

Michael McGinn

December 5, 2002

TO: The Hon Bronwyn Bishop MP
Chair,
Inquiry into crime in the community:
Victims, offenders and fear of crime.

Dear Mrs Bishop,

I am a friend of Dr Richard Basham, having met him some years ago in my former capacity as a Detective in the NSW Police Homicide Squad where he assisted me greatly in a particularly vicious Vietnamese murder enquiry that I was conducting at the time.

Dr Basham recently mentioned to me the activities of your committee and it occurred to both of us that I may be able to provide you with valuable information concerning illegal activities of the Wood Royal Commission and its investigators, the large number of suicides that occurred as a result of that commission and the resultant inaction and total disinterest of the NSW Government into these allegations. It is my belief that the activities of the Royal Commission have contributed to the current state of criminal unrest in New South Wales.

I am providing this information to you, not for personal gain or revenge, but to have it placed on the public record so that those who have done these things cannot hide behind the façade that was the Royal Commission into the NSW Police. It is also an attempt to have recognised the illegal tactics used by such organisations.

In the following paragraphs I will attempt to briefly outline my information. If the matter is of interest to you and the committee I can supply further newspaper clippings as well as summaries of evidence, transcripts etc. My contact details can be found at the end of this submission.

INTRODUCTION

By way of introduction I am a former NSW Police officer having joined the Service in 1973 and resigning in 1991. I attained the rank of Detective Senior Constable and saw service in the C.I.B. Special Breaking and Homicide Squads. During my service with the Force I received the highest Police award for bravery, the Valour Award as well as the National Medal.

After leaving the Force I was employed at the Queensland Criminal Justice Commission, investigating Italian Organised Crime as well as Police and local council corruption. In late 1993 I returned to Sydney to take up a position as Senior Investigator with the National Crime Authority where I again assisted in investigations into Chinese and Italian Organised Crime.

In 1995 I left law enforcement altogether and went into the corporate world.

ROYAL COMMISSION

In 1984, as a member of the Special Breaking Unit of the Regional Crime Squad South, my partner and I, together with other Police, charged a Melbourne criminal with over 90 'cat burglary' offences committed in the Sutherland area. This offender has been referred to in the media as the 'Kareela Cat Burglar'. During the course of the investigation it became necessary at one point to spray the offender with a chemical agent known as mace. This was done due to the fact that he had barricaded himself in the Detectives office and would not come out.

After a hard fought trial the offender, who had previous convictions in Victoria for paedophile activities, received a sentence of 17 years hard labour for his 'cat burglar' offences.

Nothing more was heard about this matter until 1996 when my colleagues and I received summonses to attend the Royal Commission. For a one week period in June 1996 we were accused of corrupt conduct in relation to the 1984 Kareela Cat Burglar enquiry. Although the allegations were totally false and at the end of the week, but without any right of reply, we were advised that the matter would be sent to the DPP for determination.

SACKING OF POLICE OFFICERS

Three of my colleagues were dismissed from the NSW Police Service some months after giving evidence to the Royal Commission about the Kareela Cat Burglar. Two of these officers were of the rank of Detective Superintendent and one of them at least had the capacity to continue to senior commissioned rank.

The fact they were dismissed as a result of fabricated evidence obtained by the Royal Commission has not mattered to members of the Police Service or the Government and they, as a result of the dismissal of the charges against them, are currently seeking reinstatement and/or compensation.

As a side issue (but relevant nevertheless) they are funding their own Industrial Relations action for this reinstatement. The NSW Police Association refused to support any of us at any time, either financially or otherwise, in our matters concerning the Royal Commission.

This is notwithstanding the fact that all five of us were fully paid up members of the Association throughout our Police careers or that the charges against us were dismissed by the Magistrate.

It is my opinion that one of the reasons for this was that the then president of the Association, Mark Burgess, had political aspirations and that rumour had it he was seeking a safe Labour seat to enter politics. This entry into politics by Burgess did not occur, but if this was in fact the case I can see why the Association did not wish to support us.

ISSUING OF SUMMONSES AGAINST MYSELF AND MY COLLEAGUES

Nothing more was heard until 1999 when I received information that myself and another colleague were to be charged with 5 criminal counts, namely 3 counts of perverting the course of justice and 2 of assault, while my other 3 colleagues were to be charged with 3 counts, 1 of pervert the course of justice and 2 counts of assault.

AVAILABLE EVIDENCE IGNORED BY PROSECUTING AUTHORITIES

I would like to indicate that there was ample evidence in the form of transcripts from Court trials from both civilians and Police that existed at the time of both our appearances at the Royal Commission and the determination by the DPP that corroborated and supported our version of events.

This evidence was effectively ignored and none of this evidence was taken into account and we were still charged.

SUBSEQUENT COURT APPEARANCE

The main details of our subsequent Court case and some of the illegalities of the Royal Commission investigators can be found in the attached Sydney Morning Herald article 'Justice for victims of gross Police hypocrisy'. (See attachment #4)

For the sake of brevity I will not go into the Court case in this submission, but leave those details to be read in the above news article.

ILLEGALITIES OF ROYAL COMMISSION PERSONNEL IN RELATION TO THE KAREELA CAT BURGLAR MATTER

I have attached for your information an existing submission that has been sent, in various forms to NSW State Politicians including the present and current NSW Minister for Police, the ACTU etc.

This submission outlines the main areas of concern regarding the activities of the Royal Commission investigators as well as illustrating how unaccountable for their actions these people are. (See attachment #1)

OTHER ILLEGAL ACTIONS OF ROYAL COMMISSION INVESTIGATORS

As you would know the Royal Commission brought interstate Detectives to Sydney to work with the Royal Commission. One of these Detectives, David McGinlay is a serving member of the South Australian Police. This person was one of the individuals who investigated my colleagues and I concerning the Kareela Cat Burglar and who was instrumental in the fabrication of evidence against us.

The other officer involved in the fabrication of evidence against us is a Detective Phillip Stephens of the Queensland Police Force, who is, as I understand it, now employed at the Queensland Crime Commission.

While serving with the Royal Commission McGinlay was involved in providing 'witness protection' for a Police whistleblower, who was a former prostitute. McGinlay, when asked by this female, how she was to support herself in Adelaide, told he to go and work for a brothel run by a woman named 'Stormy Summers'. He also advised her of a brother where it would not be safe to work in.¹

In looking at the South Australian Summary Offences Act I believe that this action constitutes 'procurement of prostitution'.

In recent months information has come to hand that McGinlay has been suspended from the South Australian Police Force of sexual misconduct allegations. It would be an affront that McGinlay was to subsequently go onto Police sick report with 'stress' over this issue and obtain a 75% pension.

SUCIDES INVOLVING POLICE AND OTHER WITNESSES ASSOCIATED WITH THE ROYAL COMMISSION.

I have also attached for your information several news articles relating to the suicides of individuals associated with the Royal Commission. (See attachments #5 & 6)

¹ See SMH article 18 January 1997 'Sacked trainee encouraged to work in brothel'.

It should be noted that there was a recent suicide of a former Police officer by the name of Hazell who killed himself allegedly surrounded by news articles of the 1996 Royal Commission, in which he had been summonsed as a witness at the time. It shows the long lasting and continued effects of the Royal Commission on those involved.

My reason for mentioning the suicides of the Royal Commission is that it is beyond the realms of reason that my colleagues and myself were the ONLY individuals who were subjected to having evidence fabricated against them by the Royal Commission.

If that is accepted, then it naturally follows that other individuals, whose cases are not as well known as ours, were also victims of fabricated evidence by the Royal Commission.

If that too is accepted, one must seriously look at whether or not the individuals who committed suicide were also victims of fabricated evidence by the Royal Commission and that this evidence led them to take their own lives.

ALLEGATIONS THAT THE ROYAL COMMISSION GAVE HEROIN TO KINGS CROSS ADDICTS AND THAT THE SUPPLIED HEROIN KILLED THEM

I am in contact with many other former officers and Detectives who have been subjected to the same treatment by the Royal Commission. One officer, who is currently pursuing legal action with other Police against the State Government, has told me that he was, as a member of a Major Crime Squad, performing duty at a listening post in a legal listening device operation. Unbeknown to him the listening post he was working from was bugged by the Royal Commission in an attempt by them to catch corrupt officers.

It became apparent during this listening device operation that heroin had been supplied by the Royal Commission to drug addicts in the Cross, again with an apparent view to catch corrupt Police. It was heard over the device by this officer that the mixture (given by the Royal Commission) was 'too strong and was killing the druggies'.

In effect the operation mounted by the Royal Commission, designed to catch corrupt Police, in fact killed drug addicts at the Cross.

I will have more information when I meet with the officer concerned next week.

LACK OF POLITICAL WILL TO INVESTIGATE THESE MATTERS

I have also included a chronology of events and conversations with various individuals that have occurred since our Court matter was dismissed. It is intended to show that very few individuals are actually interested in doing anything about the matters raised.

One notable exception to this is the State Member for Liverpool, Mr Paul Lynch. He has been about the only supporter we have had, yet even he, as a Labour politician is treated with contempt by his own Labour party colleagues when this issue is raised by him.

I have many letters from Mr Lynch that can be supplied if necessary.

The matter was raised last year with the former NSW Minister for Police Paul Whelan, yet nothing was done. The issue was further raised to the current Minister in January this year. All that has happened is 'stone walling' and basically putting the matter into the 'too hard basket'.

THE ROYAL COMMISSION 'CHAIN OF COMMAND'

As you can see in my experience I have worked in similar multi-disciplinary task forces as the Royal Commission.

It is my experience that their Team Leaders, usually lawyers, tightly control the activities of the individual investigators. These investigators could not go outside their 'rules of engagement' and fabricate the evidence against use without the agreement and/or knowledge of their Team Leaders.

As an example, when I was at the CJC we had a briefing with out Team Leader (a lawyer) each morning at 8am. After the briefing he would then attend a senior management meeting and advise on the activities of our team to the senior management.

During these briefings the individual investigations were discussed in some detail and those discussions were recorded by the Team Leader in his notebook.

I cannot see any difference in what we did at the Commission and how the Royal Commission would have operated.

What this means is, in effect, that the fabricated evidence was condoned by the Team Leaders of the Royal Commission.

By way of corroboration of this assertion, the closeness of the Royal Commission lawyers is illustrated by the fact that , in the case of McGinlay

procuring the offence of prostitution, one of the Royal Commission lawyers, a Ms Beth Walker 'also knew that she was working in a brothel.'

In our case we have several instances whereby the Royal Commission lawyers intimidated and threatened witness with gaol and not seeing their families again.

CONCLUSION

I have attempted to provide to you a brief account of the information I have about this matter. I apologise in advance if some of it does not make a great deal of sense or lacks important detail.

I am aware that you would be covering a large number of other important issues relating to crime in the community. I am of the strong belief that the actions of the Royal Commission, not just in our case but in many others, has contributed to the current state of fear in the community by giving the perception to the Police and public that they, the Commission, can get away with illegal activities and are not accountable for what they did.

You and your committee are the final authority to whom we can raise these very serious issues. The NSW Ombudsman's office, the NSW Police Ministers office, Police Internal Affairs, Police Integrity Commission have all indicated that they will not investigate the matter or are not interested at all. The State Police Forces of the 2 investigators have indicated that, as the investigators were not under their jurisdiction at the time of the Royal Commission, they are unable to assist.

Finally we have received informal advice that the Independent Commission Against Corruption has indicated that they will not investigate the matter either. (See **attachment #2-Chronology**)

This is not an issue where there is a lack of evidence, it is more likely a lack of political will. The NSW Government knows it has an election next year and that this election will be fought mainly on law and order issues. For the Government to now investigate serious criminal allegations against its much vaunted Royal Commission would be political suicide, hence no one is interested. They basically hope that we go away and are never heard of again.

I sincerely hope that you and your committee would be interested in looking at this issue. There is continued media interest in this, but still the Government does nothing.

I hope that this submission and the attachments are of interest to you and the committee and I would be more than willing to assist you in whatever manner you deem appropriate.

RECEIVED
21 NOV 2002

BY:.....

Michael McGann, I

November 11, 2002

TO: The Hon Bronwyn Bishop MP
Chair,
Inquiry into crime in the community:
Victims, offenders and fear of crime.

**ADDITIONAL INFORMATION FOR ATTACHMENT TO MY
SUBMISSION OF OCTOBER 24 2002**

Dear Mrs Bishop,

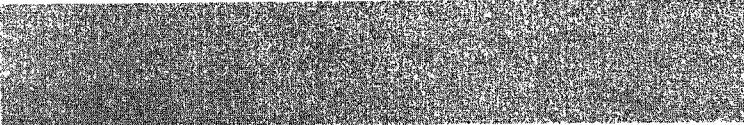
I seek your indulgence in allowing me to provide some further information to you and your committee, which is additional to my original submission of the 24th October 2002.

The main point of this additional submission that I wish to put forward is that the issue of what happened to us at the hands of the Royal Commission is a **political whitewash, sidestep, call it what you will, by the New South Wales Government in the hope that we and our allegations will go away before the next State election.**

The evidence for this assertion can initially be found when you look at the **time and date chronology supplied to you in my original submission.** This document shows the inaction and sidestepping of various NSW Government Departments in trying to avoid our issue.

The political interfering becomes more apparent when you also consider that the NSW Labor Government has **won elections** based in part on the Royal Commission, that individuals connected with the **Commission received judgeships out of it** (Finnane, Bergin, Bell etc), that many media representatives **made authoritative reputations** (and therefore money) from following the missives of the Commission (i.e. Dempster, Masters etc) and that others have **continued to prosper in other multi disciplinary commissions** (the WA Royal Commission, the Building Industry Task Force (i.e. Nigel Hadgkiss).

In June 2002 a meeting was held at Police Headquarters between 3 former officers (**Harding, Garvey and York**), their legal representative, **Mr Michael**



Holmes, NSW Police Legal Services and Mr Les Trees Director General of the Police Ministry.

Reports of that meeting (for which notes were taken by the 3 officers legal representative) indicate that Mr Holmes proffered that **there was reasonable prospects for optimism as to a successful conclusion to the matter.** The former officers were also told at that meeting that the matter would be forwarded to ICAC for review.

It now appears that that meeting was designed to offer some 'breathing space' to those officials as it was feared that we may be talking to Alan Jones about our case.

Since that meeting in June we have received informal advice that a gentleman named John Pritchard from ICAC has indicated that our allegations of corruption against officers of the Royal Commission 'were not appropriate to be investigated by ICAC'.

This beggars belief. After all isn't it called the 'Independent' Commission Against Corruption? Are we looking at political string pulling with ICAC which impacts on its very independence?

It is hard to understand this decision of ICAC when you look at the definitions of just what 'corruption' is as outlined in Sections 8 & 9 of the Independent Commission Against Corruption Act 1988.

SECTION 8

General nature of corrupt conduct

- (1) *Corrupt conduct is:*
- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
 - (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
 - (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
 - (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has*

acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

- (2) ***Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:***

(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),

(g) perverting the course of justice,

(x) matters of the same or a similar nature to any listed above,

(y) any conspiracy or attempt in relation to any of the above.

SECTION 9

- (1) ***Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:***

(a) a criminal offence, or

(b) a disciplinary offence, or

(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or

(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.

As to the question what is a public official, ICAC's own words indicate that there should be no valid reason to conduct a full enquiry into the illegal and corrupt actions of the Royal Commission.

- For conduct to be considered corrupt under the ICAC Act it must involve a New South Wales public official or public authority.
- A public official is defined in the ICAC Act as an individual having public official functions or acting in a public official capacity. Public authority employees and individuals who are members of certain boards such as the Board of the State Rail Authority, for example, would be considered public officials. In some circumstances private contractors and consultants could be public officials.

- **Public officials also include Ministers, other Members of the NSW Parliament, NSW local government councillors, and NSW judges and magistrates.**
- The ICAC may only examine conduct involving NSW public officials, however, it cannot generally examine the conduct of NSW police officers. Since 1997, the Police Integrity Commission has had responsibility for investigating allegations of police corruption. **The ICAC retains jurisdiction to investigate corruption by police officers when it also involves other public officials who are not police.** The ICAC can also advise and assist the Police Service on corruption prevention and education.

Thank you for your time in reading this document. As I indicated to you in my previous submission you and your Committee are really the final authority whereby these allegations can be properly investigated. I sincerely hope that I am able to be of assistance to you and your committee at some time in the future.

Yours sincerely

Michael McGann

CONTACT DETAILS

RECEIVED

MADAM CHAIR AND COMMITTEE MEMBERS

BY: Firstly I would like to thank you for this opportunity of speaking to you. Your committee is the only authoritative body that is prepared to hear provable and extremely serious allegations of corruption that seriously impact on the administration of Justice and Government in New South Wales with the result that these allegations directly impact on the fear of crime in the community today. Many of the Royal Commission personnel responsible for these allegations, both investigators and lawyers, have subsequently gone onto responsible positions within the justice and law enforcement community.

The Royal Commission did manage to discover corruption among Police and Government officials, however the hypocrisy associated with that finding of corruption and the corruption of the Commission itself is breathtaking.

Let me commence my initial address to you by stating that these allegations involve somewhat complex issues. However it is my intention in this short address and my attendance at the committee today to simplify them by breaking them down into their respective core elements.

These allegations mainly consist of the following:

1. Illegal tactics used by Royal Commission investigators and lawyers in the intimidation of witnesses and the fabrication of evidence. These illegal tactics include the mental torture of witnesses, with 'torture' being defined in the United Nations Code of Conduct for Law Enforcement officials.
2. The total unaccountability of the Royal Commission investigators and lawyers to any form of scrutiny of their illegal activities.
3. The fact that the Wood Royal Commission (and therefore by default the NSW State Government in their support of the Commission and continued refusal to investigate these documented allegations of corruption) has been instrumental in the deaths of at least 12 persons, including Police officers and civilians. The lawyer, Mr John Marsden claimed in 2001 that the fear of being exposed as homosexual led to the deaths of 27 people during the Wood Royal Commission¹. The responsibility of the Wood Royal Commission (and therefore, as stated, the NSW State Government) in the deaths of these people lie in the fact that the Royal Commission relied (in prosecuting my colleagues and I at the least) on evidence fabricated by their own investigators, aided and abetted by their own lawyers. In addition to the deaths of these unfortunates, the Wood Royal Commission may be responsible for the deaths of an unknown number of heroin users at Kings Cross in 1996 due to providing drug dealers with higher quality heroin than was normally available in order to compromise corrupt Police.

ILLEGAL TACTICS-MENTAL TORTURE OF WITNESSES

In breaking down this complaint, I draw your attention to United Nations resolution 34/169, which deals with the Code of Conduct for Law Enforcement Officials.

In this resolution the issue of torture was, in part defined as "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person, information or confession...."

As to the relevance of this to the activities of the Royal Commission, Mr Michael Holmes, the General Manager, Court and Legal Services, NSW Police has advised Mr Costa that *all the articles of UN resolution 34/169 are embodied in the NSW Police Code of Conduct and Ethics*². In looking at this

¹ See 'The West Australian' 4 January 2002

² See letter from Costa to Paul Lynch MP 1 May 2002. See also same information in letter dated 8/8/2002 from Reba Meagher, Parliamentary Secretary for Police

statement by Mr Holmes I would take it that the provisions regarding torture and its UN definition also apply to the NSW Police Code of Ethics and were in place for some time!

How then does this allegation of torture and intimidation relate to the activities of the Wood Royal Commission investigators and its lawyers?

There are too many instances that exist to illustrate the intimidation tactics used by these persons and in the time allowed I would not be able to expand on the subject as I would like to. Suffice to say that these tactics, which would no doubt have contributed to the many deaths associated with this Royal Commission, consisted in the main of :

- Threatening witnesses with lengthy gaol terms (mainly the term of 14 years) if they did not co-operate.
- Telling lies to and tricking witnesses that other individuals had rolled over and co-operated, when that was blatantly untrue.
- Serving summonses to attend the Commission hearings on witnesses wedding anniversaries, children's birthdays' etc.
- Pointing to the photograph of a witnesses daughter stating "How is she going to feel knowing her father is a perjurer-this is only a small town'.
- Threatening officers with being sacked and charged if they did not tell the truth-the officer that this happened to was required to be sedated after these threats were made by Royal Commission investigators.
- Threatening witnesses that the Royal Commission would inform their wives about alleged affairs the witnesses were having (with this information being gleaned by the Royal Commission over a telephone intercept). The witness's wife was then summonsed to the Royal Commission to hear these allegations against her husband (together with information about the affair). The husband died soon after of Motor Neurone disease brought on by the stress of the experience³.

UNACCOUNTABILITY OF THE ROYAL COMMISSION INVESTIGATORS

Investigators of the Royal Commission into the NSW Police Service were drawn from other Police Forces around Australia including the Australian Federal Police. In our case Detective David McGinlay of South Australia and Detective Phillip Stevens of Queensland were the main investigators for our matter. Mr McGinlay is currently suspended in South Australia on allegations of impropriety regarding sexual assault and Mr Stevens is an officer with the Queensland Crime and Corruption Commission.

Officers working for the Royal Commission were designated as 'investigators' of the Royal Commission and issued with appropriate identification for such a role.

What this means is that investigators drawn from other Police Forces around Australia to serve as Royal Commission investigators were NOT under the command and control of their respective State Police Commissioners⁴. The significance of this is seen when attempts were made to complain about their illegal activities.

Under Section 37K of the Royal Commission (Police Service) Act 1994 investigators were to have all the powers of NSW Police Officers⁵, however under Section 37K (4) they were NOT subject to complaints

³ Matter of Detective Ray McDougall

⁴ See Wainwright letter to McGann 30-4-2001

⁵ See also Section 37K(4) of the Royal Commission (Police Service) Act 1994 which states "*This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other Police Officer when acting in the person's capacity as an officer of the Commission*".

under Section 8A of the Police Service Act 1900 regarding their actions as would be expected of serving NSW Police Officers⁶.

In response to a letter of complaint from us to the South Australian Police Complaints Authority we were informed ".....(A)t the time the officer conducted the investigation you complain of he was not acting pursuant to the laws of this State nor at the direction of the Commissioner of SAPOL."

In a further response to a letter from one of us, an officer of the NSW Ombudsman stated ".....(T)his office does not have jurisdiction over the conduct of Royal Commission investigators"⁷.

Outlined below is Section 8A of the (NSW) Police Service Act 1990 which illustrates the areas that Royal Commission Investigators are unable to be complained about by any person, despite being afforded the same powers as NSW Police Officers who can be complained about.

Corroboration of this lack of accountability for these investigators can be found in the letter from Sergeant Gentle of the Special Crime and Internal Affairs Command, NSW Police where the Sergeant stated that our allegations concerning the criminal activities of the Royal Commission were declined to be investigated '...under Section 8A of the NSW Police Service Act 1900'.

Finally, regarding accountability, Justice Wood himself has stated⁸ that if supervisors (in this context he was referring to Police supervisors) were wilfully blind to their duty (regarding corrupt activity) they should be held accountable'. As I have continually stated there is no accountability for the actions of these corrupt investigators and lawyers. It seems from the evidence that the Government and Royal Commission are above accountability.

(NSW) POLICE SERVICE ACT 1990

PART 8A - COMPLAINTS ABOUT CONDUCT OF POLICE OFFICERS

Division 1 - Preliminary

- 121. Definitions
- 122. Application of Part to certain complaints
- 123. Application of Part to former police officers
- 124. Application of Part to anonymous complainants
- 125. Relationship with Police Integrity Commission Act 1996

Division 2 - Procedure for making complaints

- 126. Right to make complaint
- 127. Making of complaints

Division 3 - Complaints information system

- 128. Complaints information system
- 129. Registration of complaints

Division 4 - Reference of complaints between authorities

- 130. Complaints received by Commissioner
- 131. Complaints received by Police Integrity Commission
- 132. Complaints received by Ombudsman

⁶ See Section 37K(5) of the Royal Commission (Police Service) Act 1994 which states "A complaint about the conduct of the Commission investigator when exercising the functions of a Police Officer may NOT be made under Section 8A of the Police Service Act 1990".

⁷ See letter from Riordan to Harding 2 November 2001.

⁸ See address by Justice Wood to 8th International Anti Corruption Conference

- 133. Complaints lodged at Local Courts
- 134. Complaints referred by ICAC or NSW Crime Commission
- 135. Complaints referred by Minister
- 136. Complaints made by member of Parliament
- 137. Multiple handling of complaints
- 138. Action on complaint not affected by failure to comply with Division

Division 5 - Investigation by Commissioner

- 139. Decision of Commissioner as to investigation of complaint
- 140. Decision of Ombudsman as to investigation of complaint
- 141. Factors affecting decision as to investigation of complaint
- 142. Ombudsman may request further information from complainant
- 143. Ombudsman may request further information from other persons
- 144. Investigation of complaints
- 145. Conduct of investigation
- 146. Ombudsman may monitor investigation
- 147. Ombudsman's and Commissioner's reports to complainant
- 148. Proceedings to be instituted if warranted
- 148A. Alternative dispute management procedures may be used if warranted
- 149. Other police investigations not affected

Division 6 - Procedures following investigation by Commissioner

- 150. Information to be sent to complainant and Ombudsman
- 151. Ombudsman may request information concerning complaint and conduct complained of
- 152. Ombudsman may request information concerning investigation of complaint
- 153. Ombudsman may request further investigation of complaint
- 154. Ombudsman may request review of Commissioner's decision on action to be taken on complaint
- 155. Ombudsman may report on Commissioner's decision on Ombudsman's request

Division 7 - Investigation by Ombudsman

- 156. Investigation of complaint under Ombudsman Act 1974
- 157. Report following Ombudsman's investigation
- 158. Notification of proposed action on reports
- 159. Investigation of conduct not the subject of a complaint

Division 8 - Additional provisions concerning Ombudsman

- 160. Inspection of records and special reports to Parliament
- 161. Publicity
- 162. Consultation with Minister
- 163. Ombudsman not to publish certain information
- 164. Application of section 34 of Ombudsman Act 1974
- 165. Ombudsman and officers of Ombudsman not competent or compellable witnesses in respect of certain matters
- 166. Limitation on delegation of functions by Ombudsman
- 167. Exercise of Ombudsman's functions by officers of Ombudsman

Division 9 - Miscellaneous

- 167A. Offence of making false complaint about conduct of police officer or giving false information
- 168. Police Integrity Commission may take over Category 2 complaint
- 169. Provisions relating to reports furnished to Parliament
- 170. Certain documents privileged
- 171. Part not to affect police officers' other powers and duties
- 172. Use of Federal and interstate police for investigations

DEATHS DUE TO THE ROYAL COMMISSION

SUICIDES

My allegation concerning the responsibility of the Wood Royal Commission and ultimately the NSW State Government is circumstantial, yet sound.

Although neither the Government nor the Royal Commission actually put a gun to the head of the victims, placed a tube from an exhaust into a car window or threw anyone from a tall building, their culpability is the same as if they had done just that.

My colleagues and I were criminally charged in 1999 over an incident that occurred in 1984. The charges were laid by using fabricated evidence gathered by Wood Royal Commission investigators. This fabrication was seen to be what it was and as a result, after 13 hearing days, all charges were dismissed at our committal at the Downing Centre Local Court in 2001.

That the Royal Commission fabricated evidence and intimidated witnesses in our case is well documented. What is also certain, but less provable, is that our case cannot possibly be the only case whereby this occurred.

If the scenario that our case is not the only one where evidence was fabricated is accepted, then it must also follow on that the Royal Commission also fabricated any number of other cases that it came in contact with over its 3 year life span.

If that is also accepted it is more than possible that some of the dozen or so suicide victims were also, possibly unknowingly, before their deaths, other victims of fabricated evidence against them by officers of the Wood Royal Commission.

I informed the Minister of these allegations tying in the criminal activities of the Royal Commission and the many suicides in correspondence between myself and the Minister of Police Mr Costa in January 2002. Nothing of a supportive nature has been received by me or my colleague from the Minister in relation to these allegations.

Finally I would make the point that if there was a plane crash, a mine disaster, deaths in custody or some other tragedy involving the deaths of this large number of people the resources of all affected Government agencies would be immediately utilised to see the investigation through .

Apart from avoiding the issue, 'stonewalling' and delaying tactics nothing of any positive nature from the NSW Government has happened in relation to the issue of the involvement of the Royal Commission into the deaths of these unfortunate persons.

POLICE SUICIDES

Before the Royal Commission commenced there was a plethora of studies concerning Police suicides publicly available. For example, a study in 1995 reported a rate of 29 suicides per 100,000 for the New York City Police Department versus 12 per 100,000 for the general population⁹.

If the Wood Royal Commission had done their homework the issue of Police vulnerability to suicide would have been well known before the Commission started. Possibly it was known by them but ignored. In my submission the deaths were NOT ignored, merely used as an additional tool of intimidation by the Royal Commission.

⁹ See McNamara 1996 as quoted in 'Every Police Departments nightmare: Officer Suicide by Sergeant Monroe Dugdale 11 August 1999 (See www.tearsofacop.com/police/articles/dugdale.html)

RESPONSE FROM THE GOVERNMENT AND OTHER RESPONSIBLE AGENCIES-DELAYS AND 'STONEWALLING'

What is just as tragic as these many deaths are, yet totally to be expected, is the lack of interest, delays and 'stonewalling' shown by various sections of the NSW Government to these facts. The Government and its Departments have paid continual 'lip service' to these serious allegations in the hope that they will go away before the election next year. The people of New South Wales deserve better than that.

Since the dismissal of the charges against us myself and another colleague have unsuccessfully attempted to seek action from a number of relevant areas, namely:

- ✓ The NSW Ombudsman
- ✓ The NSW Minister for Police
- ✓ The NSW Police
- ✓ The Commissioner of Police, Queensland
- ✓ The Commissioner of Police, South Australia
- ✓ The Criminal Justice Commission, Queensland
- ✓ The Police Complaints Authority, South Australia.
- ✓ The ACTU
- ✓ The Commonwealth Ombudsman

- The complaint regarding the criminal actions of the Royal Commission investigators was initially reported to the NSW Minister for Police, Paul Whelan who forwarded it to the Commissioner of Police. A reply was received in September 2001 from the Special Crime and Internal Affairs Command of the NSW Police declining to investigate these serious allegations. The author of the Ministers letter, Mr Gaudry stated in a letter dated the 17th October 2001 that he had arranged for the complaint to be sent to ICAC for investigation. As later information will show it is doubtful if this was, in fact, done.
- The NSW Ombudsmans office, in a letter in November 2001¹⁰ recommended that the NSW Police handle our matter. As can be seen the Police had already declined to do so. Mr Holmes of the NSW Police Service stated¹¹ that it was '...not possible or proper for this service to investigate..' This is despite the fact that we are alleging a crime had occurred in the State of New South Wales, that is 'Perverting the Course of Justice'.
- As a result of a newspaper reporter's questions to the Minister of Police in early February 2002 the Minister stated that our matter had gone to the Police Ministry.
- In his letter of January 2002 Mr Holmes stated that the complaint would be forwarded to ICAC. This does not appear to have happened at that time as it was only in early October that we received information that ICAC had finally advice to the Police Minister regarding our allegations. This statement by Mr Holmes in January appears to be yet another stalling tactic to avoid having the issues raised before the State election.
- The criminal actions of the Royal Commission investigators were reported to the New South Wales Police as a 'crime' that had occurred in the State of New South Wales. In reply the 'crime' was watered down to '...misconduct of the investigators...' by Mr Michael Holmes, the General Manager, Court and Legal Services, NSW Police¹². Our report to the Police related to an actual crime occurring, no different to shoplifting, stealing, rape or murder. It was reduced to 'misconduct' and supposedly sent to ICAC for investigation.
- In late October 2002 we received unconfirmed information that a Mr John Pritchard from ICAC had indicated that **"..it was not appropriate for ICAC to investigate our matters"**.

¹⁰ Letter 2/11/2001

¹¹ In a letter to Harding dated 30/1/2002

¹² Letter to Harding dated 30/1/2002

My colleagues and I have received 3 separate indications since October 2001 that the matter was referred to ICAC. Finally almost 12 months to the day we have received informal advice that ICAC do not 'consider it appropriate' to investigate these allegations.

The fabrication of the Royal Commission was reported as a 'crime' by us to the NSW Police in October 2001 but they declined to take action, despite that fact that other Government agencies told us that it was a matter for the NSW Police to investigate.

Finally the matter has gone to 2 separate Ministers for Police but nothing, short of paying lip service and delays, has been forthcoming.

DRUG ADDICTS

The issue surrounding the Royal Commissions alleged involvement in the deaths of an unknown number of drug addicts at Kings Cross by proving heroin of a higher purity than the addicts were used to is extremely serious if provable. Like much of the evidence surrounding the activities of the Royal Commission it is mainly circumstantial.

A slight reference to '....what has been called the "hot heroin" incident...' is made by His Honour Judge Viney in the trial transcript of Regina v Peter and Roula Kay at the New South Wales District Court on Thursday 9 December 1999¹³. Another reference is made to it in the District Court trial of Regina -v- Bill Bayeh before His Honour Judge Gibson where he stated "(W)hen later in July it was suggested that there was coming onto the street hot heroin, he was directed not to sell heroin"¹⁴.

These 2 District Court transcripts also make interesting reading of further 'irregularities' and illegalities involving officers of the Wood Royal Commission.

In my submission to the committee dated the 24th October 2002 I have made reference to the supply of this heroin by Royal Commission officers.

CONCLUSION

What the Royal Commission did to us and others was corruption, pure and simple.

Why would the Royal Commission and their lawyer's resort to corrupt activities to put the 5 of us before the Courts on fabricated charges?

It is the contention of many people, myself included that the Royal Commission was desperate to have the scalps of Harding and Davidson with the rest of us merely collateral damage, being caught in the cross fire.

As Justice Wood said¹⁵ when speaking about 'process corruption'(i.e. perjury, falsification of documents, forced confessions etc) "*the truly corrupt rely upon the more altruistic reasons for its adoption as an excuse or mask for their venality*". Although he was referring to corrupt Police when he uttered those words, Justice Wood could well be describing the actions of his own lawyers and investigators in his own Royal Commission.

The investigators in our matter, Detectives McGinlay and Stephens could not and would not be operating on their own. Organisations such as the Royal Commission don't work that way.

¹³ See page 33.

¹⁴ See page 2

¹⁵ See address by Justice Wood to 8th International Anti Corruption Conference

There is an identifiable and sustainable upward chain of command for these individual investigators. This chain of command consists of lawyers (usually in the capacity of team leaders) as well as senior Police Officers (in the form of Directors of Operations or some other similar title). Appendix 1 of the Wood Royal Commissions final report indicates that the Director of the Operations Directorate of the Royal Commission was Australian Federal Police Officer Nigel Hodgekiss held this position between 1995 and 1996 when the investigation of the Rider issues were conducted. I understand that Mr Hodgekiss was appointed in October 2002 to lead the Building Industry Task Force.

When it is seen from the evidence that Royal Commission lawyers were able to participate in the intimidation and threats of Police and other witnesses it is no wonder that individual investigators also took that same course of action.

Finally anyone reading this would think "Well hang on, if all these agencies are not prepared to look at the matter, there must be something wrong with the evidence!" That is perfectly correct, there is something wrong with the evidence-there is too much!

All the main evidence does not come from any of the 5 of us, it comes from others and primarily consists of sworn testimony before Magistrates and Judges. In the case of Justice Wood, his words come from a presentation delivered to an anti corruption conference.

The problem with having too much evidence is that there is an election coming up and those who are most affected by this hope it will go away. Their thinking is that 'if we hang out long enough we will wear them down and they will go away.

Sadly they underestimate our resolve. As the Duke of Wellington said before Waterloo '*Hard pounding, this, Gentlemen, try who can pound the longest.*'

Our families have suffered enough from this to enable any of us to just walk away.

Thank you for reading this

Michael McGann

LIST OF PERSONS KNOWN TO HAVE COMMITTED SUICIDE DUE TO THE WOOD ROYAL COMMISSION

1. **15 June 1995** -Unnamed 32 year old Detective from Annandale Police Station who jumped to his death from a 7th floor building.
2. **12 April, 1997** -Policeman Clinton Moller found hanged at Parklea Gaol-was serving a sentence for contempt-was told he was being transferred to Berrima Gaol but, according to his lawyer Ken Madden, the decision to overrule his transfer to Berrima was designed to place pressure on Moller.
3. **10 July, 1995** -Businessman Ray Jenkins gassed himself in his car
4. **23 September 1996** -Detective Wayne Johnson shot himself and his wife-Johnson was earlier named at the Royal Commission
5. **4 December 1996** -Mr Danny Caines found gassed in his car at Forster
6. **17 October 1997** -John Ross, shot himself at the Sebel Townhouse-named in Royal Commission as having made corrupt payments to Police
7. **4 November 1996** -Justice David Yeldham gasses himself in his car
8. **29 March 1996** -Acting Patrol Commander Bob Tait, Narrabri-shot himself after being accused by the Royal Commission
9. **18 April, 1996** -Brian Tobin, gassed himself in his car hours after being interviewed by Royal Commission investigators.
10. **8 May 1996** -Peter Foretic gasses himself in his car the day before giving evidence at the Royal Commission
11. **17 September 2002** -Mr 'R', plunged a knife into his heart surrounded by newspaper clippings of his appearance at the Wood Royal Commission in 1996