimile: (08) 9321 7536
E-mail: sales@mpc.wa.gov.au

Published by the Parliament of Western Australia,
Perth, Western Australia, 6000.



Printed by the Government Printer, State Law Publisher,
Perth, Western Australia.





**Joint Standing Committee on the
Anti-Corruption Commission**

**A REPORT ON THE SPECIAL INVESTIGATION
CONDUCTED BY MR GEOFFREY MILLER QC: THE
ALLEGATIONS, THE EVIDENCE, THE OUTCOMES AND
THEIR RELEVANCE TO ANTI-CORRUPTION PROCEDURES
WITHIN THE WESTERN AUSTRALIAN POLICE SERVICE**

Ninth Report
In the Thirty-Fifth Parliament

Presented by

**Hon. Derrick Tomlinson, MLC and
Mr W. Thomas, MLA**

Laid on the Table of the Legislative Council and the Legislative Assembly on
Thursday, 9 December 1999

ORDERED TO BE PRINTED

COMMITTEE MEMBERS

Chairman	Hon. Derrick Tomlinson, MLC
Deputy Chairman	Mr W. Thomas, MLA
Members	Mr R. Bloffwitch, MLA Dr E. Constable, MLA Hon. J. Cowdell, MLC Hon. M. Montgomery, MLC Hon. N. Griffiths, MLC Mr M. Trenorden, MLA

COMMITTEE STAFF

Clerk to the Committee	Mr Peter Frantom
Research Officer	Mr Alphonse de Kluuver
Secretary/Stenographer	Mrs Patricia Roach

COMMITTEE ADDRESS

Legislative Assembly Parliament of Western Australia Harvest Terrace, PERTH WA 6000	Contact: Mr Peter Frantom <i>Telephone: (08) 9222 7486</i> <i>Fax: (08) 9222 7804</i> <i>E-mail: pfrantom@parliament.wa.gov.au</i>
---	---

Table of Contents

	Page No
COMMITTEE MEMBERS	i
TABLE OF CONTENTS	iii
CHAIRMAN'S FOREWORD	v
BACKGROUND TO THE MILLER INVESTIGATION	1
CHRONOLOGY OF EVENTS	5
THE ALLEGATIONS, EVIDENCE AND THE OUTCOME	13
THE ALLEGATIONS AGAINST THE SIX POLICE OFFICERS	13
THE PURPOSE OF THE DRUG SEARCH	16
ALLEGED EVENTS IMMEDIATELY FOLLOWING THE DRUG SEARCH	18
THE INTERNAL AFFAIRS UNIT	19
THE HEROIN	20
THE CANNABIS	21
THE HANDBAG AND THE MONEY	23
PETER ROWLAND COOMBS	26
CHRISTOPHER GORDON CULL	29
THE AFTERMATH	33
THE INITIAL SUSPENSION OF THE SIX OFFICERS	33
SUPREME COURT ACTION: PARKER v MILLER	35
REFERRAL TO THE COMMISSIONER OF POLICE FOLLOWING PARKER v MILLER	36
SUPREME COURT ACTION: PARKER v ACC	39
THE OUTCOME	40
DISCUSSION	45
INTRODUCTION	45
STANDARD OPERATING PROCEDURES	45
POLICE DISCRETION	49
INFORMANT MANAGEMENT	54
IMMUNITIES AND INDEMNITIES FROM PROSECUTION	59
THE COMMISSIONER'S POWERS UNDER SECTION 8 OF THE POLICE ACT 1892	60
REVIEW OF STANDARD OPERATING PROCEDURES AND INFORMANT MANAGEMENT POLICY	65
APPENDIX	
THE COMMITTEE'S TERMS OF REFERENCE	67

CHAIRMAN'S FOREWORD

The Joint Standing Committee on the Anti-Corruption Commission presents this report in the knowledge that this is the first time that details of the allegations against six police officers who were adversely named in the report of the Special Investigation undertaken by Mr Geoffrey Miller QC (the "Miller Investigation") have been released publicly. The Miller Investigation was conducted over six months, from 16 June 1997 when Mr Miller was sworn in as an Anti-Corruption Commission Special Investigator, to 5 December 1997 when his report (the "Miller Report") was presented to the Commissioners for their consideration.

Four days after receiving the Miller Report, the Chairman of the Anti-Corruption Commission (the "ACC"), Mr Terry O'Connor QC, announced the Commission's intention to release it. Before doing so, the Commission was required to invite the six police officers named in the report to make submissions. They declined to do so. Instead, an application was lodged in the Supreme Court for a Writ of Certiorari and interim injunction preventing the ACC and the Commissioner of Police from publishing findings contained in the Miller Report. An order *nisi* and interim injunction were granted.

There followed a vigorous campaign by the Western Australian Police Union (the "Police Union") against the ACC, the Special Investigation and its statutory obligations of confidentiality, and the Commissioner of Police for his suspension of the six officers named in the Miller Report. The last of these included a concentrated campaign against the "loss of confidence" power available to the Commissioner under Section 8 of the *Police Act 1892* (WA).

The case against the ACC was heard by the Full Court of the Supreme Court on 22 April 1998. Judgement was delivered in 8 May 1998.¹

On 2 September 1998 the six officers obtained another order *nisi* for a Writ of Certiorari against the ACC seeking to quash reports provided by the ACC to the Commissioner of Police. After a hearing by the Full Court the order *nisi* was discharged by the Full Court on 31 March 1999.²

The Order prohibiting the release of the findings contained in the Miller Report remains in place. The Joint Standing Committee has not received the findings, nor does it have information about them.

This report, save for the chronology, is derived entirely from reports on the Miller Investigation prepared by the ACC which were relevant to the allegations against each of the officers, which reports had been given to the officers to enable them to defend section 8 notices against them by the Commissioner of Police. These reports were given by the officers to the Joint Standing Committee.

¹ *Parker and Others v Miller and Others (Parker v Miller)* Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 8 May 1998, Lib. No. 980249.

² *Parker and Others v Anti-Corruption Commission (Parker v ACC)* Unreported decision of the Full Court, delivered 31 March 1999, Lib. No. 990162B.

By sending copies of three of the reports, unsolicited, to each member of the Joint Standing Committee, lawyers acting for the Police Union, effectively, published them. The other three reports were sent to the Committee, at its request, by the Police Union. Additional procedural information was sought from and given to the Committee by the ACC and the Commissioner of Police.

In preparing this report, the Committee has been able to call upon the substantial documentary information it has accumulated. However, the Committee does not have complete information because of Court Orders preventing the ACC from releasing the Miller Report and attendant evidence. Neither has the Committee been able to use all the information it has because some was made available in confidence and cannot be reported, even to Parliament.

It is important to note that the Joint Standing Committee invited the six officers to provide copies of their responses to the section 8 notices they received in June. Only one responded and he declined.

Only when the Miller Report and, more important, the evidence gathered in the Special Investigation, can be released will it be possible to appreciate the full nature of the matters investigated and their implications for the Western Australian Police Service. Until now, the public controversy about this case has been unbalanced, mainly because the ACC and the Commissioner of Police have been constrained by decisions of the Supreme Court in answering some of the things which have been said and reported by others.

Even with the reservations that it does not know everything and cannot divulge all that it knows, the Committee presents this report so that Members of Parliament, and therefore the public, have more information available to enable them to make informed judgements about the actions of the ACC and the response of the then Commissioner of Police to the conduct of the six police officers adversely named in the Miller Report.

The Committee offers no judgement in this report about the conduct of those officers. That has been decided by others and their decisions and the evidence available to them in reaching their decisions is presented here without prejudice. However, the information presented here invites comment on some aspects of operating procedures police officers are required to follow. It also invites commentary on the power of the Commissioner of Police to discipline, by suspension and dismissal if justified, police officers who fail to maintain professional standards expected of them. Those matters are considered in detail in the Discussion section of this report.

The Joint Standing Committee on the Anti-Corruption Commission presents this report for Parliament's consideration.

Hon Derrick Tomlinson MLC
CHAIRMAN

BACKGROUND TO THE MILLER SPECIAL INVESTIGATION

A news article under the heading “New Theft Claim Hits Drug Squad” in *The West Australian* of 3 June 1997 reported that police internal affairs officers were investigating Drug Squad detectives who were alleged to have stolen cash during a drug search at a suburban home –

“A 36-year-old mother of two has made a sworn statement that on April 8, drug squad detectives held guns to her head in the street outside her northern suburbs home and stole \$2000 from her handbag.

The woman, who does not want to be identified, said she showed detectives about 60g of cannabis in a plastic bag but they did not seize the drug or charge her.

She said her partner phoned internal affairs that day and an internal affairs officer later told her to “kiss the money goodbye”.

According to the newspaper report, the woman claimed that police officers from the Internal Affairs Unit (the “IAU”) had photographed the cannabis and arranged for the bag to be fingerprinted. She also claimed in a statutory declaration that the IAU officers had told her, “she would have to be charged with possessing the drug”.

The Assistant Commissioner of Police (Professional Standards) declined to comment on whether the allegations made by the unnamed woman were being investigated by the IAU of the Western Australian Police Service (the “WAPS”). Just two days later on 5 June 1997, however, the Anti-Corruption Commission (the “ACC”) announced that, at the request of the Commissioner of Police, it would assume full responsibility for the investigation.

On 16 June 1997, eleven days after the newspaper report appeared, Mr Geoffrey Miller QC (“Miller”), at that time a prominent criminal lawyer, was sworn in as an ACC Special Investigator.¹ This (the “Miller Investigation”) was the first Special Investigation under Part IV of the *Anti-Corruption Commission Act 1988 (WA)* (the “ACC Act”) since the ACC had come fully into operation on 1 November 1996.

Six police officers became subjects of the Miller Investigation. They were **B**

- Detective Senior Constable Larry Scott Parker (“Parker”);
- Detective Senior Constable Stephen Joseph Clark (“Clark”);
- Detective Senior Constable Pryce Joseph Scanlan (“Scanlan”);
- Detective Senior Constable Paul James McMurtrie (“McMurtrie”);
- Detective Sergeant Peter Rowland Coombs (“Coombs”); and
- Inspector Christopher Gordon Cull (“Cull”).

¹ Mr Miller has since been appointed to the bench of the Supreme Court.

Parker, Clark, Scanlan and McMurtrie were the members of the WAPS Drug Squad referred to in the newspaper article of 3 June 1997. Each was a member of the Drug Squad's Cannabis Team. Coombs was Officer-in-Charge of the WAPS Organised Crime Squad. Cull was a commissioned officer of the WAPS holding the rank of Inspector.

Miller presented the report of the Special Investigation to the ACC on 5 December 1997 (the "Miller Report"). It contained adverse findings against individual police officers as well as more general criticisms of certain practices within the WAPS. A report in *The West Australian* under the headline "Police corruption blamed on laxity" claimed that the Miller Report included findings that **B**

Police corruption existed in WA because many officers ignored standard operating procedures and management directives, the Anti-Corruption Commission revealed.

And police middle management often failed to enforce the directives.²

On 12 December 1997, one week after Miller presented his report, six police officers were suspended from the WAPS. In announcing the suspensions, the Commissioner of Police named the six and said –

As a consequence of the findings of the special investigator, Mr Geoffrey Miller QC, I have lost confidence in the ability of each of the officers to perform the functions of the office.³

Those suspensions and the findings made against the officers were successfully challenged in the Supreme Court in *Parker and Others v Miller and Others (Parker v Miller)*.⁴

On 18 June 1998, following receipt of reports from the ACC dated 11 June 1998 complying with the decision in *Parker v Miller* on the allegations against each of the six officers investigated by Miller, the Commissioner of Police issued to the officers notices of intention to remove from the Police Force. Those reports were the subject of an unsuccessful Supreme Court challenge by the officers in *Parker and Others v Anti-Corruption Commission (Parker v ACC)*.⁵

Four months after the notices were issued, and ten months after their original suspension, four of the officers, Parker, Clark, Scanlan and McMurtrie, were reinstated after the Commissioner received their responses to those notices. Inspector Cull was reinstated one month later. He has since resigned from the Police Service. The process with respect to Coombs is not yet complete.

The events which followed the presentation of the Miller Report to the ACC resulted in litigation before the Supreme Court. A public campaign by the Western Australian Police Union (the "Police Union") occasioned press and media comment about and criticism of the ACC, the conduct of the Special Investigation and the obligations of secrecy under which the ACC is

² The West Australian, "Police corruption blamed on laxity", Saturday, 27 December 1997, p. 4.

³ Police Media *Officers Suspended* Peter Newman, Director, Media and Public Affairs, 12 December 1997.

Police Media *Further Suspension* Peter Newman, Director, Media and Public Affairs, 12 December 1997.

⁴ Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 8 May 1998, Lib. No. 980249.

⁵ Unreported decision of the Full Court, delivered 31 March 1999, Lib. No. 990162B.

required to work. The Joint Standing Committee has tabled in Parliament a discussion paper and a number of reports dealing with matters arising from the Miller Investigation.

In spite of the litigation before the Supreme Court, the reports of the Joint Standing Committee and critical newspaper and television news reports, as well as the apparent seriousness of the observations regarding police misconduct said to be contained in the Miller Report, detailed information from the Special Investigation has not been made public. Neither has the nature of the misconduct alleged to have been committed by the six police officers previously been revealed.

There are various reasons for this. In the first instance, as a result of the first Supreme Court action taken by the police officers to prevent the ACC from publishing the Miller Report, an injunction was placed upon the publication of its findings. That injunction remains in place. The ACC is prevented by its Act from disclosing information or making statements setting out opinions which are, “either expressly or impliedly, critical of any person unless the Commission ...” has afforded that person “the opportunity to appear before it and to make submissions ... in relation to the matters” (the ACC Act, ss 52(5)(a) and 52(6)). That statutory process has not been followed through. As to the release of information concerning allegations made to the ACC by persons or organisations other than the ACC, provisions of confidentiality in section 54 of the ACC Act restrict the publication of such information.

As things stand, only the six police officers are in a position to release detailed information with respect to the Miller Report. On 18 June 1998, each of the officers received copies of the material upon which the Commissioner of Police relied in making his decision to suspend them. That material included the ACC reports dated 11 June 1998 to the Commissioner of Police on the matters concerning each of the officers investigated by Miller. The Chairman of the ACC gave the officers permission to release the reports, subject to the names of informants not being revealed.

On 5 March 1999, the members of the Joint Standing Committee received, separately and unsolicited, through lawyers representing the Police Union, copies of the ACC reports to the Commissioner of Police relating to Parker, Coombs and Cull and other material.⁶ The ACC reports on allegations against Clark, Scanlan and McMurtrie were provided to the Joint Standing Committee by the Police Union at the Committee’s request.⁷

⁶ On 5 March 1999 the Police Union wrote to each Joint Standing Committee member regarding *Parker v ACC*, the decision in which was soon to be handed down. The purpose of the correspondence was to outline the Applicants’ principal argument. To that end, copies of the following documents were provided to each member -

- Report from Mr L A Tsaknis;
- The ACC Report to the Commissioner of Police in respect of Larry Scott Parker (it was noted that the reports on the other three Drug Squad officers were in “substantially the same form”);
- The ACC Report to the Commissioner of Police in respect of Peter Rowland Coombs;
- The ACC Report to the Commissioner of Police in respect of Christopher Gordon Cull;
- The “Applicant’s Analysis and Commentary” on the reports; and
- The first instance decision of Justice Parker heard and delivered on 27 August 1998.

⁷ Covering letter dated 4 June 1999 from the Police Union to the Chairman of the Joint Standing Committee enclosing the three reports.

The purpose of this report to Parliament is to provide as comprehensive an account of the Miller Investigation and its aftermath as is possible from information assembled by the Joint Standing Committee. The primary sources of that information are those ACC Reports dated 11 June 1998 provided to the Committee by the Police Union, judgements of the Supreme Court concerning litigation arising from the Miller Investigation, media releases from the WAPS and the ACC and material regarding the Miller Investigation reported in the media. Additional material was provided to the Joint Standing Committee by the then Commissioner of Police, Mr Robert Falconer, and the ACC at the Committee's request.

CHRONOLOGY OF EVENTS

Date	Event/Action
3 June 1997	Report in <i>The West Australian</i> regarding Drug Squad raid under the headline: "New Theft Claim Hits Drug Squad".
16 June 1997	Geoffrey Miller QC sworn in and appointed as an ACC Special Investigator.
18 August 1997 to October 1997	Parker, Clark, Scanlan, McMurtrie, Coombs and Cull give evidence before the Special Investigation, each on more than one occasion.
27 October 1997 and 27 November 1997	Notice of Potential Adverse Findings served by the Special Investigator on five of the officers on 27 October 1997 and on the sixth on 27 November 1997. Each given between six and ten days to respond and then an extension of a week.
14 November 1997 to 2 December 1997	Officers responded to Notice of Potential Adverse Findings.
5 December 1997	The ACC received from Miller the report of the Special Investigation.
9 December 1997	The ACC announced that it had completed its initial consideration of the Miller Report. The ACC reported Miller had recommended serious disciplinary action be taken against six police officers. The ACC noted it was unable to make further public statements until it had informed the officers of the findings against them and had given them an opportunity to make submissions.
10 December 1997	The ACC met to decide its response to the Miller Report.
11 December 1997	The Director of Public Prosecutions (the "DPP") provided with an abridged Miller Report and informed that a formal brief would be forthcoming. Letter from the ACC to the Commissioner of Police enclosing two copies of the modified Miller Report.

Date	Event/Action
12 December 1997	<p>Letters from the ACC delivered to the officers named in the Miller Report setting out the findings against them and inviting them to appear before it and make submissions in relation to the findings.</p> <p>The six officers were suspended pursuant to the provisions of section 8 of the <i>Police Act 1892</i> (WA) (the “Police Act”).</p> <p>WAPS media release regarding the suspensions and naming the officers, noting that Cull had been directed to take paid leave. Further WAPS Media release announcing that Cull had now been suspended.</p>
17 December 1997	<p>Application in Supreme Court before Justice Steytler for order <i>nisi</i> for Writ of Certiorari (requiring the application to go before the Full Court) and interim injunction preventing the Commission of Police or the ACC publishing the findings contained in the Miller Report.</p> <p>The order <i>nisi</i> and injunction were granted.</p>
19 December 1997	<p>The ACC provided a brief of evidence to the DPP.</p> <p>Writ of certiorari served on ACC Chairman and Miller.</p>
21 December 1997	<p>A mass meeting organised by the Police Union passed no confidence motions in the Commissioner of Police, senior police officers, the Court Government and the ACC.</p>
23 December 1997	<p>The ACC announced it would be applying for an expedited hearing in the Supreme Court to challenge the injunction granted on 17 December 1997.</p> <p>The ACC noted the suspended officers had declined the opportunity to make further submissions to it.</p>
	<p>It was reported the Supreme Court was asked by Counsel representing the Commissioner of Police in the matter of <i>Parker v Miller</i> to lift the injunction restraining the Commissioner from releasing details of the Miller Report.</p> <p>The application was withdrawn after Counsel for the officers gave an undertaking that the officers would make no further public comment.</p>
12 January 1998	<p>The Minister for Police, the Hon. John Day MLA, announced</p>

Date	Event/Action
	that the powers relating to dismissal and suspension of police officers in the WAPS were to be reviewed by Mr Michael Codd AC.
1 February 1998	Gazetted DPP Guidelines on discretion not to prosecute indictable offences became operative.
26 February 1998	Minister for Police media statement noting that the Codd review had been completed and that the Government was working towards its implementation.
24 March 1998	ACC releases a policy statement regarding the interpretation of section 54 of the ACC Act and setting out a less strict interpretation than had been accepted.
22 April 1998	<p><i>Parker v Miller</i> heard before the Full Court of the Supreme Court.</p> <p>The Court held that the ACC acted beyond power in making findings of guilt against six officers named in the Miller Report.</p> <p>The Court reserved its judgement regarding the action of the Commissioner of Police resulting in the suspension of the officers in reliance on those findings.</p>
23 April 1998	The DPP wrote to the ACC informing it that he would not be prosecuting the officers with respect to whom he had received briefs of evidence for any criminal offences and giving his reasons for coming to that decision.
30 April 1998	Letter from Commissioner of Police to ACC returning two abridged copies of Miller Report provided on 11 December 1997.
8 May 1998	<p>The Full Court of the Supreme Court delivered its judgement in <i>Parker v Miller</i>.</p> <p>The Court found by majority that the Commissioner of Police had overstepped his authority under section 8 of the Police Act in acting under that section in reliance on findings against the six officers made by the Special Investigator and adopted by the ACC which were invalid.</p>
11 May 1998	Notices issued to Parker, Clark, Scanlan and McMurtrie

Date	Event/Action
	<p>rescinding the order dated 12 December 1997 suspending them from duty (thereby formalising the decision of the Supreme Court in <i>Parker v Miller</i>) and giving them notice to take paid leave as of 12 May 1998.</p> <p>Cull informed of decision to rescind and approval sought from Executive Council to reinstate him.</p> <p>Notice to Cull rescinding order dated 12 December 1997 suspending him from duty and giving him notice to take paid leave as of 12 May 1998.</p>
13 May 1998	The ACC announced that it had provided the Commissioner of Police with details of the allegations against the six officers together with reports on the allegations.
15 May 1998	Letter from ACC (CEO) to Assistant Commissioner of Police (Professional Standards) advising that additional material requested in letter dated 15 May 1998 has had confidentiality order lifted and is enclosed.
4 June 1998	Letter from ACC to Assistant Commissioner of Police (Professional Standards) forwarding supporting material relating to each of the six officers.
11 June 1998	Working copy of the reports which were handed to Assistant Commissioner of Police (Professional Standards) on 13 May 1998 returned by him to the ACC to correct minor errors.
12 June 1998	<p>Amended ACC reports dated 11 June 1998 regarding each of the six officers forwarded to the Commissioner of Police pursuant to section 22(1) of the ACC Act.</p> <p>Covering letter from the Chairman of the ACC to the Commissioner of Police dated 12 June 1998 noting minor amendments to the original reports, setting out the allegations against each officer and advising that the material had been forwarded to him for further action pursuant to section 21(4) of the ACC Act.</p>
15 June 1998	Additional material (further documents) submitted to the Assistant Commissioner of Police (Professional Standards) in respect of the six officers.

Date	Event/Action
	<p>Internal Police Memoranda to the Commissioner of Police prepared by the Assistant Commissioner of Police (Professional Standards) in respect of each officer and enclosing papers relating to the allegations against each officer.</p> <p>The memoranda suggested that each officer by his actions as reflected in the evidence had demonstrated that he lacked the ethical judgement, integrity and professionalism required to remain in the WAPS and recommended that each show cause as to why he should not be removed from the WAPS.</p>
16 June 1998	Commissioner of Police notes on each memorandum that “he concurs”.
17 June 1998	<p>The ACC takes out a full-page advertisement in <i>The West Australian</i> to counter what the ACC called a campaign of misinformation against it.</p> <p>The six officers were served notices dated 16 June 1998 of intention to remove from the Police Force and given 21 days to show cause why the intention should not be confirmed.</p>
18 June 1998	<p>Commissioner’s reasons for so doing that he had lost confidence in the officers –</p> <ul style="list-style-type: none"> • ability to maintain the professional standards required of a police officer; • capacity to exercise credible and sound ethical judgement; and • integrity.
18 June 1998	<p>Material used by Commissioner of Police to make decision provided by ACC to Police Union.</p> <p>The Chairman of the ACC gave the officers permission to release the reports, subject to the names of informants not being revealed.</p> <p>Coombs also issued with second Notice of Intention to Remove dated 17 June 1998 in relation to joint taskforce investigation by the WAPS, Australian Federal Police (the “AFP”) and National Crime Authority (the “NCA”) into allegations of corrupt activities by members of the WAPS attached for a time to Perth office of the NCA. (The Joint Standing Committee has</p>

Date	Event/Action
	not been able to confirm the date of service of this notice.)
21 June 1998	A mass rally of police officers voted to apply work bans if the ACC is not suspended and section 8 of the Police Act repealed.
25 June 1998	Summaries of the joint taskforce investigation dated 22 June 1998 into allegations of corrupt activities by members of the WAPS attached for a time to the Perth office of the NCA tabled in Parliament.
10 August 1998	State Cabinet approved the establishment of an appeal and review process for police officers subject to dismissal proceedings initiated by the Commissioner of Police under section 8 of the Police Act.
2 September 1998	<p>Supreme Court grants an order <i>nisi</i> for a Writ of Certiorari against the ACC before Justice Parker.</p> <p>The order <i>nisi</i> required the ACC to show cause before the Full Court why the reports dated 11 June 1998 to the Commissioner of Police should not be quashed.</p> <p>The order was granted it being held that the ACC had a case to answer before the Full Court regarding the validity of its reports dated 11 June 1998 to the Commissioner of Police.</p>
14 October 1998	Memoranda to Assistant Commissioner of Police (Professional Standards) from Commissioner of Police regarding Clark, Parker, McMurtrie and Scanlan advising of decision to rescind Notice of Intention to Remove issued under section 8 and further advising that each should undergo formal counselling.
15 October 1998	Notice to Resume Duty dated 15 October 1998 issued on or about this date to each of the four Drug Squad officers. That decision made after considering the response of the officers to the Notice of Intention to Remove from the Police Force each had received and the granting of extensions of time in which to respond.
10 November 1998	Supreme Court appearance regarding <i>Parker v ACC</i> seeking amendment to Motion of Writ of Certiorari and Declaration to include matters regarding breach of natural justice. Granted.

Date	Event/Action
11 November 1998	<p>Notice to Resume Duty on 16 November 1998 dated 11 November 1998 issued on or about this date to Cull following extensions of time in which to respond to the Notice of Intention to Remove from the Police Force issued to him and receipt of his response.</p> <p>By that notice Cull required to undergo formal counselling.</p>
3 December 1998	<i>Parker v ACC</i> heard before the Full Court of the Supreme Court. The Court reserved its judgement.
14 January 1999	Cull's resignation is accepted by the Commissioner of Police.
5 March 1999	Copies of ACC reports on allegations against Parker, Coombs and Cull and other materials provided unsolicited to members of the Joint Standing Committee by the Police Union with covering letter.
17 March 1999	Material (five (5) lever arch files – unsanitised) released to the Assistant Commissioner of Police (Professional Standards) (only) in respect of section 8 submission by Coombs.
31 March 1999	Full Court of the Supreme Court delivers judgement in <i>Parker v ACC</i> finding the reports to the Commissioner of Police dated 11 June 1998 were within power.
4 June 1999	Copies of the remaining reports not already provided to members of the Joint Standing Committee provided to the Committee at its request by Police Union with covering letter dated 4 June 1999.
11 June 1999	<p>Commissioner of Police determines that he had lost confidence in Coombs' ability to maintain the integrity and ethical judgement required by his office and recommended his removal from the Police Force.</p> <p>The decision is subject to appeal.</p>
21 October 1999	High Court hears application for special leave to appeal in <i>Ibbotson and Others v Chaney and Others</i> (P26/1988) and denies application.
28 October 1999	Full Court of the Supreme Court delivers judgement in <i>Western</i>

Date	Event/Action
	<i>Australian Police Union of Workers and Others v ACC and Another</i> [1999] WASCA 227 finding in favour of the defendants.

THE ALLEGATIONS, EVIDENCE AND THE OUTCOME

THE ALLEGATIONS AGAINST THE SIX POLICE OFFICERS

Parker, Clark, Scanlan and McMurtrie

“That each one of the four officers was involved in the search of certain premises when \$2 000 was wrongly taken and that the four officers failed to seize cannabis material during the search.”⁸

These allegations were elaborated in evidence to the Miller Investigation –

- At about 10.00 am on Tuesday 8 April 1998 officers Parker, Clark, Scanlan and McMurtrie executed a search warrant on a house occupied by a man code-named for the Miller Report as A1 and his de facto wife, code-named A2.⁹ Parker was the officer responsible for the execution of the warrant.¹⁰
- The officers arrived at the house at the same time as A1 and A2 arrived in A2's car. Parker and Clark arrived in one car just before Scanlan and McMurtrie arrived in another.¹¹
- Scanlan and McMurtrie approached opposite sides of A2's car as she and A1 were alighting. A1 and A2 testified that the officers had guns drawn. This was denied by the officers.¹²

⁸ Covering letters dated 12 June 1998 from the Chairman of the ACC to the Commissioner of Police enclosing the amended reports on the allegations against each of the four Drug Squad officers.

⁹ The Anti-Corruption Commission *Report to Commissioner of Police pursuant to section 22(1) of the Anti-Corruption Commission Act on allegations against Detective Senior Constable Larry Scott Parker* (“ACC report on allegations against Parker”) dated 11 June 1998 at p. 3.

The Anti-Corruption Commission *Report to Commissioner of Police pursuant to section 22(1) of the Anti-Corruption Commission Act on allegations against Detective Senior Constable Stephen Joseph Clark* (“ACC report on allegations against Clark”) dated 11 June 1998 at p. 3.

The Anti-Corruption Commission *Report to Commissioner of Police pursuant to section 22(1) of the Anti-Corruption Commission Act on allegations against Detective Senior Constable Pryce Joseph Scanlan* (“ACC report on allegations against Scanlan”) dated 11 June 1998 at p. 3.

The Anti-Corruption Commission *Report to Commissioner of Police pursuant to section 22(1) of the Anti-Corruption Commission Act on allegations against Detective Senior Constable Paul James McMurtrie* (“ACC report on allegations against McMurtrie”) dated 11 June 1998 at p.3.

A1 and A2 are the codes substituted by the ACC for the names of the man and his de facto wife in these reports to the Commissioner of Police.

¹⁰ *Ibid*, all four ACC reports, p. 1.

¹¹ *Ibid*, all four ACC reports, p. 3.

¹² *Ibid*, all four ACC reports, p. 3.

-
- A1 and A2 were shown a search warrant. A1 was searched but no drugs were found. A2 had her handbag with her which contained, among other things, her passport, her money and A1's wallet.¹³
 - The officers took A1 and A2 into the house.¹⁴
 - Once inside the house, A2 said she heard A1 say, "the cannabis is in the Vax machine", which was in the bedroom.¹⁵ Parker, Scanlan and Clark went to the bedroom with A1 while McMurtrie stayed with A2 in the lounge room.¹⁶ In the bedroom, the officers (Parker, Scanlan and Clark) were directed to a white plastic bag containing cannabis.¹⁷
 - The cannabis was not seized by the officers, although evidence given to Miller indicated that the officers handled the bag.¹⁸
 - Scanlan gave evidence to Miller that A1 was told to get rid of the cannabis.¹⁹
 - Parker, Scanlan and Clark returned with A1 to the lounge room. McMurtrie gave evidence that he was told by Scanlan that "there was a shitty...shitty little plant...it was in a plastic bag that apparently A1 had pinched from the next door neighbour if I remember".²⁰

Coombs

"The allegations are of misconduct by Detective Sergeant Coombs following receipt by him of a complaint that certain police officers had taken money during the execution of a search warrant and further that he sought to mislead his superiors."²¹

- A1 told all or some of the officers that he was a police informant to Coombs. Parker gave evidence to Miller that Coombs was mentioned "straight away" before they entered the house, though A1 seemed to think he told them later on.²²
- A1's status as a police informant to Coombs was confirmed through a telephone call made by Scanlan to Coombs. All the other officers were told by Scanlan that A1's claims about being an informant were true.

¹³ *Ibid*, all four ACC reports, p. 3.

¹⁴ *Ibid*, all four ACC reports, p. 3.

¹⁵ *Ibid*, all four ACC reports, p. 3.

¹⁶ *Ibid*, all four ACC reports, p. 14.

¹⁷ *Ibid*, all four ACC reports, p. 3.

¹⁸ *Ibid*, all four ACC reports, p. 4.

¹⁹ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

²⁰ *Ibid*, all four ACC reports, p. 14.

²¹ Covering letter dated 12 June 1998 from the Chairman of the ACC to the Commissioner of Police enclosing the amended report on the allegations against Coombs.

²² *Op cit*, note 9, all four ACC reports, pp. 4-5.

From what is said in the ACC reports given to the officers, it appears this happened relatively early in the search.²³

- After Parker, Scanlan and Clark returned to the lounge room with A1 from the bedroom where they had been shown the cannabis, Parker and Scanlan took A1 to the backyard of the house. A1 again told Parker and Clark he was an informant to Coombs.²⁴
- Clark and McMurtrie stayed in the house with A2.²⁵
- A2 had a handbag with her which was taken during the search.²⁶ A2 testified that the handbag was put on the sideboard in the kitchen of the house.²⁷ She told Miller that she had \$1,600 of her own money in her purse which was in her handbag. She testified also that the handbag had in it a wallet containing \$900 belonging to A1.²⁸
- A2 identified “the Italian looking one” as the officer who put the handbag on the sideboard. According to the ACC reports on the Miller Investigation, that description matched the appearance of Clark. A2 gave evidence to Miller which indicated Clark looked through her handbag.²⁹
- A1 came back inside with Parker and Scanlan. In the ACC reports it is said that he “was brought into the kitchen where he was questioned about the content of A2's purse”.³⁰
- A1 gave evidence to Miller that he was asked to sign a receipt for an amount around \$500 by Clark.³¹
- Following this, according to A1's evidence, Clark searched him and found heroin in rock form. Clark testified that the heroin, described as “probably white rock”, was found after he asked A1 to empty his pockets.³² The heroin was seized.
- Some time not long after, the officers left the house. A2 testified that after they left she went to her handbag and found “everything was everywhere”. She said she checked her purse and found that \$1,600 was missing. She

²³ *Ibid*, all four ACC reports, pp 4-5.

²⁴ *Ibid*, all four ACC reports, p. 5.

²⁵ *Ibid*, all four ACC reports, p. 4.

²⁶ *Ibid*, all four ACC reports, p. 3.

²⁷ *Ibid*, all four ACC reports, pp. 3-4.

²⁸ *Ibid*, all four ACC reports, p. 4.

²⁹ *Ibid*, all four ACC reports, p. 4.

³⁰ *Ibid*, all four ACC reports, pp. 4-5.

³¹ *Ibid*, all four ACC reports, p. 5.

³² *Ibid*, all four ACC reports, p. 5.

further alleged before Miller that \$400 of the \$900 which had been in A1's wallet was missing also.³³

Cull

“The allegations against Inspector Cull are that he had an association with a known heroin dealer and acted inappropriately in respect of that association.”³⁴

THE PURPOSE OF THE DRUG SEARCH

The search warrant which was executed on 8 April 1997 at the home of A1 and A2 had been granted by a Justice of the Peace on 3 April 1997 on the basis of the following information sworn on oath by Parker B

I Larry Scott Parker make oath and swear:

1. I am a Detective Senior Constable stationed at the Drug Squad.
2. I have received a complaint from an unregistered informant that drug dealing is being conducted from A1's house.
3. The informant, who resides nearby, has stated that vehicles will stop out front of this address, with one occupant going to the front door for a very brief period, and then depart. This happens on a frequent basis, both day and night.
4. This activity is consistent with that of persons dealing in illicit drugs.
5. I have conducted inquiries and carried out covert surveillance on the above address and believe this complaint to be true.
6. The male person who resides at this address is one A1 who has an extensive criminal history including drug convictions for possession of heroin with intent to sell/supply and possession of heroin, amphetamine and cannabis.
7. I have received information from an unrelated confidential source that A1 and his de facto are habitual heroin users and are currently involved in the selling of heroin to support their habit.
8. I therefore request the issue of your warrant to search the said premises.³⁵

Before seeking the warrant Parker had told Det. Sgt Corkhill (“Corkhill”) of the information upon which he wished to seek the warrant. Corkhill agreed that there was enough evidence to justify a search warrant being sought.³⁶

³³ *Ibid*, all four ACC reports, pp. 6-7.

³⁴ Covering letter dated 12 June 1998 from the Chairman of the ACC to the Commissioner of Police enclosing the amended report on the allegations against Cull.

³⁵ *Op cit*, note 9, all four ACC reports, p. 1.

³⁶ *Ibid*, all four ACC reports, p. 1.

There is no evidence presented in the ACC reports to suggest that any of the information sworn on oath in support of the application for the search warrant by Parker was incorrect or that A1 and A2 were not the legitimate targets of a Drug Squad operation.

All four officers indicated in evidence before the Special Investigator that they believed that A1 in particular, but also A2, were dealing in drugs and this was the reason why the search was undertaken.³⁷

In the reports the ACC says that Parker knew that “A1, and to a lesser extent A2, were dealing in heroin, possibly cannabis and perhaps other drugs” and that he confirmed they were believed to be “real targets ... the real thing ... authentic targets of a police investigation”.³⁸

Scanlan conceded that the officers had gone to the A1's house “looking for drugs because they were drug dealers”.³⁹

McMurtrie said that A1 was “apparently a drug dealer ... I believe he was supposedly a good target”.⁴⁰

Clark agreed that all members of the team “were well aware of the fact that A1 and A2 were likely to be dealing in heroin or other drugs and that was the purpose of going to the premises”.⁴¹

A1 accepted that he had used drugs since he was fifteen years old and that he had a criminal history. Indeed, he had convictions for breaking and entering, armed robbery in company and serious drug offences. At the time he gave evidence to the Special Investigation, he was on the methadone programme, but was using heroin nonetheless.⁴²

A1 said A2 “used opiates” and she said she had received methadone treatment but was not a registered drug addict. She indicated to the Special Investigator that she was the de facto wife of A1. She had one minor criminal conviction for stealing.⁴³

In the ACC reports it is noted that evidence taken in the Special Investigation suggested A1 and A2 used heroin more regularly than they had declared. Evidence was taken from a person referred to as A3 in the reports that on the day before the raid he saw A1 and A2 and both appeared to have used heroin.⁴⁴ Further evidence was given by the officers who conducted the raid that they found “a substantial number of used syringes and drug paraphernalia in a chest in the main bedroom of the house”. Clark said to the Special Investigation **B**

They had this big chest at the bottom of the bed and it's just full of picks and it just ... it struck me, you know, that's not right. Because they had the kids running around ... they should get rid of the bloody things ...⁴⁵

³⁷ *Ibid*, all four ACC reports, pp. 1-2.

³⁸ *Ibid*, all four ACC reports, p. 1.

³⁹ *Ibid*, all four ACC reports, p. 1.

⁴⁰ *Ibid*, all four ACC reports, p. 1.

⁴¹ *Ibid*, all four ACC reports, pp. 1-2.

⁴² *Ibid*, all four ACC reports, p. 2.

⁴³ *Ibid*, all four ACC reports, p. 2.

⁴⁴ *Ibid*, all four ACC reports, p. 2.

⁴⁵ *Ibid*, all four ACC reports, p. 2.

The ACC concluded **B**

There can be little doubt that both A1 and A2 are, and have been for a long time, heavily involved in drugs.⁴⁶

ALLEGED EVENTS IMMEDIATELY FOLLOWING THE DRUG SEARCH

At about 11.00 am the officers completed their search and returned to Curtin House. The heroin was recorded on a P11 form (Drugs **B** Inventory and Movement Form) under the heading Particulars of Drugs Seized. It was entered on the form as “0.6 gram white powder [heroin]” seized from A1’s address. The form was further endorsed with the acronym “NPC”, meaning “no person charged”, and “inquiries continuing”.⁴⁷

Scanlan informed the operations sergeant responsible for overseeing Drug Squad operations, Sergeant Davies (“Davies”), of the search. Davies said, in evidence to the Special Investigation, that Scanlan told him about the search by the Cannabis Team and that “a small quantity of heroin” had been seized, though he could not recall the quantity. He was also told that A1 was an informant of Coombs and “he should either contact Coombs or expect a call from Coombs”. He remembered being asked by Scanlan something like “is it alright to put it through the book and not charge him” and that he said in response “I didn’t see a problem with that”. He also remembered that Scanlan told him “a small quantity of cannabis was left behind”.⁴⁸

Two of the officers, Parker and Clark, met with Coombs later that morning. Clark said, in evidence to the Miller Investigation, that the main point of the discussion related to a request from Coombs to “hang off” as he had a job which needed to “run for a couple of weeks”. After this, Coombs is alleged to have said they could use A1 as an informant. Parker testified that the meeting was “perfectly amicable” and that Coombs had assured them A1 could be used as an informant. Parker and Clark then contacted A1 and arranged to meet him.⁴⁹

A1 said in evidence that the two officers returned to his house for that meeting only some 20 minutes after having left his house following the raid that morning. He testified that they were driving a “racy sort of car”. Clark testified he and Parker arrived in a Mazda 626. According to Clark, the officers and A1 went to a coffee shop. A1 said that the officers told him that Coombs had said that A1 was allowed to give them information. He further testified that he agreed to do this as he had been told that the heroin would be returned to him if he assisted the officers. A1 provided “some assistance” to the officers.⁵⁰

Both Clark and Parker denied offering to return the heroin to A1 in return for information. Both noted, however, that A1 was anxious to get the heroin back. The heroin was not returned to A1.⁵¹

⁴⁶ *Ibid*, all four ACC reports, p. 3.

⁴⁷ *Ibid*, all four ACC reports, pp. 6 and 13.

⁴⁸ *Ibid*, all four ACC reports, p. 14.

⁴⁹ *Ibid*, ACC reports on allegations against Parker and Clark, pp. 17-18.

⁵⁰ *Ibid*, ACC reports on allegations against Parker and Clark, p. 18.

⁵¹ *Ibid*, ACC reports on allegations against Parker and Clark, p. 18.

Parker, Clark and A1 went back to A1's house again. A1 said he complained of the heroin not being returned to him and that "we [A1 and A2] also had a lot of money stolen as well". Parker denied A1 referred to his money being stolen. A1 also said that a friend of his pulled up in the driveway at this time and the officers "panicked ... and left extremely quickly". A2 confirmed this.⁵²

THE INTERNAL AFFAIRS UNIT

That afternoon, A1, at A2's insistence, contacted the IAU complaining of the conduct of the officers during the raid and alleging that \$2 000 had been stolen by the officers.⁵³

A1 spoke to Acting Inspector Murray John Smalpage ("Smalpage") at the IAU. Smalpage documented the call. The detail of the complaint was set out in a memorandum to Acting Superintendent Heavens the next day. That memorandum reads as follows **B**

INFORMATION RECEIVED

At about 1730hrs on the 8th of April, 1996, I received information from A1 that earlier in the day his home and (*sic*, had) been raided by members of the State Crime Drug Squad. He indicated that the officer in charge of the raid was Detective Senior Constable PARKER from the Drug Squad.

After being taken into his house by members of the Drug Squad, [he] told them that the only drug in his home was a bag of cannabis in the bedroom, he failed to declare a small amount of heroin in his pocket. Also present with the informant was his de-facto

Both the registered informant and his de-facto are regular heroin users.

The informant stated that members of the drug squad located the cannabis in the bedroom, examined it but did not seize it. He further stated that his wallet containing \$900.00 was in his de-facto's handbag with approximately \$1,00.00 (*sic*, \$1,100.00) of hers. During the search this handbag was placed in another room out of sight. The informant states that members of the drug squad stole \$2,000.00 in cash from the handbag.

He was later give (*sic*, given) his wallet back and it contained only approximately \$540.00.

After a short time these officers located approximately 1.5 grams of rock heroin in his pocket. After a period of time the officers left the premises, he was not charged with the heroin matter.

About 45 minutes later PARKER and one other detective returned to the informants home, He was told that if he co-operated with these officers they would give the heroin they had seized back to him. ... he was dropped off at home and told they would be back in contact with him and he was to do a controlled purchase for them. He was not given the heroin back.

The informant also provides information to Detective Sergeant Peter COOMBS of the Organised Crime Squad and spoke with him about this matter, COOMBS arranged to meet the informant later in the day. Detective Sergeant Coombs gave the informant \$400.00 cash at the meeting and requested that the informant sign a receipt. (Believed to be informant money from the O.C.S.)

⁵² *Ibid*, ACC reports on allegations against Parker and Clark, p. 18.

⁵³ *Ibid*, ACC reports on allegations against Parker and Clark, p. 19; ACC report on allegations against Scanlan, p. 17; ACC report on allegations against McMurtrie, p. 15.

The informant was outraged at police behaviour and has stated his wishes to assist the I.A.U. in regards to investigating these officers.

The informant does not wish any overt inquiries to be made on his behalf regarding this matter, he was warned by these officers should he complain they would ensure that he was charged with serious criminal offences.⁵⁴

Smalpage and another officer went to A1's house at 6.15 pm, 45 minutes after receiving the complaint. Both A1 and A2 were interviewed by Smalpage and the interviews were taped. The bag of cannabis was photographed at the house and seized by Smalpage. A1 and A2 were told that no immunity from prosecution could be offered with respect to either the cannabis or the heroin. Smalpage and the other officer returned to the offices of the IAU taking the cannabis with them. Fingerprinting of the bag was attempted but no conclusive results were obtained. A covert investigation was undertaken at the offices of the Drug Squad and documentation relevant to the raid conducted that morning was collected.⁵⁵

THE HEROIN

In his complaint to the IAU, A1 said he had approximately 1.5 grams of heroin on him at the time of the raid and this was seized by the officers.⁵⁶ The amount of heroin seized by the officers and entered on the P11 form was 0.6 of a gram.⁵⁷

The heroin was sent to the Chemistry Centre of Western Australia to be analysed and was found to be 83% pure. That analysis was conducted by Mr Colin Roderick Priddis of the Centre's Forensic Science Laboratory. He told the Special Investigation that the percentage of purity in the heroin seized at the 8 April raid was equivalent to the highest level of purity in heroin seized and analysed over the previous two years and was very close to "totally pure". Following analysis the Drug Squad was provided with an Analysis Certificate dated 22 April 1997.⁵⁸

THE CANNABIS

None of the officers involved in the raid denied leaving behind the cannabis. However, those who saw the cannabis gave descriptions of the cannabis which tended not to be consistent with the photographs of the cannabis taken by the IAU on the evening of the raid and other evidence.

In the ACC reports the cannabis is described as being 172 grams of cannabis material in a white plastic bag, which was "fresh, and of good quality".⁵⁹ Some of the material was leaf and some

⁵⁴ *Ibid*, ACC reports on allegations against Parker and Clark, pp. 19-21; ACC report on allegations against Scanlan, pp. 17-19; ACC report on allegations against McMurtrie, pp. 15-17.

⁵⁵ *Ibid*, ACC reports on allegations against Parker and Clark, pp. 20-21; ACC report on allegations against Scanlan, pp. 18-19; ACC report on allegations against McMurtrie, pp. 16-17.

⁵⁶ *Ibid*, ACC reports on allegations against Parker and Clark, p. 19; ACC report on allegations against Scanlan, p. 17; ACC report on allegations against McMurtrie, p. 15.

⁵⁷ *Ibid*, all four ACC reports, p. 6.

⁵⁸ *Ibid*, all four ACC reports, pp. 13-14.

⁵⁹ *Ibid*, all four ACC reports, p. 3-4.

“head”, head referring to what is the most potent part of the cannabis plant. The ACC reported that **B**

The cannabis had been provided to A1 by A3, who had brought it to Perth from the South West the previous day. The balance of the cannabis consisted of leaf and head material stripped from a mature female plant stolen by A3 and A1 on the evening of 7 April 1997.⁶⁰

Scanlan gave the following description of the cannabis he saw to the Special Investigator –

MR TANNIN: And how was it packaged? --- Just one white plastic shopping bag. A full plastic bag? --- I wouldn't say it was full. It was about half maybe --- What did it look like? --- ... it looked like green leaf material. Cannabis. Did it look relatively fresh? --- It did --- I believe it was leaf.⁶¹

At some point, Scanlan told Corkhill that the cannabis was “shitty leaf” or “shrivelled up green leaf of no consequence”.⁶²

He was shown the photographs of the cannabis taken by the IAU on the evening of the raid and responded that “it appeared similar ... it appears to be the same”. He did not dispute that it weighed 172 grams. He did try to maintain that “it looks like shitty leaf”. The ACC went on to say in the reports that **B**

When told there was a general trend of opinion from experienced police officers before the Special Investigation that it could not be described as shrivelled up leaf of no consequence, he (Scanlan) had no satisfactory answer. He had no answer to the proposition that his description did not match the true description of the cannabis.⁶³

Parker described the cannabis he saw as “a plant (about a metre high) broken up ... stalk and leaves ... a plant sticking out ... it was a whole plant”.⁶⁴

He “disputed that there was any head material in the bag and would not acknowledge that it was of good quality”.⁶⁵ In response to being shown the IAU photographs of the cannabis Parker denied it was the cannabis he saw. He agreed that, had it been the cannabis he saw, charges would have been laid.⁶⁶

The Special Investigator put to Parker that Scanlan had told the investigation the previous day that “it appeared to be the cannabis”, to which Parker responded “well, I ... to me, that's not the cannabis I saw”.⁶⁷

When Clark was shown the IAU photographs of the cannabis he said he did not recognise it. The ACC further noted **B**

⁶⁰ *Ibid*, all four ACC reports, p. 4.

⁶¹ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁶² *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁶³ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁶⁴ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁶⁵ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁶⁶ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁶⁷ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

At first he (Clark) agreed the cannabis in the photographs was of good quality and could not be described as “shitty leaf”. He then sought to disagree that the description of the cannabis as “shitty old leaf” was inaccurate.⁶⁸

From what was said in the ACC reports Clark appeared unclear about what he had seen. When pressed on why he had such a poor recollection he said **B**

I ... I would ... I'm sure I would recall it if I saw it. The only ... the only reason I say, because. I mean, its just my natural curiosity as a detective that it would surprise me that I wouldn't have gone to have a look. But then again, if its ... if they said, 'Oh its only a shitty plant,' well then I wouldn't have. But I .. I'm sure if I saw I would remember.⁶⁹

McMurtrie himself did not see the cannabis. As discussed earlier, McMurtrie said Scanlan described the cannabis to him on the day of the raid as “a shitty ... shitty little plant ...”. He said he was also told by Parker or Scanlan that the cannabis was “not worth anything”.⁷⁰

When McMurtrie was shown photographs of the cannabis taken by the IAU officers his response was **B**

Well that's what you believe to be the cannabis, but I can assure you that if we saw that it would have been seized ... that's not ... my understanding of what was there.⁷¹

McMurtrie was told, as Parker had been, that Scanlan had said the photographs appeared to be of the cannabis he had seen during the raid. McMurtrie's response was said to be one of “surprise and shock”. The following excerpt from the Special Investigation transcript is recorded in the reports **B**

Mr. TANNIN: It would shock you would it not? --- Well I am.
I mean ... is that something you'd exercise a discretion to allow someone to continue to possess?
--- No I don't think so.
That's appalling isn't it? --- It is.
And you had no knowledge of that? --- Not ... not like that no.⁷²

McMurtrie agreed that the reports by Scanlan and Parker to him as to the nature of the cannabis were entirely misleading.⁷³

In the reports reference is also made to testimony given by Det. Snr Sgt Gary John Budge (“Budge”), officer in charge of the Drug Squad at the time of giving evidence, to the Special Investigation. After the article appeared in *The West Australian* on 3 June 1997, he said he spoke to the four officers and that Scanlan laughed saying, “well obviously this is nothing to do with us because we are dealing with an informant and other issues on that day so no-one would have any complaints about the way we operated on the 8th of April”. He also said that he overheard a

⁶⁸ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16-17.

⁶⁹ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 17.

⁷⁰ *Ibid*, all four ACC reports, p. 14.

⁷¹ *Ibid*, all four ACC reports, p. 15.

⁷² *Ibid*, all four ACC reports, p. 15.

⁷³ *Ibid*, all four ACC reports, p. 15.

conversation between the officers in which one of the officers, probably Scanlan, described the cannabis as being “like an old plant; an old, rubbishy leaf”.⁷⁴

Budge was shown the photographs of the cannabis taken by the IAU. He responded by saying that it could not be described as “poor quality cannabis ... that certainly wouldn't equate with the description I was given of the cannabis if that is the cannabis they were talking about”.⁷⁵

In reporting Budge's response to the IAU photographs and the discrepancies between those and the descriptions of the cannabis by the officers, the ACC said Budge was “quick to suggest that somebody may have substituted for the cannabis seen by three of the officers a different bag”.⁷⁶

That same theory was advanced by Parker. When told that the photographs were taken on the evening of the raid Parker responded **B**

Obviously someone else has put it there. It's not the cannabis that we saw that morning.⁷⁷

THE HANDBAG AND THE MONEY

On the day of the raid A2 had a handbag which was taken from her. It is noted in the ACC reports that when A1 and A2 arrived home on the morning of the raid **B**

A2 had with her a handbag in which she had her possessions, including a passport and her money. It also contained A1's wallet, which had money in it. It was A2's practice to carry A1's wallet within her bag, and it appears she maintained control of the family's finances, and had a better awareness of how much cash was in her joint possession. A2's handbag was taken from her by one of the officers. He was not identified.⁷⁸

It is further noted in the reports that **B**

A2 testified that her handbag was taken from her and placed on the sideboard in the kitchen, where it was out of her sight. A2 identified “the Italian looking one” (which matches the appearance of Clark) as having put the bag on the sideboard.⁷⁹

A2 heard Clark make comments in the kitchen indicating that he was looking in her handbag. The ACC says that, “in particular, she heard him comment >You've been to Bali”. The ACC noted that this comment could only have been made by reference to information from A2's passport which was in her handbag.⁸⁰ A2 also said she heard Clark speaking with A1 saying that he wanted A1 to sign a “bit of paper about \$500 being in his wallet”. She further said that she objected to this. Her testimony with respect to these points was as follows **B**

He was wanting him to sign a bit a paper about \$500 being in his wallet ... All I heard was something to the effect of '\$500 in your wallet=which I verbally objected to ... I proceeded to try

⁷⁴ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 15.

⁷⁵ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 15.

⁷⁶ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 15.

⁷⁷ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

⁷⁸ *Ibid*, all four ACC reports, p. 3.

⁷⁹ *Ibid*, all four ACC reports, p. 4.

⁸⁰ *Ibid*, all four ACC reports, p. 4.

and stand and say >No that's not right= or something to that effect. I was told to sit down and shut-up.

Did A1 say anything to you when you were protesting in this way? --- Yes. He yelled something but it was muffled. Something to the effect of >Be quiet and cooperate= ... In the heat of the moment I tried to say something but was told to sit down and be quiet so I couldn't really do much ... I tried to yell out but I was told to shut-up and sit down.⁸¹

A1 said that he had been asked if there was \$500 in his wallet and that he could hear A2 “screaming out”. He said that he yelled at her “to cooperate with the police, sit down and stop”. He further testified that Clark asked him to sign a receipt for “around the \$500 figure ...” .⁸²

That receipt was not located by or produced to the Special Investigation.⁸³

A2 told the Special Investigation that she had \$2500 in her handbag on the morning of the raid, \$1600 in her purse and \$900 in A1's wallet, and that after the raid only \$500 was left in A1's wallet.⁸⁴

With respect to the money contained in A2's handbag, the following statement is made in the ACC reports –

A2 knew she had \$1600 in her purse, and she was “concerned” about what was happening in the kitchen. She also testified that A1's wallet was within her handbag, and she knew that he had \$900 in that wallet. A2 testified with some particularity in this regard, stating that A1 had gone to a delicatessen the night before, when he had \$920 in the wallet, from which he had taken \$20 to purchase tobacco. A2's evidence about the total sum of money in her purse and A1's wallet is consistent with what she told Acting Insp. Murray Smalpage (“Smalpage”) of the Western Australian Police Service Internal Affairs Unit (“IAU”), during a tape recorded record of interview on the evening of Tuesday 8 April 1997, which was the first occasion she was formally interviewed. A2 was also consistent in this regard in all of her interviews with the ACC investigators. On the other hand, in a statutory declaration made on 2 June 1997 at the instigation of Mr Luke Morfesse (“Morfesse”), a journalist with *The West Australian*, A2 said that she “had \$2000 in [her] purse which was to be banked that morning and was the proceeds of selling some Amway, pension maintenance money and money that [she] loaned to a friend four weeks earlier”. The reference to Amway is clearly incorrect, as she conceded when questioned by Mr Tannin during the Special Investigation.⁸⁵

The information contained in the ACC reports indicates that of all four officers only Scanlan made a definite statement about A2 having a handbag.⁸⁶

The comments in those reports regarding the officers recollections of A2's handbag and their responses to the allegation that money was stolen from the bag are as follows **B**

Scanlan recalled A2 getting out of the car with only her “car keys”, but later said that A2 had taken her handbag from the car. Inside the house, Scanlan was with A2 in the lounge room.

⁸¹ *Ibid*, all four ACC reports, p. 5.

⁸² *Ibid*, all four ACC reports, p. 5.

⁸³ *Ibid*, all four ACC reports, p. 5.

⁸⁴ *Ibid*, all four ACC reports, pp. 4 & 7.

⁸⁵ *Ibid*, all four ACC reports, p. 4.

⁸⁶ *Ibid*, all four ACC reports, p. 7.

He described her as “laughing and joking”. He said he heard a reference to “a pay out of some sort” whilst he was there, but at what stage of the day he could not say. Counsel assisting put to Scanlan that on the evidence “around \$2000 was stolen” and asked Scanlan whether he had any share in that money. He said “No. I didn't ... and I don't believe it was taken.”

Clark claimed to have no recollection of locating A2's handbag in the car or knowledge of how the handbag was taken inside the house. Clark's memory of what occurred inside the house in respect of the bag was similarly vague. He conceded that *if* the bag was there he may have searched it. He remembered that A1 had \$500 or \$600 or thereabouts, but could not recall asking A1 where it was from, or where the money was located. Clark observed in testimony at this point:

I really can't recall the conversation. I'm not trying to be vague. I know it sounds that way, but ...

Mr Tannin: You keep protesting that you're not trying to be vague and it sounds that way. I haven't said anything about that? --- I know, but I'm listening to myself.

Clark denied ever asking A1 to sign a receipt verifying that there was only \$500 in the bag, and denied that any money was stolen. He claimed that if he was going through the bag, A2 was not shouting out and screaming as she had claimed, but that “she was as happy as Larry”.

McMurtrie did not recall the handbag in the car, but conceded that it was possibly there. When asked what had happened to A2's handbag in the house, he said that at no stage had he taken possession of her handbag. When asked whether Clark had gone through A2's handbag in the house, he said that it was possible. We quote from the transcript:

MR TANNIN: Well, he was wasn't he? He was actually talking about it wasn't he? --- Oh I don't recall.

Wasn't he talking about asking Ms A2 “Oh you've been to India” referring to various places she'd been to because she had a passport in there. ... Wasn't she becoming agitated about that? --- With India I seem to recall some photos of ... it was either him or her ... had either been to India or Bangkok. ...

... [D]id Clark audibly say to A1 ‘How much is in here?’-and A1 said ‘I don't go through her purse. I wouldn't know’. Did he say ‘I think she'd have \$500?’- --- I don't recall hearing it. I'm not saying it didn't happen.

Was there not a bag that Ms A2 had that was being gone through by Mr Clark? --- If there was a bag there it would have been gone through for sure. And you didn't go through it? --- Not that I recall.

So it's the likelihood that it's one of the other officers? --- If the bag was where I searched I would have gone through it --- but it's not something which stands out.

Right. So you didn't search the bag? --- Well I can't say yes or no. I don't directly recall searching it, but if it was there ---

It would have been searched? --- Yeah. Yeah for sure.

Parker did not recall seeing whether A2 had a handbag when he first approached the car outside, although he accepted that the search of handbags would be normal practice. Parker said that if Clark was searching through a handbag inside the house, he probably would have seen him. However, he maintained that he did not see Clark search a handbag. He denied any knowledge of the theft of the money, and denied receiving any share of the proceeds.⁸⁷

⁸⁷ *Ibid*, all four ACC reports, pp. 7-8.

PETER ROWLAND COOMBS

A1 was an unregistered informant to Coombs over a period of years. In the ACC reports it is noted that such arrangements, while irregular, were “unexceptional” within the WAPS.⁸⁸

Coombs told the Special Investigation that when he was in the Drug Squad he had “targeted” A1 as an informant and had now known A1 for about ten years.⁸⁹

A1 acted as an informant to Coombs, except while imprisoned, until 1997. In the report it is noted that “A1 does not seem to have been paid anything substantial for the information or assistance he gave”. Coombs said he did “from time to time” use his informant’s allowance to buy A1 “food, pay his telephone bills, or other incidental expenses”.⁹⁰ Even though he knew or had a real suspicion at times that A1 dealt in heroin, Coombs did not arrest him because he said he did not have any evidence.⁹¹

Soon after the 8 April 1997 raid commenced on A1’s house, A1 told the Drug Squad officers that he was an informant to Coombs and it appears that at 10.19 am he phoned Coombs using A2’s mobile phone. A number of calls were made to either Coombs directly or the Organised Crime Squad, of which Coombs was in charge. The ACC reported that, “certainly A1 made Coombs aware of the fact that he was being “raided”, and expressed concern to Coombs about the raid”.⁹²

Following the raid, and after A2 told A1 that \$2000 was missing from her bag, A1 phoned Coombs again. He was angry and said he complained about the missing money. He said Coombs told him “don’t do ... anything until you hear from me”.⁹³

During one call between A1 and Coombs, A1 said that Coombs had said he would contact A1 “later on during the day”.⁹⁴ Coombs phoned A1 during the afternoon of 8 April 1997 and a meeting subsequently took place at Beatty Park. A1 said he complained about the theft of the money. He said Coombs knew how upset he was. He was given \$400 by Coombs and signed a receipt for it. That was an amount Coombs was authorised to give to an informant as a reward without approval. Part of A1’s testimony is reproduced in the report **B**

... he said to me it was coming from ... an informer’s fund and I’d given him some information on the weekend about ... a factory that had been broken into and mobile phones had been stolen, and he got the arrest on the Monday ... I said look, I don’t want that money. I want my money. I want the money that belongs to me ... not the money from the informer’s fund, but the money that was stolen from me ... I wanted that money, you know, because it was a matter of honesty. There is nothing worse than a bent policeman. I mean ... I’ve accepted my charges. I’ve pleaded

⁸⁸ The Anti-Corruption Commission *Report to the Commissioner of Police pursuant to section 22(1) of the Anti-Corruption Commission Act on allegations against Detective Sergeant Peter Rowland Coombs* 11 June 1998, p. 1.

⁸⁹ *Ibid*, p. 1.

⁹⁰ *Ibid*, p. 1.

⁹¹ *Ibid*, p. 1.

⁹² *Ibid*, p. 2.

⁹³ *Ibid*, p. 2.

⁹⁴ *Ibid*, p. 2.

guilty. I've done my goal, but these officers shouldn't be allowed to walk into somebody's house and steal money.⁹⁵

According to A1, Coombs told him "to live with it". A1 told A2 the same thing upon return to his house, however, she refused and urged A1 to contact the IAU, which he did. A2 confirmed A1's account of what happened upon his return to the house. It appears the IAU was contacted at about 6.00 pm.⁹⁶

A1 told the Special Investigation that "at no time had Coombs told him to contact the IAU ...".⁹⁷

Coombs's testimony was to the effect that A1 had called him at home on the morning of 8 April 1997, that A1 had told him he was being raided and that he seemed to recall speaking to Scanlan to confirm A1's informant status.⁹⁸

Coombs admitted he met with A1 that day, and said he met with him twice. He said no mention was made of any money until meeting A1 in the car park at Beatty Park and that A1 was not specific about the amount "missing". Coombs denied that "A1 was angry and unhappy about having had his money stolen and drugs taken by the Drug Squad".⁹⁹

Coombs said he gave A1 the \$400 at the second meeting, but that the payment was "a matter of rewarding him for previous work" and had nothing to do with the money A1 said had been stolen.¹⁰⁰

In the ACC report on the allegations against Coombs it is noted **B**

He [Coombs] denied that the payment of \$400 was made under urgent circumstances, although he conceded that during the meeting he had with Sgt Davies that day, he had obtained a precedent for a form of receipt to be signed by an informant receiving reward payments.¹⁰¹

It is further noted in the report that on the day of the raid A1 was "belatedly" registered as an informant by Coombs.¹⁰²

In the ACC report it is concluded that Coombs should have informed a superior officer or the IAU or both of A1's complaints as required under the *Police Force Regulations*. Coombs denied that anything A1 said to him amounted to a complaint. Coombs claimed that he had told two senior officers about the raid and the allegation of the theft of money on or about 8 April 1997, a claim denied by those officers.¹⁰³

An Intelligence Report dated 8 April 1997 was completed by Coombs in the following terms **B**

⁹⁵ *Ibid*, p. 2.

⁹⁶ *Ibid*, pp. 2-3.

⁹⁷ *Ibid*, pp. 2-3.

⁹⁸ *Ibid*, p. 3.

⁹⁹ *Ibid*, p. 3.

¹⁰⁰ *Ibid*, p. 3.

¹⁰¹ *Ibid*, p. 3.

¹⁰² *Ibid*, p. 3.

¹⁰³ *Ibid*, pp. 3-4.

OCS Op 1.

Information received by Detective Sergeant COOMBS ex OCS RI 211 [A1]. The Drug Squad have raided (*sic* raided) our house today and approx. \$500.00 is missing.

After the meeting with RI 211 Detective Sergeant COOMBS advised him (RI 211) and his *de facto* to make a complaint to Internal Affairs a.s.a.p.¹⁰⁴

The officer responsible for entering such reports on the Bureau of Criminal Intelligence computer records agreed that Coombs=Intelligence Report was not entered onto the computer until about 3 June 1997, some weeks after the raid, though he suggested that there may have been a delay in entering the information. However, in the ACC reports, it is noted that the officer could not “point to any other case where there had been a seven week delay in entering an Intelligence Report”.¹⁰⁵

Coombs denied that the Intelligence Report had been prepared weeks after the raid, but could not explain why it was entered “out of sequence”.¹⁰⁶ The ACC suggested that one reason for the preparation of the Intelligence Report was that it was prompted by the front page story in *The West Australian* of 3 June 1997 detailing information about the raid and the allegations made by A2 arising from that raid. The ACC noted that “news of its [the article=s] pending publication was well known to Police Headquarters on 2 June, and known to Coombs that day by reason of a phone call from A1,” in which he was warned that A2 had been to see the journalist who broke the story in *The West Australian*.¹⁰⁷

Coombs prepared two more Intelligence Reports based on information provided by A1 dated 1 and 2 June 1997 respectively. The following comment attributed to A1 was added to the 2 June Intelligence Report by Coombs **B**

She followed you (*sic*, your) advise (*sic*, advice) on the day of the raid and reported the matter to internal affairs.¹⁰⁸

That Intelligence Report also included statements to the effect that A1 had said that \$20 000 had gone missing and that A2 had been in touch with the journalist, an “old boyfriend” that weekend.¹⁰⁹

The ACC notes that the claims about the amount of money stolen and that the journalist was an “old boyfriend of A2’s” were “misinformation”.¹¹⁰

¹⁰⁴ *Ibid*, p. 4.

¹⁰⁵ *Ibid*, p. 4.

¹⁰⁶ *Ibid*, p. 4.

¹⁰⁷ *Ibid*, p. 4.

¹⁰⁸ *Ibid*, p. 4.

¹⁰⁹ *Ibid*, p. 4.

¹¹⁰ *Ibid*, pp. 4-5.

CHRISTOPHER GORDON CULL

The ACC also reported to the Commissioner of Police on allegations investigated by Miller against Christopher Gordon Cull.¹¹¹ The allegations had been the subject of a previous investigation by the IAU.

The allegations concerned a relationship Cull had with a person described by the ACC as a “major heroin dealer”.¹¹² In the ACC report to the Commissioner of Police this person is referred to as A31. That relationship was constituted by three meetings held by Cull with A31 between mid 1996 and mid 1997.¹¹³ In the report it is explained that the first meeting with A31 took place at Cull’s instigation. It took place in Cull’s car at a location near A31’s home. Cull had requested a meeting with A31 through a retired Police Officer known to A31’s mother. Cull told the Special Investigation that he had met with A31 to inform him of a threat to his security.¹¹⁴

This information was given at a hearing before the Special Investigation on 12 September 1997. Cull was asked whether he had ever released confidential information to any person unauthorised to receive such information. He replied that he had.¹¹⁵

In Cull’s testimony to the Special Investigation, he said the information he had given A31 was that “... he was to be taken away and tortured and tracked and followed so they could get to his money B his drugs money”.¹¹⁶

It was noted in the report that provisions in the Criminal Code make it an offence for a public officer “to communicate any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to communicate it” (section 81). In addition, under regulation 607(1) of the *Police Force Regulations 1979*, a duty of secrecy is imposed on each member of the Force with respect to information received by the member in the course of his or her duty.¹¹⁷

Regulation 607 requires permission from a senior police officer before confidential information is released. Cull did not obtain any such permission before meeting with A31, though he claimed to have discussed the matter with other officers. He further claimed before the Special Investigator that he had received advice from a solicitor seconded to the Legal Services Unit of the Police Service that the release of confidential information in analogous circumstances was not a breach of regulation 607. That advice was given in respect of a briefing paper prepared by Cull for release to Argyle Diamond Mines. The advice to Cull, given through another officer, was that the paper was arguably “within his duty as a police officer investigating alleged crimes” and insofar as it contained confidential information it did not breach either section 82 of the *Criminal Code* or Regulation 607.¹¹⁸

¹¹¹ The Anti-Corruption Commission *Report to the Commissioner of Police pursuant to section 22(1) of the Anti-Corruption Commission Act on allegations against Inspector Christopher Gordon Cull* 11 June 1998.

¹¹² *Ibid*, p. 3.

¹¹³ *Ibid*, p. 4.

¹¹⁴ *Ibid*, pp. 1-3.

¹¹⁵ *Ibid*, p. 1.

¹¹⁶ *Ibid*, p. 1.

¹¹⁷ *Ibid*, p. 1.

¹¹⁸ *Ibid*, p. 2.

In evidence given to the Special Investigation on 18 July 1997, the solicitor testified that she had no recollection of any questions being asked of her with respect to the release of confidential information to A31 by Cull and she was confident that had such questions been asked she would remember.¹¹⁹

From information contained in the ACC report to the Commissioner of Police it is apparent that Cull claimed the original information supplied to A31 was supplied on the basis that in return information of use to the Police Service might be received.¹²⁰ A31 testified to the Special Investigation that he indicated to Cull that he was not prepared to give that information.¹²¹

In the report it is noted that, when asked about why he had sought to cultivate A31 as an informant, Cull responded –

I suppose if you take it in context, that I'd drawn some conclusions that he might be the target ... and there was the need then to determine how we deal with that; should we let him get chopped up into little pieces or, should we mount an operation.¹²²

Cull did not, however, follow informant management principles in dealing with A31. Cull's testimony to the Special Investigation was that this was not required as A31 was not an informant. Cull argued before the Special Investigator that there was no “ongoing informant relationship” between him and A31 and consequently there was no requirement to use the informant management plan.¹²³

Cull was pressed on this matter in the Special Investigation. It was put to him that **B**

... as an honest policeman, the only thing you could legitimately seek from a major drug dealer and a known criminal like A31, when you gave him information of the kind you gave him, and when you said to him, 'a favour for a favour', was information about criminals.

Cull replied –

Of course I wanted information about criminals.

It was then put to Cull that, in this case, he was, “plainly ... seeking to cultivate a relationship with him [A31] as an informant”.

Cull denied this. He went on to say **B**

... because in fact, if you've been in the game long enough, you know all informants are a pain in the backside to be involved in ... my role as the intelligence officer at the Drug Squad was to provide people that were ... potential for ... being informants for the future.¹²⁴

¹¹⁹ *Ibid*, p. 2.

¹²⁰ *Ibid*, p. 3.

¹²¹ *Ibid*, p. 4.

¹²² *Ibid*, p. 4.

¹²³ *Ibid*, pp. 4-5.

¹²⁴ *Ibid*, p. 5.

Cull indicated in answer to questions about whether he had given A31 to another officer, that he had intended to do so but A31 “didn't want to talk to anyone else”.¹²⁵

In further testimony to the Special Investigation Cull said he spoke to Detective Sergeant Davies (“Davies”) of the Drug Squad in July 1997 about A31 becoming a target and informant of the Drug Squad. Cull, however, required that the matter be kept confidential. His reason for requesting confidentiality was that he did not want his name linked “with any crooks out there”.¹²⁶

When the relationship between Cull and A31 came to the attention of Davies he informed the IAU. Davies was the officer in charge of operations and taskforce coordination at the Drug Squad.¹²⁷ Among those operations was Operation 7 (“Op7”), of which A31 was a target. Davies expressed concern in testimony to the Special Investigation about Cull's relationship with A31. The ACC says in the report that –

he [Davies] was troubled by Cull's contact with A31 as an informant, and suspected that a surveillance operation conducted on A31 by officers of the Drug Squad in the course of Op7, had been compromised, with A31 apparently being aware of the surveillance.¹²⁸

With respect to Op7, mention is made in the report of evidence given to the IAU investigation that A31 had been removed as a target of the operation by Cull, though the observation is made that the officer who gave this evidence later “prevaricated about that”.¹²⁹

Cull contacted the NCA to inquire about A31. Reference is made in the report to a telephone call to an officer within the NCA in which Cull asked whether the NCA had any interest in A31. Cull said to the Special Investigation that the response was negative and “that was the end of it”. In response to a question about why he had made the inquiry “if he was not interested in just how far and how extensive the targeting of A31 was”, Cull answered that had the NCA indicated an interest in A31 or his contacts he would have passed him on to them. Cull was also asked about whether he had asked the NCA officer about the phone being bugged. Cull's initial response was that he could not recall this, but in the ACC report to the Commissioner of Police it is concluded that “ultimately he effectively conceded that he had”.¹³⁰

A31 testified that at his first meeting with him Cull had said “... he had a spy or something like that ...”.¹³¹ Cull was asked whether he had recruited an Acting Detective Sergeant to “spy on his behalf at the Drug Squad”. Cull's initial response was to deny this, but the report concluded that when pressed on the matter Cull effectively conceded that he had recruited a “spy”.¹³² Counsel Assisting put the matter to Cull as follows **B**

COUNSEL ASSISTING: And I suggest to you, you clearly did do that, to spy for you in relation to any mention of A31 and yourself, that A31 was a targeted criminal; you must have known he was a targeted criminal, and just seeking to have someone like ----- , a junior officer,

¹²⁵ *Ibid*, p. 5.

¹²⁶ *Ibid*, p. 6

¹²⁷ *Ibid*, p. 2.

¹²⁸ *Ibid*, p. 2.

¹²⁹ *Ibid*, pp. 8-9.

¹³⁰ *Ibid*, p. 6.

¹³¹ *Ibid*, p. 3.

¹³² *Ibid*, p. 6.

report to you on a confidential basis was, I suggest to you, grossly insubordinate, at least. Do you think it proper that you should recruit a junior officer to give information to you on a confidential basis about the goings on in another squad?

Cull responded –

I think it's proper that if Garry Davies and others start to put people at risk, then I should be in a position to put that to the IAU and that was the means by which I employed.¹³³

With respect to the second meeting between Cull and A31, it is noted in the report that Cull was offered an envelope containing money, which he refused. A31 agreed in evidence before the Special Investigation that the money was offered as a bribe. The amount in the envelope, on A31's testimony, was about \$400.¹³⁴

Cull told the Special Investigation that he advised two officers about the bribe, but it is stated in the report that, “Cull made no record of the incident, and appears to have given no consideration to the question of whether A31 should have been charged with bribery”.¹³⁵

¹³³ *Ibid*, p. 6-7.

¹³⁴ *Ibid*, p. 4.

¹³⁵ *Ibid*, p. 6.

THE AFTERMATH

THE INITIAL SUSPENSION OF THE SIX OFFICERS

Miller presented his report to the ACC on Friday, 5 December 1997. On the following Tuesday, 9 December 1997, after initial consideration of the Miller Report, the ACC issued a media statement noting that Miller had recommended serious disciplinary action be taken against six police officers.

Those officers were Parker, Clark, Scanlan, McMurtrie, Coombs and Cull. All had been summonsed on more than one occasion to give evidence before the Special Investigator. As witnesses before the Special Investigator they were entitled to legal representation. The officers were advised of this, but were told they could not use the same lawyer. They chose not to be represented. They also were required by section 43 of the ACC Act to be informed of the general scope and purpose of the investigation.

Statements of the facts in the Supreme Court decisions resulting from applications made by the officers indicate that the officers were not aware of the detail of the allegations against them until they appeared before the Special Investigation to give evidence.

However, before Miller completed his report, Counsel Assisting the Special Investigator advised the officers of the potential adverse findings against them and invited them to make submissions to the Special Investigation. A Notice of Potential Adverse Findings was served on 27 October 1997 in respect of five of the officers and 27 November 1997 in respect of the sixth. Each was given between six and ten days to respond and, at the request of their solicitors, each was granted an extension of one week. The responses were received by the Special Investigation between 14 November 1997 and 2 December 1997.

In their responses, the officers noted that they did not know the evidence against them, and that they had not been able to cross-examine witnesses who had given evidence against them.

Later that week, matters arising from the Miller Report were referred to the DPP and the Commissioner of Police. The DPP was provided with an abridged report on 11 December 1997 and advised that a formal brief would be forthcoming. On the same day, the Commissioner of Police was presented with two abridged copies of the Miller Report.

On Friday, 12 December 1997, the ACC delivered to the six officers letters dated 9 December 1997 in the case of one and 10 December 1997 in the cases of the other five, setting out the findings made against them in the Miller Report. They were invited to make submissions orally or in writing in relation to the findings. This was in line with the requirements of section 52 of the ACC Act which required that the officers be informed of the Special Investigator's findings and recommendations relating to them and be given the opportunity to respond before any details were made public by the Commission. Four of the letters read as follows **B**

This Commission has now received from its Special Investigator a report into various matters relating to corrupt conduct, criminal conduct, criminal involvement and serious improper conduct by certain members of the Western Australian Police Service.

As you are aware, your conduct was the subject of consideration by the Special Investigator.

The Special Investigator has concluded in respect of you that:

1. You are guilty of criminal conduct and/or criminal involvement in that you ...
2. You are guilty of serious improper conduct in that you ...
3. You are guilty of improper conduct in that you:- ...
4. You are guilty of serious improper conduct in that you ...

The Special Investigator reports that because of the conclusions he has reached, you are unfit to hold office as a member of the Western Australian Police Service, and has recommended that pursuant to the provisions of section 8 of the Police Act 1892, you should be summarily removed from office.

The Commission intends to publish this recommendation, including making a public statement detailing the above matters and stating that it believes you have been guilty of serious improper conduct.

Pursuant to section 52(6) of the Anti-Corruption Commission Act 1988 we write to give you the opportunity to appear before the Commission and make submissions, either orally or in writing, in relation to these matters.

If you wish to make a written submission, please have it delivered to this Commission by 5 pm on 18 December 1997. If you wish to make an oral submission please telephone Miss Margaret Potts at the Commission (Telephone 9221 3622) by 18 December. The Commission will sit on 19 December 1997 for the purpose of hearing oral submissions.

The other two letters differed only insofar as they referred to findings of guilt in relation to allegations of serious improper conduct or improper conduct on the part of the particular officers concerned.

That same day, pursuant to section 8 of the Police Act, the Commissioner of Police issued notices of suspension to Parker, Clark, Scanlan, McMurtrie, and Coombs. All were non-commissioned officers. Under section 8 the power to suspend non-commissioned officers lies within the authority of the Commissioner of Police.

The notices were set out in the following terms **B**

TAKE NOTICE that under the provisions of Section 8 of the Police Act 1892-1982, you will be suspended from duty in the Western Australian Police Service from 12 December, 1997 until further notice.

My reasons for imposing the suspension is that:

As a consequence of the findings of the Anti Corruption Commission Special Investigator Mr Geoffrey Miller QC, conveyed to you by notice dated December 10, 1997, I have lost confidence in your integrity and credibility and therefore your ability to perform the functions of your office.

Consideration is presently being given to withdraw your pay and allowances as of December 27, 1997. Therefore you are hereby afforded SEVEN (7) days from the date of this notice to show cause in writing why withdrawal of your pay and allowances should not take place.

The sixth officer, Cull, was a commissioned officer. In the first instance, on 12 December 1997, the Commissioner of Police issued to Cull a Notice to Take Paid Leave in terms similar to those in the Notice of Suspension set out above. Later, by letter dated 12 December 1997 from the Assistant Commissioner of Police (Professional Standards), Cull was informed of his suspension by the Governor **B**

As a consequence of the findings of the Special Investigator Mr Geoffrey Miller QC, conveyed to you by notice dated December 10, 1997, the Commissioner of Police lost confidence in your integrity and credibility and therefore your ability to perform the functions of your office. Accordingly, the Commissioner of Police recommended to the Hon Minister for Police that you be suspended from duty in the Western Australian Police Service.

By Executive Council Minute dated 12 December, 1997 the Governor suspended you from office. I attach a copy of that minute. ...

Consideration is presently being given to withdraw your pay and allowances as of December 27, 1997. Therefore you are hereby afforded SEVEN (7) days from the date of this notice to show cause in writing why withdrawal of your pay and allowances should not take place.

His Excellency had been advised that on the application of section 52 of the *Interpretation Act 1984* (WA) and section 6 of the Police Act a commissioned officer may be suspended by the Governor.

A brief of evidence was presented to the DPP by the ACC on 19 December 1997.

SUPREME COURT ACTION: PARKER v MILLER

The opportunity to respond to the findings of the ACC Special Investigator or make submissions to the Commissioner of Police was not taken up by the suspended officers. Rather, the officers applied to the Supreme Court seeking to quash the findings made by Miller, the notices of suspension issued to the non-commissioned officers and the Notice to Take Paid Leave issued to the commissioned officer by the Commissioner.

On 18 December 1997, following a hearing in Chambers before Justice Steytler on the previous day, orders were made requiring the officers' application to go before the Full Court. An interlocutory injunction restraining the ACC or the Commissioner of Police from publishing the findings contained in the Miller Report was granted.

The application was heard by the Full Court on 22 April 1998.¹³⁶ The Court unanimously concluded that the findings of guilt made by Miller were beyond the power of the ACC or a Special Investigator. However, it reserved its judgement on the question of the validity of the notices issued to the officers by the Commissioner of Police.

¹³⁶ *Parker v Miller, op cit*, note 4.

The Court delivered its judgment on 8 May 1998. The Chief Justice (at pp. 40-41) concluded –

In my opinion, given that the ACC has no power to make findings of guilt or unfitness for office, it follows that it was beyond the power of the Special Investigator to make any such findings. It was also beyond the power of the ACC to adopt such findings and communicate them to the applicants and the Commissioner of Police including the conclusion of the Special Investigator that each of the applicants was unfit to hold office as a member of the Western Australian Police Service and his recommendation that the officer should be summarily removed pursuant to the provisions of s8 of the *Police Act*.

The Chief Justice's conclusions were consistent with those of the other two members of the Court.

The Court held by majority, Franklyn J dissenting, that, on the question of the validity of the notices suspending the non-commissioned officers and the notice requiring the commissioned officer to take paid leave, given the Commissioner exercised a discretion under section 8 of the Police Act in reliance upon findings beyond the powers of the Special Investigator or the ACC to make, the issuing of the notices were themselves an invalid exercise of power.

On 8 May 1998, two days after the decision in *Parker v Miller*, the DPP announced he would not be prosecuting those of the six officers about whom he had received briefs of evidence from the ACC for any criminal offences. He had concluded that it would not be in the public interest to do so.

REFERRAL TO THE COMMISSIONER OF POLICE FOLLOWING PARKER v MILLER

There was nothing in the judgements in *Parker v Miller* which prevented the ACC from again referring matters from the Miller Report to the Commissioner of Police for further action, provided that any report to the Commissioner was consistent with the powers and authority of the ACC as interpreted by the Court.

On 11 May 1998 the Commissioner of Police issued notices to Parker, Clark, Scanlan and McMurtrie requiring them to take paid leave as of 12 May 1998.

It was noted by Chief Justice Malcolm in *Parker v Miller* that the matter of whether the recommendation of the Commissioner of Police to the Minister that the commissioned officer be suspended was invalid or beyond power was not raised before the Court. The Chief Justice (at pp. 58-59) concluded –

Consequently, the question of the impact of the invalidity of the Findings on the Commissioner's recommendation to the Minister, the advice to His Excellency and the decision of the Governor in Council to suspend are not matters which fall within these proceedings.

Notwithstanding this, the Assistant Commissioner of Police (Professional Standards) sought approval from the Executive Council to reinstate Cull. Subsequently, Cull was required to take paid leave as of 12 May 1998.

On 13 May 1998 the ACC announced that the Commissioner of Police had been provided with details of the allegations against the six officers together with reports on the allegations in a form “consistent with the Full Court decision”. Action on those reports was not finalised until a month later. On two occasions subsequent to the initial presentation of the revised reports, 15 May 1998 and 4 June 1998, further material was provided by the ACC to the Assistant Commissioner of Police (Professional Standards). The information provided to the Commissioner on 13 May 1998 was returned to the ACC on 11 June 1998. Some minor amendments were made and the reports were resubmitted to the Commissioner of Police the next day. A covering letter dated 12 June from the Chairman of the ACC noted the changes made, set out the allegations against each officer and advised the Commissioner that the material had been forwarded to him pursuant to section 22(1) of the ACC Act for further action. The letter noted Assistant Commissioner Mackaay had been provided with relevant evidence taken during the Special Investigation. Hence, not only did the Commissioner receive the reports, but he also received accompanying evidence.

Further material was provided to the Assistant Commissioner on 15 June 1998. That same day, internal Police Force memoranda on each of the six officers, enclosing papers relating to the allegations against them, were prepared by the Assistant Commissioner. These memoranda to the Commissioner of Police were summarised by Murray J (at p. 5) in his judgement in *Parker v ACC* as follows **B**

In each case it was suggested [in the memoranda] that there had been a breach of operating procedures and the actions of the officer “as reflected by the evidence” were such as to demonstrate that the officer lacked the ability to maintain the professional standards required of a police officer, that he did not exercise credible and sound ethical judgement and has tarnished his integrity to the extent that he is unfit to remain a member of the WA Police Service.

A signed note dated 16 June 1998 on each memorandum states that the Commissioner of Police concurred with that view.

In addition, Coombs was the subject of a report from the Assistant Commissioner of Police (Professional Standards) to the Commissioner of Police relating to allegations of serious misconduct and unethical behaviour while Coombs was seconded to the Perth office of the NCA between 1994 and 1996. A summary of the investigation into those matters dated 22 June 1998 was tabled in Parliament on 25 June 1998.

On 18 June 1998 the Commissioner of Police issued to each of the six officers a Notice of Intention to Remove from the Police Force of Western Australia pursuant to section 8 of the Police Act. The notices were dated 16 June 1998. In the case of each non-commissioned officer, the Commissioner stated his intention to recommend to the Minister for Police that he approve the removal of the officer from the Police Force. His grounds for this action were as follows –

... that the evidence, information and matters contained in a Report and associated papers which I have received from the Anti-Corruption Commission (ACC), an exact copy of which I have requested that the ACC provide to you, have caused me to lose confidence in –

- your ability to maintain professional standards required of a police officer;
- your capacity to exercise credible and sound ethical judgement; and

-
- your integrity.

Each officer was invited to show cause as to why the Commissioner of Police should not confirm his intention to recommend removal from the Police Force. They had twenty-one days to respond.

Cull, the commissioned officer, received a notice in similar terms. In his case, however, if Cull were not able to show cause why removal should not take place, the Commissioner's recommendation would go to the Governor, rather than the Minister.

The officers sought further particulars of the grounds upon which the Commissioner relied and these were provided.

With the notices of intention to remove, each officer received copies of the materials provided to the Commissioner of Police by the ACC and the Assistant Commissioner of Police (Professional Standards). Murray J (at p. 7) in *Parker v ACC* set out in the following terms what was provided to the officers **B**

When each was served with the notice dated 16 June 1998, he was also served with copies of the letter dated 12 June 1998 under the hand of the Chairman of the ACC to the Commissioner of Police, the report which was the annexure thereto, a copy of the transcript of the evidence given during the special investigation, but not all of that evidence, and a copy of Mr Mackaay's memorandum dated 15 June 1998.

That was the same information upon which the Commissioner of Police made his decision to issue Notices of Intention to Remove from the Police Force to each of the officers.

After extensions of time, the Commissioner received responses from Parker, Clark, Scanlan and McMurtrie to the section 8 notices. Following consideration of those responses, on 15 October 1999, the Commissioner issued to each a Notice to Resume Duty. They were required to undergo formal counselling. The Commissioner of Police informed the Committee on 18 June 1998 that the formal counselling process had not been finalised as there were relevant matters which were the subject of litigation in *Western Australian Police Union of Workers and Others v Anti-Corruption Commission and Another* [1999] WASCA 227. That case was brought before the Supreme Court by the applicants on appeal seeking to have the entire Notice of Allegations provided to Mr Tannin ruled invalid. In the first instance decision, only the fourth Term of Reference was held invalid and was severed from the other three. The case was heard on 9 April 1999, but the decision was not brought down until 28 October 1999.

Cull also was granted extensions of time in which to respond to his section 8 notice. After considering Cull's response, on 11 November 1998, the Commissioner of Police had served on him a notice requiring him to resume duty. Cull was also required to undergo formal counselling. He resigned from the service in January 1999.

The sixth officer, Coombs, was issued with section 8 notices arising from two matters. The first related to the Miller Investigation. The second was a separate matter regarding a joint taskforce investigation by the WAPS, the AFP and the NCA into allegations of corrupt activities by members of the WAPS who had been attached for a time to the Perth office of the NCA.

Coombs too was granted extensions of time in which to respond. After receiving and considering those responses, the Commissioner of Police determined on 11 June 1999 that he had lost confidence in Coombs' ability to maintain the integrity and ethical judgement required by his office and recommended his removal from the Police Service. That decision is presently subject to review by the Industrial Relations Commission.

SUPREME COURT ACTION: PARKER v ACC

The June reports of the ACC to the Commissioner of Police made following the decision in *Parker v Miller* were challenged in the Supreme Court in *Parker v ACC*. In the first instance, following argument heard on 27 August 1998, Parker J found that the officers had an arguable case and the matter should go to the Full Court. The application was heard on 3 December 1998 and judgement delivered on 31 March 1999. The Court found against the applicants, upholding the validity of the ACC reports presented to the Commissioner of Police on 12 June 1998.

The applicants' case was argued on a number of grounds. The principal one was that the ACC was an investigatory agency only. It was limited to assembling and furnishing evidence. The applicants argued that the June 1998 reports to the Commissioner of Police went beyond this and expressed opinions, made evaluations and drew conclusions.

The Court did not agree. However, it did clarify the scope of the ACC's reporting powers when referring matters to other agencies for further action. Murray J, at pages 11 and 15 of his judgement, concluded **B**

Parker v Miller and *Balog v Independent Commission Against Corruption* are authority for the proposition that the reporting power of the ACC may not be properly exercised so as to make findings or express conclusions about the guilt of any person of criminal or improper conduct, and the recommendations, if any, made in such a report, may not properly be as to the particular action which should be taken by way of prosecution or disciplinary action, or what should occur in relation to the employment of any person, because all those matters are matters to be considered and decided upon by the appropriate authority or independent agency to which the report is made. Such a report goes beyond the statutory power. ...

It seems to me that the language used in the relevant sections of the Act carries the necessary implication that to report on an allegation, and the outcome of the investigation by the ACC, may involve an account of the process, evaluation of, comment upon, the outcome of the investigation and the evidence assembled, if thought to be helpful, including the presentation of a summary of what has been discovered and a discussion of the perceived merit or lack of merit in the allegation.

The other two members of the Court agreed with Murray J, subject to the following comments made by Wheeler J at page 3 of her judgement **B**

So far its own functions are concerned, the ACC must evaluate the evidence to the extent necessary to decide whether to report, and to whom. Provided that this evaluation goes no further, and is not directed to the issues of what view should be formed or what action should be taken by the authority to whom the report is made, the ACC would not have exceeded its power.

THE OUTCOME

The Miller Investigation failed to assemble evidence sufficient to sustain a prosecution by the DPP. Briefs were prepared, but the DPP declined to prosecute. However, on the two occasions the matters were referred by the ACC for further action by the Commissioner of Police, loss of confidence procedures were instituted against the six police officers. Suspensions which followed the first referral were lifted when the Commissioner's action was rendered invalid by the decision of the Supreme Court in *Parker v Miller*. New loss of confidence procedures were instituted following the referral to the Commissioner of Police of the ACC reports which complied with the decision in *Parker v Miller* and related materials on the allegations against each of the six officers investigated by Miller. Again, at the conclusion of the process, five of the officers were reinstated, subject to the requirement that they undergo formal counselling. As noted above, matters concerning the sixth officer, Coombs, are still to be completed at the time of this report.

After receipt and evaluation of the evidence relating to the allegations against the officers, the Assistant Commissioner of Police (Professional Standards) submitted memoranda dated 15 June 1998, to the Commissioner of Police recommending that each of the officers show cause as to why he should not be removed from the WAPS. Those memoranda were set out in the following terms –

Parker, Clark, Scanlan and McMurtrie

These papers relate to allegations made against [name of officer] which were the subject of an inquiry by Mr G Miller QC in his role as Special Investigator appointed by the Anti-Corruption Commission (ACC).

The evidence disclosed that Detective Senior Constable [name of officer], on his own admission, breached Standard Operating Procedures (SOPs) promulgated for his guidance and compliance.

By his actions, as reflected by the evidence, Detective Senior Constable [name of officer] has demonstrated that he lacks the ability to maintain the professional standards required of a police officer, did not exercise credible and sound ethical judgement and has tarnished his integrity to the extent that he is unfit to remain a member of the WAPS.

Recommendation

That [name of officer] be required to show cause why he should not be removed from the WAPS.¹³⁷

Coombs

These papers relate to allegations made against Detective Sergeant Coombs, which were the subject of an inquiry by Mr G Miller QC in his role as Special Investigator appointed by the Anti-Corruption Commission (ACC).

It is alleged that Detective Sergeant Coombs failed to report a complaint from (code name) A1, concerning the actions of Drug Squad officers, to his

¹³⁷ Memoranda to the Commissioner of Police from the Assistant Commissioner of Police (Professional Standards) dated 15 June 1998.

superiors in the Internal Affairs Unit and attempted to mislead his superiors. Despite Detective Sergeant Coombs' denials there is, on the balance of probabilities, compelling evidence in support of the allegations.

By his actions, as reflected by the evidence, Detective Sergeant Coombs has demonstrated that he lacks the ethical judgement, integrity and professionalism required of a member of the WAPS.

Recommendation

That Detective Sergeant Coombs be required to show cause why he should not be removed from the WAPS.¹³⁸

Cull

These papers relate to allegations made against Inspector Cull which were the subject of an inquiry by Mr G Miller QC, in his role as Special Investigator appointed by the Anti-Corruption Commission (ACC). In addition, the file contains relevant transcripts of interviews and a report from Detective Mickle, obtained from the Internal Affairs Unit (IAU) file. Those documents are secured to the file in plastic sleeves. Although the IAU file was provided to the ACC it is not known whether the documents were examined by Mr Miller. As they are relevant, the documents have been provided to you and will be made available to Inspector Cull.

The evidence discloses that Inspector Cull, on his own admission, –

- formed a relationship, which included the provision of confidential information, with a known criminal in circumstances where he should not have done so; and
- used his position for purposes other than proper professional or operational reasons.

By his actions, as reflected by the evidence, Inspector Cull has demonstrated that he lacks the ethical judgement, integrity and professionalism required of a member of the WAPS.

Recommendation

That Inspector Cull be required to show cause why he should not be removed from the WAPS.¹³⁹

Following receipt of that advice, the Commissioner of Police issued to the officers notices under section 8 of the Police Act of his intention to recommend each be removed from the WAPS.

The information upon which the Commissioner relied in making this decision was not the same as that which he had received before making his original decision with respect to the suspension of the six officers in December 1997. In December 1997, the Commissioner received an abridged Miller Report and the findings of the Special Investigator as to the conduct of the officers and his

¹³⁸ Memorandum to the Commissioner of Police from the Assistant Commissioner of Police (Professional Standards) dated 15 June 1998.

¹³⁹ Memorandum to the Commissioner of Police from the Assistant Commissioner of Police (Professional Standards) dated 15 June 1998.

recommendation with respect to each officer that he be summarily removed from office pursuant to the provisions of section 8 of the Police Act.

Following the decision in *Parker v Miller*, which found the suspension notices issued in December 1997 invalid, new information was provided to the Commissioner by the ACC in the form of six reports on the allegations against the officers and related materials. Consistent with the Full Court decision in *Parker v Miller*, those reports did not contain findings or recommendations as to action to be taken against the officers.

After granting extensions of time in which the officers could respond to the section 8 notices, the Commissioner received substantial submissions from each of the officers. Having considered all the information provided to him, the Commissioner reversed his intention to remove the officers from the Police Force, except Coombs, in respect of whom matters remain outstanding.

Memoranda dated 14 October 1998 and 11 November 1998 from the Commissioner of Police to the Assistant Commissioner of Police (Professional Standards) set out the Commissioner's final decisions relating to Parker, Clark, Scanlan, McMurtrie and Cull. That relating to Cull refers to particular findings, but all memoranda instructed that the officers be counselled rather than removed –

Parker, Clark, Scanlan and McMurtrie

Having examined all of the available material in relation to the Section 8 matters involving [name of officer] my decision is to rescind the Notice of Intention to Remove issued under section 8 of the Police Act.

There is considerable evidence that [name of officer] and his colleagues did not carry out their duties at the Drug Squad in the manner and standard expected of our investigators.

Their attitude and conduct in regard to adherence to proper practice relating to the conduct of raids, searches/seizures, exhibit handling (etc) leaves much to be desired. Having said that it seems such standards were accepted, albeit by some personnel, within the Drug Squad at the time. As you aware, many changes to procedures and enhancements of standard operating practices have now been addressed.

[Name of officer] and his colleagues are to be formally counselled in regard to the identified breaches of proper investigative practices evident in the material provided. ...¹⁴⁰

Cull

Having examined all of the available and permissible material in relation to the Section 8 matters involving Inspector Cull my decision is to rescind the Notice of Intention to Remove issued under section 8 of the Police Act.

In the material made available to me there is considerable evidence that in his dealing with ----, a known criminal, Inspector Cull took unnecessary and unacceptable risks. It was and is not at the standard expected of an

¹⁴⁰ Memoranda to the Assistant Commissioner of Police (Professional Standards) from the Commissioner of Police dated 14 October 1998.

experienced sub-officer and investigator. In addition to personal risks at such meetings, Inspector Cull risked his professional reputation. This view is supported by the fact that at one meeting ---- offered Cull money, who compounded the unprofessionalism associated with the meeting by failing to take any action against ---- . His pre and post meeting reports in regard to his dealings with ---- also do not meet the expectations of this organisation.

Inspector Cull is to be formally counselled in regard to these identified breaches of safe practices in regard to his relationship and meetings with criminal informers, he is to be made familiar with current practices including approvals, reporting and recording of such activities. ...¹⁴¹

¹⁴¹ Memorandum to the Assistant Commissioner of Police (Professional Standards) from the Commissioner of Police dated 11 November 1998.

DISCUSSION

INTRODUCTION

While the evidence uncovered through the Miller Investigation and provided to the DPP did not result in any criminal prosecutions, the investigation exposed concerns about professional misconduct. They related to the failure of Parker, Clark, Scanlan and McMurtrie to comply with Standard Operating Procedures in the execution of the search warrant on A1's house, their failure to seize drugs found during that search, their failure to lay charges with respect to the possession of drugs and their failure to fully investigate complaints of drug dealing. Evidence from the Special Investigation also raised concerns about the relationships of Coombs and Cull and police informants and the management of those relationships. The matters investigated by Miller and the evidence uncovered illustrate the dangers to police officers where professional standards are not maintained. The conduct of the police officers exposed them to opportunities for corruption, pressure from known criminals or the perception that they may have engaged in criminal or corrupt activity.

STANDARD OPERATING PROCEDURES

At the time of the 8 April 1997 drug search at A1's house, Drug Squad Standard Operating Procedures were in place which set out procedures for the obtaining and execution of search warrants and the seizure of drugs.¹⁴²

Standard Operating Procedure No. 1 B Search Warrant

The purpose of Standard Operating Procedure No. 1 relating to search warrants, was **B**

To ensure uniformity of procedures with regard to the obtaining and execution of Search Warrants by members of the Drug Squad.

Under that procedure an application for a search warrant had to meet the following three requirements **B**

- members are to ensure the Complaint meets legal requirements for the valid issue of search warrants;
- include grounds for suspicion and grounds for belief in the body of the complaint or on the reverse side of the Complaint form; and
- supervisors are to vet preparation of Complaints to Ground Search Warrant to ensure compliance with the law.

¹⁴² Crime Operations Portfolio, Standard Operating Procedures Drug Squad, Standard Operating Procedure No. 1 – Search Warrant, Effective Date: April 1, 1996.
Crime Operations Portfolio, Standard Operating Procedures Drug Squad, Standard Operating Procedure No. 4 – Seizure of Drugs, Effective Date: November 1, 1996.

From the information provided in the ACC reports to the Commissioner of Police, it appears that the application for the search warrant on A1's house granted on 3 April 1997 satisfied those requirements. The ACC concluded in the reports –

The search warrant was issued in proper accord with Drug Squad procedures.¹⁴³

However, those reports show that in the actual execution of the search warrant Parker, Clark, Scanlan and McMurtrie departed from Standard Operating Procedures in a number of respects.

The procedures directed that searches be carried out methodically and without any general ransacking of the premises. They were reasonably detailed, requiring that a search should begin in one room, that the search should be systematic, thorough and conducted at various levels within the room before moving on to the next room until the premises had been completely searched. Other than in “exceptional circumstances”, the procedures required that searches be conducted in the presence of the suspect, occupier, owner or an independent person.

While it cannot be said definitively from the information provided in the ACC reports that A1's house was not methodically and thoroughly searched, that appears to be the case. The reports only refer to A1 being searched, A2's handbag being searched (though from the testimony of the officers themselves as reported by the ACC it is not clear how the handbag was handled), three of the officers going to inspect the bag of cannabis in the bedroom in the company of A1 and Parker and Clark going with A1 into the backyard of the house. They do not indicate that any thorough search of the premises was undertaken.

Standard Operating Procedure No. 4 B Seizure of Drugs

The purpose of Standard Operating Procedure No. 4. relating to the seizure of drugs was to **B**

Ensure the security and safe conveyance of drugs by members of the Drug Squad.

That procedure detailed how drugs found and seized during a search were to be dealt with and secured at the scene. No discretion is permitted officers to leave prohibited drugs at the scene.

The drugs were to be photographed “in situ” and placed in a sealed drug bag described as a “conveyance bag”. An interim receipt describing the drugs seized was to be issued to the person present and that person was to be asked to sign the receipt and the conveyance bag. The security of conveyance bags was to be ensured.

Of the drugs found during the search, that is the heroin in A1's pocket and the cannabis in the plastic bag in the bedroom, only the heroin was seized. The cannabis was left behind. Scanlan testified before the Special Investigation that A1 was told to get rid of the cannabis.¹⁴⁴

The heroin which was seized was apparently placed in a conveyance bag, but in the ACC reports on the allegations against Parker, Clark, Scanlan and McMurtrie it is stated that “no receipt was

¹⁴³ *Op cit*, note 9, all four ACC reports, p. 1.

¹⁴⁴ *Ibid*, ACC reports on allegations against Parker, Clark and Scanlan, p. 16.

issued [to A1], nor was A1 offered the opportunity to sign a receipt or the exhibits bag as required by SOPs [Standard Operating Procedures]”.¹⁴⁵ Testimony from Scanlan is quoted in the reports on this point. Counsel Assisting the Special Investigator said to Scanlan **B**

... these are the SOPs which deal with the seizure of exhibits, and they provide that where a drug is seized a receipt is to issue to the person from which they are seized, and that person must be invited to sign the receipt ... he wasn't even offered any receipt in this case was he?

Scanlan replied **B**

No he wasn't.¹⁴⁶

The procedures also set out how seized drugs were to be dealt with upon return to the Drug Squad offices. Following the weighing of the drugs and their placement in exhibit jars, the drugs and the original conveyance bag were required to be placed in a new conveyance bag. After this procedure was completed the details of the drugs seized and the conveyance bag were required to be recorded on a Drug Inventory and Movement Form (a P11 form).

There is nothing in the ACC reports to indicate that these procedures were not complied with in respect of the heroin seized. It is noted in those reports that **B**

“6 gm white powder [heroin]” was recorded under the heading “PARTICULARS OF DRUGS SEIZED” on a “DRUGS **B** INVENTORY AND MOVEMENT” form ... at the office of the Drug Squad on 8 April 1997, with the Depositing Member and Receiving Member shown as Clark and McMurtrie respectively.¹⁴⁷

However, the further comment is made by the ACC in the reports that **B**

It is puzzling that Clark should have seized the drug, Scanlan bagged the drug, Clark “deposited” the drug and McMurtrie “received” the drug.¹⁴⁸

Failure to Charge A1 or A2 with respect to Possession of Cannabis or Heroin

The cannabis which was found on the premises was described in the ACC reports as being 172 grams of cannabis material in a white plastic bag, which was “fresh, and of good quality”.¹⁴⁹ As has been noted, it was not seized and there appeared to be no intention on the part of the officers to charge either A1 or A2 in relation to the cannabis.

A1 was found to be in possession of heroin which was subsequently shown to be 83% pure. The ACC noted in its reports that the purity of the heroin was “the equivalent of the highest level of heroin purity seized or analysed in the preceding two years”.¹⁵⁰ No charges were laid by the Drug Squad officers in relation to the heroin.

¹⁴⁵ *Ibid*, all four ACC reports, p. 6.

¹⁴⁶ *Ibid*, all four ACC reports, p. 9.

¹⁴⁷ *Ibid*, all four ACC reports, p. 6.

¹⁴⁸ *Ibid*, all four ACC reports, p. 6.

¹⁴⁹ *Ibid*, all four ACC reports, pp. 3-4.

¹⁵⁰ *Ibid*, all four ACC reports, p. 14.

On the question of charges being laid against either A1 or A2 as a result of the 8 April 1997 raid, the ACC noted in its reports on the allegations against the four Drug Squad officers that **B**

Apart from the P11, and scant journal/dairy entries of the four officers, there was no written or photographic record of the events that had occurred at A1's address on 8 April 1997. Had a decision later been made to charge either A1 or A2 in relation to any offence, there was no semblance of a brief from which any action could have been taken.¹⁵¹

Investigation of Complaints that A1 and A2 were Dealing in Drugs

In the information sworn on oath by Parker in support of the application for a search warrant on A1's house, it is stated that a complaint had been made by an unregistered informant that drug dealing was being conducted there and that inquiries and covert surveillance undertaken by Parker led him to believe the complaint might be substantiated.¹⁵²

From the information provided in the ACC reports, there does not appear to be any substantive record by the officers of inquiries into any drug dealing being conducted by A1 or A2.

The ACC referred in those reports to information assembled by the officers on the day of the raid as recorded by them **B**

Having searched A1, and seized the heroin from him, the officers departed shortly thereafter. In doing so they left behind the bag of cannabis referred to above. Further, they failed to take any notes of interview as to anything said by either A1 or A2. In addition, they did not make any appropriate investigation as to what A1 intended to do with the heroin, and in particular, whether he intended to sell or supply the heroin as the information which gave rise to the search warrant correctly suggested. Each officer had a journal or diary or both, but entries made by each officer for the events that occurred that day were uninformative and minimal. By way of example, Parker, who was the officer in charge of the team, made the following journal entry for the day of 8 April 1997 –

To [A1's address] and meet with A1. Info obtained. Returned to office.
Conduct surveillance.

When asked why the entry was so scant and nothing else was noted, Parker replied, "Well, when I fill out my journal I put in the things that I consider relevant".

The purpose of the journals and diaries is clearly to record in some detail the events that have occurred in the course of the duties performed by an officer on any particular day. There is no settled or arbitrary standard set for a journal/diary entry, but without appropriate detail scrutiny and accountability are made more difficult.¹⁵³

¹⁵¹ *Ibid*, all four ACC reports, p. 13.

¹⁵² *Ibid*, all four ACC reports, p. 1.

¹⁵³ *Ibid*, all four ACC reports, p. 6.

On the P11 form relating to the seizure of the heroin by the Drug Squad officers on 8 April 1997 the statement “inquiries continuing” is included. The scope of the “continuing inquiries” undertaken by the officers is discussed in the ACC reports and the following comments made by the ACC **B**

Despite reference to “inquiries continuing” all of the evidence would indicate that there were no further inquiries to be made in relation to A1. The officers frankly conceded that there was no intention to charge A1, although he was unaware of this fact. Any suggestion that “inquiries continuing” meant inquiries in relation to A1's supplier cannot be maintained, and indeed none of the four officers suggested this to be the case.¹⁵⁴

POLICE DISCRETION

The defence of Parker, Clark, Scanlan and McMurtrie before the Special Investigation to their non-compliance with the Standard Operating Procedures in executing the search warrant on A1's house and their failing to charge either or both A1 and A2 was that they were exercising police discretion.

There is no doubt that police officers may exercise “discretion” in performing their duties. It is both a matter of law and a necessary part of police practice. In its reports the ACC quotes from the judgement of Malcolm CJ in *Kings-Brook v Roberts* (1991) 5 WAR 500 at 515 on the subject of police discretion **B**

At common law the office of constable or peace officer was regarded as a public office. Constables had 'large powers necessarily incident to the discharge of their functions as peace officers or conservators of the peace, amongst which perhaps the most important was the authority to arrest upon suspicion of felony': *Enever v R* (1906) 3 CLR 969 at 975-976 per Griffiths CJ. Such powers of a constable whether conferred by common law or statute law, are exercised by him by virtue of his office and cannot be exercised on the authority of any person but himself.=(at 977). *The power to arrest or charge is essentially discretionary, although every constable is under a duty to uphold and enforce the law* (emphasis in the reports).¹⁵⁵

Police discretion, however, as suggested in the judgement of Malcolm CJ in *Kings-Brook v Roberts*, is not absolute nor unconstrained. Its scope can be determined by reference to objective standards of integrity and within a framework of proper practice.

The point is well made by John Kleinig **B**

Discretion is not simply a capacity to make choices - of being effectively free to choose between possible courses of action - but a permission, privilege, or prerogative to use judgement about how to make a practical determination. As such, it has embedded constraints - implicit understandings about the range of choice that is legitimately available to officials as they go about their activities. ...

¹⁵⁴ *Ibid*, all four ACC reports, p. 13.

¹⁵⁵ *Ibid*, all four ACC reports, p. 10.

In no case does discretionary authority amount to license or immunity to criticism. Although governed by norms, discretion may be abused or misused.¹⁵⁶

Dealing more directly with police practice, the Independent Commission Against Corruption noted in its 1994 report on the relationship between police and criminals that **B**

Detectives have widespread discretions. Decisions have to be made as to which incidents will be fully investigated, which incidents will not be pursued at all and which sensibly ought to be dropped after they have been taken to a certain point. Decisions then have to be taken as to whether charges will be laid, what evidence is available, and what the charges will be. In all of these areas the unscrupulous can take advantage. Unfettered and unaccountable discretions are fertile breeding grounds for corrupt practices. It is neither possible nor desirable to remove discretion entirely, but steps can be taken to ensure that decisions are based on appropriate criteria and are properly recorded.¹⁵⁷

Standard Operating Procedures provide some of those criteria. They are designed both to protect police against false accusations of corruption and against actual police corruption. The purpose served by Standard Operating Procedures and their particular importance in terms of Drug Squad operations was emphasised in the ACC reports **B**

The purpose of the SOPs was acknowledged by all witnesses as being to provide an effective manual for correct practice in all nominated situations. Insp. Kim Porter (“Porter”) testified that adherence to SOPs was particularly emphasised to overcome the perception of corrupt practices within the Drug Squad, and to ensure the integrity of police investigations. He testified that all serving Drug Squad officers (including Parker, Clark, Scanlan and McMurtrie) receive training about SOPs upon their induction into the Squad, and the need for adherence to the SOPs is constantly emphasised. Porter frankly acknowledged the obvious truth that some police squads, such as the Drug Squad, work in a high risk area **B** both as to the existence of opportunities for corrupt practices by police, and the making of false claims of corruption in legitimate police investigations by suspects. Porter made clear that the observance of SOPs was not discretionary, and that police officers should be well aware of this from their training.¹⁵⁸

Further criteria have been provided in Western Australia in relation to the discretion not to prosecute indictable offences. In January 1998, the DPP issued the following guidelines pursuant to section 24 of the *Director of Public Prosecutions Act 1991* (WA) to police officers and other public officers for the exercise of such a discretion **B**

Guidelines

1. There will be occasions, when despite sufficient credible evidence identifying a person as having committed an offence, a police officer or public officer will exercise a discretion not to charge a person.
2. Such a discretion should only be exercised in the public interest and by applying to the particular facts and circumstances the *Statement of Prosecution Policy and Guidelines* published in the *Government Gazette* No. 157 on 6 November 1992.

¹⁵⁶ Kleinig, J (1996) ‘Introduction: Handling Discretion with Discretion’ in *Ethical Issues in Police Decision Making* John Kleinig (ed) at p. 3.

¹⁵⁷ Independent Commission Against Corruption (1994) *Investigation into the Relationship Between Police and Criminals* p. 29.

¹⁵⁸ *Op cit*, note 9, all four ACC reports, pp. 8-9.

3. The reasons for the exercise of a discretion not to lay a charge in a particular case must be recorded in writing.
4. The exercise of a discretion not to lay a charge in a particular case should be subject of routine review within the Police Service or other responsible authority. The review must also be recorded in writing.
5. These guidelines apply to all indictable offences, including indictable offences triable summarily and will become operative from 1 February 1998.¹⁵⁹

The DPP provided those guidelines for the purpose of clarifying the scope of the discretion and to promote consistency and improve accountability.

Testimony Regarding the Scope of Police Discretion

According to the information provided in the ACC reports on testimony to Miller given by the four Drug Squad officers, they appeared to hold a view that police discretion was unrestricted.

With respect to Standard Operating Procedures, the ACC said in the reports that all four officers expressed a belief that they had a discretion not to comply with procedures. By way of example, the ACC quoted testimony given by Scanlan **B**

Mr Tannin: The compliance, I am putting to you, with standard operating procedures with execution of search warrants in the drug squad is not discretionary. It is also the clear duty of all officers ... why was there no compliance with standard operating procedure in relation to search warrants? --- Your opinion differs from mine Mr. Tannin.

I'm not asking ... I'm not putting an opinion. That is a fact. --- I believe it is discretionary.

...

Your discretion of what? --- I used my discretion.

Just ignore whatever rules are put up? --- I used my discretion to do the job as we thought appropriate on the day.

I'm putting to you you have no discretion in this at all. --- I believe I have discretion.

Who told you you had a discretion to ignore standard operating procedures in relation to execution of search warrants done under the lawful authority of the *Misuse of Drugs Act* ... ? ---

No-one's told me any different.

Who told you that you positively did? --- No-one has told me.¹⁶⁰

Earlier in the ACC reports on the allegations against the four Drug Squad officers reference was made to Scanlan's testimony on the issue of the cannabis not being seized **B**

... And it [the Standard Operating Procedure] also says that all drugs are to be seized. The execution of a search warrant doesn't provide any discretion to deliberately leave behind a prohibited drug. Again that's what occurred at A1's house, isn't it? --- That's correct.

Why? --- As I said to you Mr Tannin we used our discretion on the day.

You don't have a discretion so lets get that fiction that out. --- I'm telling you I have a discretion.

SPECIAL INVESTIGATOR: Discretion to leave drugs behind? --- Yes, I believe so.

¹⁵⁹ Director of Public Prosecutions, *Director of Public Prosecutions Act 1991*, Section 24, *Guidelines to Police Officers and Other Public Officers for the Exercise of the Discretion not to Prosecute Indictable Offences* Government Gazette, 20 January 1998.

¹⁶⁰ *Op cit*, note 9, all four ACC reports, p. 9.

MR TANNIN: You have a discretion to ignore deliberate breaches of the law? Is that what you say? --- I believe so.¹⁶¹

The ACC summarised the evidence of the four officers before the Special Investigation regarding their departure from Standard Operating Procedures as follows **B**

Each officer, when faced with the proposition that there had been a clear and deliberate breach of the SOPs in a number of respects, categorically denied any wrongdoing and/or breach of protocol, and in each case, insisted that an officer had a discretion “in the field” to comply with or abandon the SOPs as he or she saw fit.¹⁶²

With respect to not charging A1 or A2 with any criminal offences after finding them in the possession of drugs, the officers relied on the argument that A1 could be of assistance to them in their investigation of higher level drug dealers. Clark, for instance, told the Special Investigator that the officers “were prepared to tolerate” the commission of offences by A1 and A2 because they were “trying to get to the next level and that seemed the best way to do it”.¹⁶³

McMurtrie advanced a similar argument. After he had recounted his recollection of the events surrounding the discovery of the cannabis, McMurtrie was asked if any charges were to be laid. McMurtrie’s response was reported as follows **B**

... I don’t know if it was decided at that stage to leave, or what. He went on to say that A1 intimated he could assist the police. When asked by Counsel Assisting whether in return he had been “let go on the cannabis”, McMurtrie agreed it “would have been something like that yeah”.¹⁶⁴

The officers' arguments are undercut by their subsequent actions as reported by the ACC. As discussed earlier, material provided in the ACC reports to the Commissioner of Police suggested that any substantial further inquiries either in relation to A1 or A2 or any higher level drug dealers as a result of information provided by A1 were not undertaken by the officers.

On this point, the ACC said in the reports on the allegations against the four officers **B**

That view of a supervening “noble cause” justifying a deliberate indifference to the duty of enforcement of the law was common to each of the officers. If the officers were to use A1 to target others, they should have registered A1 as an informant, as required by the SOPs (Informant Management Plan). No such attempt was made by the officers. No further contact was made with A1 after 8 April 1997 whether for the purpose of trying to get to the next level of drug dealer or any other purpose.¹⁶⁵

¹⁶¹ *Ibid*, all four ACC reports, p. 6.

¹⁶² *Ibid*, all four ACC reports, pp. 9-10.

¹⁶³ *Ibid*, all four ACC reports, p. 10.

¹⁶⁴ *Ibid*, all four ACC reports, p. 14.

¹⁶⁵ *Ibid*, all four ACC reports, p. 10.

Other Testimony Regarding the Scope of Police Discretion

In general terms, Parker, Clark, Scanlan and McMurtrie received a degree of support for their views about police discretion from some of their immediate supervising officers. Det. Snr Sgt Gary John Budge (“Budge”), at the time of his testimony Officer in Charge of the Drug Squad, told the Special Investigation he believed **B**

... in relation to small amounts of drug that police have a discretion not to charge a person in relation to those drugs ... in certain circumstances ... I think over a period of time ... it has been well documented that police have an underlying discretion and actually recorded in many areas that police have that discretion ... and should have that discretion to advance their cause particularly in drug related areas.¹⁶⁶

Budge referred to comments by a Royal Commission, either the *Williams* or *Stewart* Royal Commission, verbal statements on record by the Commissioner of Police and National Drug Strategy to support his position. After giving evidence he was asked to provide to Miller the Commissioner of Police’s statement and the National Drug Strategy. No statement from the Commissioner of Police was provided, but the National Drug Strategic Plan 1993-1997 was. The ACC said in its reports that the plan “was silent” on Budge’s conclusion that a “discretion” existed in the broad terms he used.¹⁶⁷

The operations sergeant, Sgt Davies, also supported the view that the police officers had a discretion not to charge in circumstances such as those investigated by Miller.¹⁶⁸

Those views were not shared by more senior officers within the Police Service. The Special Investigator said to Assistant Commissioner Jacobus Mackaay (“Mackaay”) when Mackaay was giving evidence **B**

He [Budge] went further. He said the National Drug Strategy encourages this and he went so far as to say to Mr Tannin or to me that officers would not be doing their duty unless from time to time they used this discretion not to charge where the amounts of cannabis or heroin were small.

Mackaay responded **B**

Well I find that astonishing because this is the very reason why we are here today ... and if a person of his standing can’t understand that and risk active corruption within his own area ... then I think we have a major problem.¹⁶⁹

¹⁶⁶ *Ibid*, all four ACC reports, pp. 10-11.

¹⁶⁷ *Ibid*, all four ACC reports, p. 11.

¹⁶⁸ *Ibid*, all four ACC reports, pp. 11 & 14.

¹⁶⁹ *Ibid*, all four ACC reports, p. 11.

Former Assistant Commissioner Arthur William Mott, at the time of his testimony Assistant

Commissioner Crime Operations, agreed with the views expressed by Mackaay. The following extract from evidence he gave was included in the ACC reports **B**

MR TANNIN: ... Lets talk about an amount of cannabis larger than an amount in the *Misuse of Drugs Act 1981* ... section 11 ... that deems your possession to be possession with intent to supply? --- No. there wouldn't be a discretion there ... no. And in terms of the possession of heroin? --- No.

SPECIAL INVESTIGATOR: Half a gram of heroin, say; .6 of a gram of heroin? --- No.

MR TANNIN: No. There's no directive, is there, from the Commissioner of Police to that effect? --- Not that I'm aware of. ...

SPECIAL INVESTIGATOR: And the Commissioner's not on record, as far as you know, is he, as saying, 'Look, this discretion exists'? --- No.

MR TANNIN: And the very fact of a discretion existing in that circumstance where serious drug matters are involved would ... be, if in place a formula for corrupt practices? --- It could be conducive to that, and particularly if the drugs aren't seized and accounted for.¹⁷⁰

On this issue, the following testimony from Acting Assistant Commissioner Robert Francis Ibbotson ("Ibbotson") also was reproduced in the reports **B**

MR TANNIN: ... can we now deal just shortly with this question of discretions. The situation where a person simply gives up a supplier for not being charged; should that happen? --- No. It's simply not lawful and not proper and not possible? --- That's correct.

And that's not only clear from the fact that you've been advised by the Director of Public Prosecutions, Mr John McKechnie, that that is the case, but that happens also to be the law, does it not? --- That's correct.

And there's no equivocation about that? --- None at all.

And certainly under your command there's no tolerance of that, to your knowledge? --- That's correct.

Were you aware of any such practice in the Drug Squad or the Organised Crime Squad? --- No I was not.

... there is no doubt in your mind ... that all officers attached to that Squad were quite clear about this? --- Oh, absolutely.¹⁷¹

The differences among the views of the four officers, their immediate supervisors and more senior members of the Police Service is of concern. The disjunction between the stated views of senior officers and what appeared to be actual practice within the Drug Squad suggests the existence of a police culture through which the perception of corruption is reinforced or which is conducive to actual corruption.

INFORMANT MANAGEMENT

The management of informants and, more generally, relationships among police officers and criminals were serious issues in the allegations against each of the six officers investigated by Miller.

The Drug Squad Cannabis Team

Shortly after the Drug Squad Cannabis Team arrived at A1's house on 8 April 1997, A1 identified himself to the officers as Coombs' informant. His status was confirmed immediately by the officers through a phone call to Coombs. The four officers, as discussed above, subsequently

¹⁷⁰ *Ibid*, all four ACC reports, pp. 11-12.

¹⁷¹ *Ibid*, all four ACC reports, p. 12.

argued before the Special Investigation that A1's use to them as an informant justified their ignoring Standard Operating Procedures and not charging either A1 or A2. Indeed, upon returning from the raid, Parker and Clark met with Coombs apparently to discuss their using A1 as an informant, though their testimony as to the content of that meeting differed somewhat.¹⁷²

Parker and Clark returned to A1's house shortly after the completion of the raid for a meeting with him. He was told by the officers that Coombs had given "permission" for him to provide them with information.¹⁷³ According to the complaint made to the Internal Affairs Unit by A1 as set out in the Smalpage memorandum, A1 was told that if he cooperated with Parker and Clark he would get the heroin back. He did so. The heroin was not returned.¹⁷⁴ The information in the ACC reports regarding Parker and Clark includes A1's claim that he was promised the return of the heroin in return for information, that he provided information, but did not get the heroin back. Parker and Clark agreed that A1 provided information to them at the meeting, but they denied making any offer to return the heroin to A1.¹⁷⁵

The ACC said in its reports dealing specifically with the allegations against Parker and Clark that "there were no notes or records created of the interview".¹⁷⁶ A1 was never registered as an informant by any of the four officers, nor did any of the four, according to the ACC reports, seek further information from A1 after the post-raid meeting with him on 8 April 1997.¹⁷⁷

Coombs

The allegations against Coombs arose from A1 being an unregistered informant to Coombs and his subsequent embroilment in the events following the 8 April 1997 raid by the Drug Squad Cannabis Team. As set out earlier in this report, Coombs agreed in testimony to the Special Investigation that on 8 April 1997 he had confirmed to the Drug Squad officers that A1 was an informant to him and that he had spoken on the phone to A1.¹⁷⁸ He also admitted that he had met with A1 on the day of the raid. Coombs said that A1 had mentioned that some money had gone missing, but A1 was not specific or clear in his allegation and did not raise it until his first meeting with Coombs.¹⁷⁹ Coombs also "belatedly" registered A1 as an informant on 8 April 1997 and made a \$400 reward payment to him.¹⁸⁰ An Intelligence Report dated 8 April 1997 exists in which Coombs says he advised A1 to report his complaints to the IAU.¹⁸¹

¹⁷² *Ibid*, ACC reports on allegations against Parker and Clark, p. 17.

Clark suggested Coombs had asked that the officers hold off using A1 as an informant for a couple of weeks as A1 was required for another operation, whereas Parker recalled that Coombs said there was no problem with them using A1 as an informer.

¹⁷³ *Ibid*, ACC reports on allegations against Parker and Clark, p. 18.

¹⁷⁴ *Ibid*, ACC reports on allegations against Parker and Clark, pp. 19-20; ACC report on allegations against Scanlan, pp. 17-18; ACC report on allegations against McMurtrie, pp. 15-16.

¹⁷⁵ *Ibid*, ACC reports on allegations against Parker and Clark, p. 18.

¹⁷⁶ *Ibid*, ACC reports on allegations against Parker and Clark, p. 18.

¹⁷⁷ *Ibid*, all four ACC reports, p. 10.

¹⁷⁸ *Op cit*, note 88, p. 3.

¹⁷⁹ *Ibid*, p. 3.

¹⁸⁰ *Ibid*, p. 3.

¹⁸¹ *Ibid*, p. 4.

Testimony given by A1 before the Special Investigation differs from Coombs' account. That testimony, as reported by the ACC, suggests that Coombs was made aware quite early on 8 April 1997 of A1's complaints about the theft of the money.¹⁸² There also was evidence referred to in the ACC report of the allegations that the Intelligence Report prepared by Coombs and dated 8 April 1997 could not have been entered into the database until about 3 June 1997, a delay of seven weeks from the date of the report. The information provided in the ACC report suggests that it was highly unusual for such a delay to occur.¹⁸³ A1 testified that at no time did Coombs tell him to contact the IAU.¹⁸⁴

The ACC report further noted that Coombs was required to advise a superior officer or the IAU of the complaints made by A1.¹⁸⁵ The ACC reported that Coombs denied before the Special Investigation that what A1 said to him amounted to a complaint, but Coombs also said that he had, nonetheless, informed two senior officers about A1's allegations on or about 8 April 1997. The officers concerned denied that claim.¹⁸⁶

The allegations against Coombs arose from his relationship with an informant and his actions following the 8 April raid. They were allegations of misconduct regarding how he dealt with A1's complaint against the Drug Squad officers and that he had attempted to mislead his superiors.

As has been noted, the Assistant Commissioner of Police (Professional Standards), after considering the report on the allegations against Coombs and other materials submitted to the Commissioner of Police by the ACC, concluded that "there is, on the balance of probabilities, compelling evidence in support of the allegations".¹⁸⁷

Cull

In the ACC report on the allegations against Cull, it is said he claimed that the information he had provided to A31, described by the ACC as "a major heroin dealer", was provided on the basis that useful information might be supplied by A31 to the Police Service.¹⁸⁸ Cull met with A31 three times over a period of twelve months between mid-1996 and mid-1997.¹⁸⁹ Cull, however, denied that A31 was an informant, because there was no "continuing relationship". Consequently, he claimed, informant management principles did not apply.¹⁹⁰ During one of those meetings Cull was offered a bribe by A31. In the ACC report on the allegations against Cull, it is noted that he made no record of that incident and did not appear to consider whether A31 should have been charged with bribery.¹⁹¹

¹⁸² *Ibid*, p. 2.

¹⁸³ *Ibid*, p. 4.

¹⁸⁴ *Ibid*, pp. 2-3.

¹⁸⁵ *Ibid*, p. 4.

¹⁸⁶ *Ibid*, p. 4.

¹⁸⁷ Memorandum to the Commissioner of Police from the Assistant Commissioner of Police (Professional Standards) dated 15 June 1998.

¹⁸⁸ *Op cit*, note 111, p. 3.

¹⁸⁹ *Ibid*, p. 4.

¹⁹⁰ *Ibid*, pp. 4-5.

¹⁹¹ *Ibid*, p. 6.

While Cull may have said that there was no continuing relationship with A31, the relationship and the secretive manner in which it was conducted were sufficient to raise questions about Cull's integrity. Because of the unprofessional nature of his dealings with A31, concern over the apparent compromise of a Drug Squad surveillance operation against A31 brought suspicion onto Cull.¹⁹² Had proper informant management principles been adopted by Cull in recording and reporting on his meetings with A31, it is much less likely that such questions would have arisen.

The Commissioner of Police made the following comments regarding Cull's relationship with A31
B

In the material made available to me there is considerable evidence that in his dealing with ----, a known criminal, Inspector Cull took unnecessary and unacceptable risks. It was and is not at the standard expected of an experienced sub-officer and investigator. In addition to personal risks at such meetings, Inspector Cull risked his professional reputation. This view is supported by the fact that at one meeting ---- offered Cull money, who compounded the unprofessionalism associated with the meeting by failing to take any action against ----. His pre and post meeting reports in regard to his dealings with ---- also do not meet the expectations of this organisation.¹⁹³

The WAPS Informants Management Plan

At the time the events investigated by Miller took place, the WAPS had an Informants Management Plan. That plan was dated May 1994 and had been reviewed in September 1996. It was designed to protect informant confidentiality, while providing accountability and protection for police officers against the dangers of corruption or false allegations of corruption. The objective of the WAPS Informants Management Plan was **B**

... to establish an integrated best practice system for the management of the relationship between police officers and informants. This is to be achieved through a tiered management structure for the control, accountability and evaluation of the relationship, and information provided by informants. Accountability will be achieved through adequate supervision and documentation of all steps in the relationship.¹⁹⁴

Under that plan police officers were required to register informants. Section 1.2 provided that -

Subject to section 1.4, all police officers will comply with this Plan and ensure that informants are registered and dealt with in accordance with the Plan.¹⁹⁵

With registration other provisions of the Plan relating to documenting meetings with informants, informant confidentiality, the payment of rewards, supervision of the case officer/informant relationship and evaluation of information provided came into effect.

¹⁹² *Ibid*, p. 2.

¹⁹³ Memorandum to the Assistant Commissioner of Police (Professional Standards) from the Commissioner of Police dated 11 November 1998.

¹⁹⁴ Western Australian Police Service (1994) *Informants Management Plan* p. 2.

¹⁹⁵ Section 1.4 of the Plan provides that -

Police performing duty in the National Crime Authority, Internal Affairs Unit, Crime Stoppers and ABCI are not required to register informants with whom they deal in the course of their duties with those bodies, under this Plan.

From the information provided in the ACC reports, it appears it was a plan more honoured in the breach than in the observance. Excepting that Coombs “belatedly” registered A1 as an informant, neither A1 or A31's relationship with the officers was governed by the principles and requirements set out in the WAPS Informant Management Plan. Even though the Informant Management Plan specifies that police officers were required to register informants, in the ACC Report on the allegations against Coombs the ACC said **B**

The fact that A1 was an unregistered informant for Coombs over a number of years (save when interrupted by A1's imprisonment), was irregular, but apparently unexceptional within the Western Australian Police Service.¹⁹⁶

The ACC further observed that A1 was not only a unregistered informant to Coombs, but a number of other officers as well. It referred to A1's testimony before the Special Investigation noting **B**

A1's testimony as to the nature of his relationship as an unregistered informant to various police officers was a colourful description of successive improprieties on the part of those officers, including the provision to him of drugs, favours and immunities.¹⁹⁷

The use of informers by police is a necessary part of policing. However, it is an area of police work in which the potential for corruption is widely acknowledged. The Wood Royal Commission, for instance, reported that **B**

... the existence of inappropriate relationships between police and criminals was identified early on as a major cause for the emergence of corruption.¹⁹⁸

The Independent Commission Against Corruption in New South Wales, following discussion of certain relationships between police and criminals, concluded **B**

The danger is that corrupt officers will seek to use the need to establish contact with criminal informers to conceal their corrupt dealings and associations. Without proper accountability and on going evaluation of contact with informers, such abuses will continue.¹⁹⁹

The other side of the coin is that with the proper management, regulation and accountability of informant relationships, honest police officers are protected from unfounded allegations of impropriety or corruption.

¹⁹⁶ *Op cit*, note 88, p.1.

¹⁹⁷ *Ibid*, p. 1.

¹⁹⁸ Royal Commission into the New South Wales Police Service (The Wood Royal Commission) (1997) *Final Report*, p. 432.

¹⁹⁹ Independent Commission Against Corruption (1994) *Investigation into the Relationship Between Police and Criminals* p. 11.

IMMUNITIES AND INDEMNITIES FROM PROSECUTION

A further issue arising from Miller concerns the granting of “street immunities”, whereby evidence of criminal offences committed by a person is ignored by police and no charges laid. The justification offered is that the person can provide useful information to the police service. The justification by Parker, Clark, Scanlan and McMurtrie for not charging either A1 or A2 for certain criminal offences amounted to such an immunity. As Clark told the Special Investigator, the officers “were prepared to tolerate the commission of offences by A1 and A2 because they were trying to get to the next level and that seemed the best way to do it”.²⁰⁰

The granting of such immunities is a practice which carries with it inherent dangers. They are two fold. On the one hand, it may itself encourage criminal activity. As was noted by the Wood Royal Commission B

... frequently the informant is known to be actively involved in ongoing criminal activity, to which a blind eye is turned in return for information, an occurrence which can leave the informant with the impression that he or she has a green light [to commit crimes];²⁰¹

On the other, it has the potential to compromise the officer either through encouraging corruption or giving the perception of corruption.

Evidence was given to Miller by the DPP, Mr John McKechnie QC, on the granting of indemnities or immunities from prosecution under Western Australian law. He noted that is a power exercised by the DPP or the Attorney General. He was asked in the Special Investigation hearings whether he had ever communicated in writing or otherwise to the Commissioner of Police or his officers that they could exercise such a power. He responded B

Not in any sense for two reasons ... the first is that my view about indemnities is that they are very serious matters to be granted sparingly ... it is the policy that ... investigators do not have the power to indemnify their own witnesses because of the obvious legitimate temptations to do so, but they come to another body, that body charged with prosecution, as part of the criminal justice system and make the case for an indemnity ... that is the theoretical reason why I would not entertain a delegation to an investigating authority such as the police service. The legal reason is that the power that I have to delegate is limited to a delegation effectively to officers employed in the Department (*sic*) of Public Prosecutions and I have no legal power to delegate to police officers.²⁰²

The ACC reports noted that the DPP’s evidence in relation to immunities from prosecution was to “like effect” and no immunity was given by him to either A1 or A2 “in relation to the matters under investigation”. Nor was there any evidence that the Attorney General had granted any immunity to either A1 or A2.²⁰³

²⁰⁰ *Op cit*, note 9, all four ACC reports, p. 10.

²⁰¹ *Op cit*, note 198, p. 431. A ‘green light’ refers to the situation where police permit criminals to conduct crimes in return for information or money.

²⁰² *Op cit*, note 9, all four ACC reports, pp. 12-13.

²⁰³ *Ibid*, all four ACC reports, p. 13.

THE COMMISSIONER'S POWERS UNDER SECTION 8 OF THE POLICE ACT 1892

On 11 December 1997, after it had reviewed the Miller Report, the ACC sent a letter to the Commissioner of Police, Mr Robert Falconer (“Falconer”), enclosing two abridged copies of the Report. The following day, Falconer suspended Parker, Clark, Scanlan, McMurtrie, Coombs and Cull under section 8 of the Police Act. Under this section the Commissioner of Police has power to suspend an officer, whereas removal requires the approval of the Minister. Section 8 provides –

The Governor may, from time to time, as he shall see fit, remove any commissioned officer of the police, and upon any vacancy for a commissioned officer, by death, removal, disability, or otherwise, the Governor may appoint some other fit person to fill the same; and the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable; and in the case of any vacancy in the Police Force by reason of death, removal, disability or otherwise of any non-commissioned officer or constable, the Commissioner of Police may appoint another person to fill such vacancy.

Section 8 Practices and Procedures at the Time of the Initial Suspension

At the time of the suspension of the six officers on 12 December 1997, the WAPS had in place a policy and practices regarding the Commissioner’s power to suspend. Those practices had been drawn together into a document and were summarised as follows **B**

The practice states that a member who is charged with a serious offence shall be suspended without pay, the withdrawal of pay taking effect not less than 14 days after the commencement of the suspension.

It is stated that, except where exceptional circumstances exist, suspension without pay will not be imposed on a member in respect of a breach of discipline.

The document indicates that any decision to suspend or stand down a member or to issue a direction to take paid leave shall be given in writing. In the case of a suspension, the member will be advised of the nature of the breach or charge, the date the suspension takes effect, and the date of the cessation of pay. In the case of a decision to stand a member down, the member would be advised of the nature of the breach or charge, and the area the member would be deployed during the period of stand down.

Practices are also outlined in relation to secondary employment, reinstatement and welfare considerations.²⁰⁴

Through these practices, the WAPS sought “to ensure the exercise of consistency, fairness and equity in making determinations relating to the suspension or standing down of members or requirements on members to take paid leave **B** the policy applying where a member is charged with a serious breach of discipline or the commission of a criminal offence”.²⁰⁵

Practices regarding removal from the Police Service had not been put into “approved documentary form”. However, the following standard practices were reported to have applied –

²⁰⁴ Codd, M (January 1998) *Report on the Suspension and Removal of Police Officers in Western Australia*, p. 23.

²⁰⁵ *Ibid*, p. 22.

The practice envisages notification to the officer of an intention to effect termination, citing the reasons and providing a time frame for the officer to show cause why he or she should not be terminated.²⁰⁶

The notices of suspension issued to the six officers on 12 December 1997 were consistent with the practices regarding suspension outlined above.

Changes to the Section 8 Practices and Procedures

The initial suspension of the six officers provoked a hostile response from the Police Union and its members. Litigation in the Supreme Court against the ACC and Falconer was accompanied by mass meetings of police officers and a public campaign to discredit the Miller Investigation and the statutory procedures required of the ACC. The discretion available to the Commissioner of Police to suspend a police officer for “lack of confidence” under section 8 of the Police Act was the focus of concentrated attention. The Police Union argued the six officers had been treated unfairly.

Eventually, on 12 January 1998 following discussions among the Minister for Police, the Commissioner of Police and the Police Union, the Government announced a review of procedures for the suspension and removal of officers under section 8. It was undertaken by Mr Michael Codd, a former head of the Department of Prime Minister and Cabinet.

The review was completed and a report presented (the “Codd Report”) at the end of January.²⁰⁷ In the Codd Report it was noted that the power granted the Commissioner of Police under section 8 “is not qualified by any other provisions of the Act—that is to say, it is an unfettered power and the practices and procedures which might be followed under it are not specified in the legislation”. Codd concluded that the section 8 powers of the Commissioner of Police should be retained, but that the power to suspend should be limited and an officer against whom a recommendation of dismissal is made should be able to have that decision reviewed by an independent body. That review was to be focussed on the fairness of the procedures and not the merits of the Commissioner's decision.²⁰⁸

The Police Union, while welcoming the findings in the Codd Report, continued its campaign against the Commissioner's powers under section 8 of the Police Act, while seeking a right of review of a decision to recommend dismissal through which not only procedural matters could be considered but also the merits of the case.

Following consultations between the Commissioner of Police and the Police Union before Industrial Relations Commissioner Gregor a resolution was finally reached. A process of review which went beyond that recommended in the Codd Report was agreed upon. That process was formally approved by State Cabinet in August 1998 on an interim basis pending legislative provision for a more permanent process of review.

²⁰⁶ *Ibid*, p. 23.

²⁰⁷ *Ibid*.

²⁰⁸ *Ibid*, p. 10.

Under the interim arrangements, before the Commissioner of Police recommends removal of an officer, the officer is given an opportunity to respond within 21 days (or longer where an extension is granted) to a notice of intention to recommend removal issued by the Commissioner. If, after assessing the officer's response, the Commissioner proceeds to recommend dismissal, the officer may appeal to the Western Australian Industrial Relations Commission as convened under section 80ZE of *The Industrial Relations Act 1979* (WA). In making a decision, the Commission is to have regard to the interests of the applicant and the public interest. The public interest is taken to include the special nature of the relationship between the Commissioner of Police and members of the Police Service and the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of the Police Service. The applicant is required to establish that the removal was harsh, oppressive or unfair.²⁰⁹

The Purpose of the Commissioner's Loss of Confidence Provisions

The "loss of confidence" power under section 8 of the Police Act reflects the unique status of the office of constable. Police officers are entrusted by the communities they serve to uphold and enforce the law. They also are entrusted with special powers and a significant degree of independence in their exercise of those powers. In performing their duties, police officers may use force, apprehend a person they reasonably suspect of having committed a crime, enter and search premises, seize property and assemble evidence which may be used to charge and prosecute a person for a criminal offence or offences.

The loss of confidence power is not related to a disciplinary or criminal process through which guilt or innocence is established. Rather, it represents a managerial power to cause the dismissal of an officer on the grounds that the conduct complained of renders him or her unsuitable to undertake the duties and exercise the powers of a police officer.²¹⁰ In particular, it relates to circumstances where the Commissioner of Police determines that "a member's conduct has shown a lack of integrity, dishonesty, serious misconduct, or a sustained failure to perform his/her duties".²¹¹ In a Delta Update dated August 1998 the new loss of confidence procedures under section 8 of the Police Act were outlined and the point made **B**

Loss of confidence is not about honest mistakes or administrative omissions or simple breaches of process. It is about conduct that in the Commissioner's judgement, jeopardises, or has the capacity to jeopardise, public confidence in the capacity of an officer to perform the duties of their office diligently, ethically and with integrity.

This loss of confidence is also not about guilt or innocence of a member facing criminal or disciplinary charges. It is simply a managerial prerogative exercised where an officer's integrity, honesty or probity is called into question.²¹²

The Issuing of Notices of Intention to Remove from the Police Force

²⁰⁹ Western Australian Police Service (1998) *Process for Removal of Officers Section 8, Police Act* (information brochure); Ministerial Media Statement, Minister for Police, 10 August 1998.

²¹⁰ See generally Codd, M (1998) *op cit*, note 204, Croke, G.W. (1998) *Address to the Australasian Internal Affairs Conference* Perth, Western Australia, July 1998, pp. 6ff; The Wood Royal Commission (1997), *op cit*, note 198, pp. 350-353.

²¹¹ *Op cit*, Western Australian Police Service (1998), note 209.

²¹² Western Australian Police Service (1998) "Section 8 Explained" *Delta Update*.

It was following submission to him of the reports from the ACC dated 11 June 1998 and related materials that, on 18 June 1998, the Commissioner of Police issued to each of the officers Notices of Intention to Remove from the Police Force. In so doing he relied on section 8 procedures subsequently set in place. He issued those notices because, as a result of the ACC reports and related materials submitted to him, he had lost confidence in the officers—

- ability to maintain the professional standards required of a police officer;
- capacity to exercise credible and sound ethical judgement; and
- integrity.²¹³

In a Police Service Bulletin dated 22 June 1998, the Commissioner made clear that he did not take action pursuant to section 8 of the Police Act B

... because people have simply broken some standing operating procedure or made some mistake in regard to administrative practices. In every instance the issues revolved around action or inaction that impacts adversely on the ethical standards, integrity and credibility of those involved.

The Effect of the Supreme Court Decisions

The process followed by the Commissioner of Police in dealing with Parker, Clark Scanlan, McMurtrie, Coombs and Cull reflected not only the interim process agreed to in August 1998 with respect to loss of confidence procedures, but also changes which occurred following the Supreme Court decision in *Parker v Miller*.

The decision in *Parker v Miller* and the later decision in *Parker v ACC* saw a limiting and clarification of the powers of the ACC and an ACC Special Investigator in dealing with allegations under the ACC Act. Miller had acted on the assumption that not only could he investigate the allegations against the officers, but that he also could make findings on the basis of the evidence assembled. As outlined earlier, the latter assumption was proved incorrect by the decisions in *Parker v Miller* and *Parker v ACC*. In those decisions, the Supreme Court made clear that the ACC is primarily an investigative agency. Neither it nor an ACC Special Investigator has the power to make findings of guilt against a person or findings regarding the fitness of a person to hold office. The Supreme Court held that, in reporting to another agency on further action to be taken on the basis of evidence assembled, the ACC cannot pronounce a view on the guilt of a person or direct that agency as to what disciplinary or related action should be taken. Those are decisions for the relevant agency to make.

When the Miller matters were first referred to the Commissioner of Police in December 1997, the Commissioner received not only an abridged report of the investigation, but the findings made by Miller against the six officers. As the case before the Supreme Court in *Parker v Miller* was argued, the Commissioner of Police acted on the judgements made by Miller as to the guilt of the

²¹³ Notice of Intention to Remove from the Police Force of Western Australia dated 16 June 1998 issued to each officer from the Commissioner of Police.

six officers. The Court determined that it was beyond the power of an ACC Special Investigator to make such findings and to conclude that the officers should be removed from the Police Service because of those findings. It also was beyond power for the ACC to adopt those findings and conclusions and refer them to the Commissioner of Police. Hence, the Court decided by majority that the Commissioner's action pursuant to section 8 of the Police Act was an invalid exercise of power. The Commissioner had relied on determinations by the ACC and the ACC Special Investigator which were not within their power to make.

Consequently, when the ACC reported again in June 1998 to the Commissioner of Police on the Miller Investigation, it was limited to reporting on the evidence assembled, leaving to the Commissioner the decision as to what action should be taken with respect to that evidence.

The actual process followed was for the ACC to report to the Commissioner on the allegations and to furnish the relevant evidence assembled by Miller. That evidence was evaluated in the first instance by the Assistant Commissioner of Police (Professional Standards). Following that evaluation, the Assistant Commissioner recommended to the Commissioner that loss of confidence procedures should be instituted against each officer. The Commissioner then considered the material on which the Assistant Commissioner reached his conclusions. In this instance he agreed and each officer was issued a Notice of Intention to Remove from the Police Force.

In the case of Parker, Clark, Scanlan, McMurtrie and Cull, the evidence disclosed that, on their own admission, they had not acted in accordance with standards expected of members of the WAPS. In the case of Coombs, in deciding whether or not he should be required to show cause as to why he should not be removed from the WAPS, a decision had to be made on how much weight to attach to the evidence in the face of Coombs' denial of the allegations. The standard of proof applied by the Assistant Commissioner of Police (Professional Standards) in recommending what action the Commissioner of Police should take was the civil standard. In the Assistant Commissioner's view, on the balance of probabilities there was "compelling evidence" supporting the allegations against Coombs.²¹⁴

In general terms, in cases where criminal prosecutions are not undertaken and allegations and evidence are referred by the ACC to another agency for further action, and where a determination must be made as to whether the allegations can be sustained on the basis of the evidence provided, the matter will be determined through processes available to the agency by law. In such cases, it is not the criminal standard of proof requiring that the case against a person be established beyond a reasonable doubt which applies. It is the civil standard, which requires only that the case be established on the balance of probabilities.

Reinstatement of Parker, Clark, Scanlan, McMurtrie and Cull

Before acting on his intention to remove the officers from the Police Service and as required under the interim section 8 procedures, the Commissioner of Police provided the officers the opportunity to show cause why they should not be removed. Except for the Coombs' matter, the

²¹⁴ Memorandum to the Commissioner of Police from the Assistant Commissioner of Police (Professional Standards) dated 15 June 1998.

section 8 process in relation to the officers is now complete. The Commissioner, after assessing submissions from Parker, Clark, Scanlan, McMurtrie and Cull, reinstated them on the instruction that they receive formal counselling. Cull has since resigned from the Police Service.

The decision of the Commissioner of Police to reinstate Parker, Clark, Scanlan, McMurtrie and Cull was not made because he was convinced that the officers' conduct was not unprofessional. The Commissioner's conclusion that each officer should undergo formal counselling indicates that in deciding not to remove them from the Police Service he did not condone their actions. Cull, while reinstated, was found to have taken "unnecessary and unacceptable risks" in his dealings with A31. With respect to Parker, Clark, Scanlan and McMurtrie, the Commissioner concluded that **B**

there is considerable evidence that [they] ... did not carry out their duties at the Drug Squad in the manner and standard expected of our investigators.

Their attitude and conduct in regard to adherence to proper practice relating to the conduct of raids, searches/seizures, exhibit handling (etc) leaves much to be desired. Having said that it seems such standards were accepted, albeit by some personnel, within the Drug Squad at that time.²¹⁵

REVIEW OF STANDARD OPERATING PROCEDURES AND INFORMANT MANAGEMENT POLICY

Since Miller, the WAPS Standard Operating Procedures have been reviewed and amended. The new procedures came into effect on 28 February 1999. Among the changes made to procedures governing the execution of search warrants are detailed provisions relating to the video recording of searches. They also make clear the requirement that "in every instance where drugs or other property is seized it is handled in accordance with these Standard Operating Procedures" (section 2.4.8). In relation to the seizure of drugs, the Standard Operating Procedures now provide for greater accountability. The changes include the requirement that where no person is charged following a drug seizure, the P11 form is to be endorsed by a senior supervisor and, where the seizure constitutes an indictable offence, the member in charge of the search must report in writing on the circumstances of the seizure and the reason for no charge being laid. A register of such seizures is to be maintained.

A revised WAPS Informant Management Policy has been finalised and implemented.

²¹⁵ Memoranda to the Assistant Commissioner of Police (Professional Standards) from the Commissioner of Police dated 14 October 1998.

APPENDIX

The Committee's Terms of Reference

On Wednesday 18 June 1997 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission. The Joint Standing Committee's functions and powers are set out as follows under Legislative Assembly Standing Orders 284, 285 and 264 –

- 284.** At the commencement of every Parliament, a Joint Standing Committee on the Anti-Corruption Commission will be appointed by resolution of the Assembly forwarded to the Council for its concurrence.
- 285.** (1) It is the function of the Committee —
- (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988*;
 - (b) to consider and report to Parliament on issues affecting the prevention and detection of “corrupt conduct”, “criminal conduct”, “criminal involvement” and “serious improper conduct” as defined in section 3 of the *Anti-Corruption Commission Act 1988*. Conduct of any of these kinds is referred to in this Standing Order as “official corruption”;
 - (c) to monitor the effectiveness or otherwise of official corruption prevention programs;
 - (d) to examine such annual and other reports as the Joint Standing Committee thinks fit of the Anti-Corruption Commission and all public sector offices, agencies and authorities for any matter which appears in, or arises out of, any such report and is relevant to the other functions of the Joint Standing Committee;
 - (e) in connection with the activities of the Anti-Corruption Commission and the official corruption prevention programs of all public sector offices, agencies and authorities, to consider and report to Parliament on means by which duplication of effort may be avoided and mutually beneficial co-operation between the Anti-Corruption Commission and those agencies and authorities may be encouraged;
 - (f) to assess the framework for public sector accountability from time to time in order to make recommendations to Parliament for the improvement of that framework for the purpose of reducing the likelihood of official corruption; and

- (g) to report to Parliament as to whether any changes should be made to relevant legislation.
 - (2) The Joint Standing Committee will not –
 - (a) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
 - (b) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
 - (c) have access to detailed operational information or become involved in operational matters.
- 264.** A committee has power to send for persons, papers and records.