

SUBMISSION TO THE COMMISSION OF INQUIRY RELATING TO THE CRIME AND CORRUPTION COMMISSION

submissions@cccinquiry.qld.gov.au

CONCERNING TWO CJC INVESTIGATIONS IN 1994-95 AND 1998-99 INTO THE PROSECUTION AND WRONGFUL CONVICTION OF TERRY IRVING, AND THE REPORT OF THE PARLIAMENTARY CMC COMMISSIONER

INTRODUCTION

This is a submission to the Commission of Inquiry relating to the Crime and Corruption Commission made by Michael O'Keeffe, retired lawyer.

The submission seeks to raise four matters before this Inquiry, as follows:

1. Whether serving Queensland police officers should be deputed to make inquiries on behalf of the CCC to investigate alleged crime and misconduct by other police officers.
2. The need for adequate and sufficient investigative capability within the CCC in circumstances where serious crimes (eg under the *Criminal Code*) are alleged against serving Queensland police officers, particularly in establishing clear protocols between justice agencies as to when DPP assessment ought be sought.
3. The failure of successive Queensland Governments to respond to significant recommendations of the previous 1989 Fitzgerald Royal Commission.
4. The lack of legislative authority to deal with alleged misconduct by police officers if they resign from the QPS

Consistency of this submission with the Inquiry's terms of reference

This submission draws from experiences within the Queensland justice system in the various cases of Irving v the Queen,¹ and Terry Irving v [REDACTED] and

¹ Irving v the Queen (High Court of Australia, No B96 of 1996), 8 December 1997, Transcript p7, per Brennan CJ, Hayne J and McHugh J) <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/1997/405.html>
R v Irving (Queensland Court of Appeal, per McPherson JA. Pincus JA. Byrne J.) [1994] QCA 188 (94/0009)
McPherson JA. Pincus JA. Byrne J. 20 April 1994;

[REDACTED]

Queensland.² It is submitted that all these cases are within the scope of this Committee's terms of reference, as these matters, in total, constitute matters which have not yet been determined by the courts. The most recent of the series of *Terry Irving* series of cases are still active before the High Court (*Irving v. [REDACTED] & Anor* B3/2022; *[REDACTED] v Irving* B5/2022). These cases arise out of the whole of the circumstances which constitute the High Court case in 1997 of *Irving v the Queen*¹, which was decided in the appellant (Mr Irving's) favour. It would be therefore be inappropriate to disregard this submission when the earlier (1997) High Court case is inextricably and directly connected with matters which are still actively being litigated before the High Court in 2022.

Terry Irving's case was vigorously prosecuted by the Queensland Police and the DPP until December 1997, when he was exonerated by the High Court in 1997. Following his exoneration, the case has been even more vigorously defended by the State of Queensland, [REDACTED] and continues up until the present in the High Court. The vehemence of Queensland's continuing defence in the superior courts by the State of Queensland is, at least in part, referable to the CJC's tainted findings in its various *Irving* CJC investigations. The fact is that the tainted outcomes of those flawed CJC investigations are still regrettably relied on by Crown Law and the Queensland Government almost 30 years later, for instance in the 2022 High Court proceedings. This is, in my submission, indicative of the fact that little has changed in official attitudes to the "blue wall of silence" and inability to admit error within the Queensland justice agencies since the previous Fitzgerald inquiry.

Further, serious matters which are relevant to the two investigations conducted into the wrongful conviction of Mr Irving in 1993 (by the CJC in 1994-1995; and the CJC in 1998-99) only became known to Mr Irving during discovery of the series of Irving cases civil matters, now before the High Court. It is clear from discovery of these documents that relevant matters concerning alleged official misconduct (and possible criminal conduct) of the police investigating officer in Terry Irving's original prosecution were made known to the CJC, but not disclosed to Mr Irving, who was in prison at the time. These relate to material obtained by the CJC in respect of [REDACTED] allegedly misleading a CJC inquiry in 1994 in relation to important forensic evidence in Mr Irving's case, and not disclosing that material to Mr Irving, when the CJC was aware Mr Irving was appealing his conviction to the High Court.³ It would, in my respectful submission, be inconsistent with the purpose of this inquiry to disregard any part of the history of the wrongful conviction of Terry Irving since

² *Irving v [REDACTED] and the State of Queensland* [2021] QCA 280, per Fraser, McMurdo P, Mullens JJA <https://www.queenslandjudgments.com.au/caselaw/qca/2021/280?mview=irving>; *Irving v [REDACTED] and the State of Queensland* [2020] QSC 280 [2020] 38 QLR (BS 234 of 1999) per Brown J, 10 September 2020 *Irving v [REDACTED]*; *Irving v [REDACTED] and the State of Queensland* QSC (2018) (BS 234 of 1999) per Boddice J, 27 – 31 August 2020 - trial abandoned, case not reported.

³ Letter from Terry Irving to CJC dated 21 December 1994.

[REDACTED]

1993, as it provides a continuous case history of the performance of the various Queensland investigative bodies since the previous report of Mr Fitzgerald in 1989. In short, one could not find a better example of the long-term systemic failure of the anti-corruption bodies than the Terry Irving case.

Terry Irving is not a vexatious litigant, and he has always maintained his complete innocence of the offence for which he was wrongly convicted. He has patiently and lawfully availed himself of the imperfect legal processes of Queensland Justice in order to establish his innocence and seek restitution. His ongoing case will shortly become Australia's longest running litigation, second only to the *Bell Group* litigation.⁴

His cases have travelled through both criminal (to gain his freedom); and civil (to obtain damages for malicious prosecution) - to the highest Australian and international tribunals. He has had to undergo fully contested hearings, as follows:

- in the Queensland District Court (three times, in 1993, 1995 and 1999);
- in the Queensland Supreme Court (twice, in 2019 and 2020);
- in the Queensland Court of Appeal (twice, in 1994 and 2021);
- in the United Nations Human Rights Committee (UNHRC) (once, in 2002); and
- in Australia's High Court (twice, in 1997 and 2022).

Terry Irving's wrongful prosecution and conviction for a March 1993 Cairns ANZ bank robbery has twice been investigated by the CCC's predecessors (in 1994-95 by the CJC; and in 1998-99, again by the CJC), and was considered once by the Queensland Parliamentary Crime and Misconduct Committee (PCMC) from 2000 to 2002. In every instance, the handling of the matters by these entities was unsatisfactory.

Notwithstanding the inadequate handling of Mr Irving's case by the PCMC⁵, issues relating to the PCMC are not addressed in this submission, as they would not appear to be relevant to the Inquiry's terms of reference.

IRVING SERIES OF CASES - BACKGROUND

The March 1993 ANZ Bank Armed Robbery, the District Court Trial of Terry Irving, his Appeal to the Queensland Court of Appeal, the first CJC investigation and the Appeal to the High Court

On 19 March 1993, the Australia and New Zealand Bank, Hartley St, Portsmith, Cairns, was robbed by a bandit disguised in sunglasses, a beret, masked with a

⁴ The Australian litigation record is said to be held by the "Bell Group" case in its various forms, which ran from 1991 to 2020. See Myriam Robin "Bell Group litigation given 'a decent burial'" Australian Financial review, 5 October 2020, <https://www.afr.com/rear-window/bell-group-litigation-given-a-decent-burial-20201005-p5624e>. Terry Irving's litigation will overtake Bell Group during 2022.

⁵ Letter from Chair PCMC to Mr O'Keeffe dated 9 May 2002.

[REDACTED]

scarf, carrying a bag and what appeared to be a sawn-off shotgun. The ANZ Bank at Portsmith was the second robbery in a series of 4 bank robberies in Cairns during 1992-93. The bandit in the ANZ Portsmith bank robbery (in respect of which Mr Irving was wrongly convicted) stole \$A6230 in notes from [REDACTED], [REDACTED] and [REDACTED], all ANZ Bank employees. The bandit was described at the time by eyewitness as being 6 feet tall and aged in his early 20's. The bandit escaped.

Terry Irving was arrested by [REDACTED] [REDACTED] and [REDACTED] [REDACTED] on 17 May 1993. He was initially charged with being an accessory after the fact to a charge of armed robbery (by which police seemed to allege that he had assisted the actual robber after the robbery), which was later amended to the substantive charge of armed robbery (by which police alleged that he was the person who entered the bank and committed the robbery). Other than Mr Irving, no person was ever charged as an accomplice, and there was no reliable evidence which supported the existence of an accomplice. He was refused bail (due in part to the lodging in Court by [REDACTED] of a false criminal record for Mr Irving), he and was remanded in custody until his trial. The documentation which related to Mr Irving's false criminal history was not disclosed to Mr Irving until 1999 under FOI, some 2 years after his exoneration.

On 8 December 1993 Terry Irving was indicted in the District Court at Cairns and pleaded not guilty to one count of armed robbery. Mr Irving was found guilty on that day, and [REDACTED] Honour [REDACTED] sentenced Mr Irving on the following day to an effective term of eight years in prison (his sentence was not backdated to the date of his arrest during which time he had been remanded in custody).

Mr Irving sought legal aid to appeal the conviction, but was refused legal aid by Legal Aid Queensland. He appeared without legal representation before the Queensland Court of Appeal. That Court, in an appeal hearing on 20 April 1994, refused his appeal.

Mr Irving then wrote to the CJC in April 1994 (hereinafter referred to as the FIRST CJC INVESTIGATION), complaining about the conduct of Queensland Police Officers [REDACTED] and [REDACTED] [REDACTED]

The CJC considered the matter from May 1994, before responding on 26 April 1995 that the matter had been referred to the Queensland Police Service, but as [REDACTED] [REDACTED] was on leave, [REDACTED] could not be interviewed until [REDACTED] return. In response to a reminder from Mr Irving, the CJC advised Mr Irving on 27 August 1975, that [REDACTED] [REDACTED] had "retired" from the Queensland Police Service on 12 May 1995, and consequently it had no jurisdiction to deal further with [REDACTED]

[REDACTED]

In June 1994, Mr Irving sought legal aid to appeal the judgement of the Court of Appeal to the High Court, but was again refused legal aid by Legal Aid Queensland. After many attempts to obtain legal representation, Mr Irving then himself made an application in April 1996 for special leave and leave to appeal to the High Court of Australia against his conviction. He was subsequently granted legal aid in the High Court after the intervention during hearing (in August 1997) by the then Chief Justice of the High Court.

On 8 December 1997, the High Court allowed Mr Irving's application for special leave, upheld his appeal, quashed Mr Irving's conviction, and ordered a retrial. The Queensland DPP subsequently filed a nolle prosequi in 1998.

The High Court stated in its judgement that it had the "gravest misgiving" about the circumstances of the trial and subsequent appeal and found the case to be "very disturbing". Chief Justice Brennan said that the High Court had:

"the gravest misgiving about the circumstances of this case: a serious crime; counsel brought in at the last moment; material which is relevant to cross-examination of identification not in counsel's hands at the time that the trial starts; evidence in relation to the bank video not adduced; and then there follows problems in relation to the calling of [REDACTED] who evidently broadcast or authorised the broadcast of a description of the alleged offender which, at least in terms of age and perhaps in terms of height, does not suit the accused. It is a very disturbing situation. And in all of this, the accused has been denied legal aid for his appeal."⁶

During oral submissions, the Chief Justice asked the Crown Prosecutor, [REDACTED] "how is it [the conviction] supportable". [REDACTED] stated that "We have a lot of difficulty, with respect, contending that what occurred in Cairns was a fair trial." The High Court's decision expressly raised serious and disturbing concerns about this case, but, in this submission, it will be argued that these concerns by Australia's highest legal authority have, in very large part, been ignored by the Queensland justice authorities.

Mr Irving subsequently issued civil proceedings in the Queensland Supreme Court against [REDACTED] and the State of Queensland. That matter was last before the civil courts when the Queensland Court of Appeal found in December 2021 that [REDACTED] had acted maliciously in prosecuting Mr Irving on one charge, and ordered Mr Irving to be paid damages (to be assessed), and 50% of Mr Irving's costs.

⁶ See *Irving v the Queen* (High Court of Australia, B96 of 1996) 8 December 1997 (transcript), <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/1997/405.html>.

[REDACTED]

In January 2022, the matter was appealed by both parties to the High Court, in respect of separate parts of the 2021 Queensland Court of Appeal judgement.

THE CJC INVESTIGATIONS

Mr Irving's CJC Complaints - Threshold Issues

There are several matters which would usefully be addressed as threshold issues in this long saga. The author seeks the indulgence of the Inquiry in accepting this long submission, but submits that the continuous 30-year history of the case arguing the same factual circumstances before so many courts is an historically complex matter to condense.

The first submission is that the consequence of the poor quality of the first CJC investigation (which will be set out in detail), was a major factor in Mr Irving spending from 26 April 1975 (when the first censored CJC investigation report was sent to him, until his release from prison on 8 December 1997, a period of 2 ½ years. This was a catastrophic failure of justice for Mr Irving, and reflects poorly, on the part on the CJC, but equally poorly on the whole of the Queensland justice system.

It will be one of the central elements of this submission that the poor investigative quality within both CJC investigations caused a major miscarriage of justice to Mr Irving to be exacerbated. The initial miscarriage of justice was caused elsewhere. Mr Irving does not say that the first CJC investigation caused his wrongful conviction – serving police officers, questionable DPP competence, and a poorly funded legal aid system did that - but the CJC was presented with cogent material by Mr Irving that was in due course substantiated by the CJC, which established the strong likelihood that he had been falsely charged, convicted and imprisoned on the basis of alleged false evidence of the Queensland police. The CJC findings, if properly acted upon, were capable of setting in motion the processes which would overturn his wrongful conviction. Instead of setting that process in motion, the CJC deceived Mr Irving about the results of its investigation, with the result that Mr Irving's innocence was suppressed by the CJC, and he continued to rot in jail.

It is also an element of this submission that it is improper for the CJC to rely on serving police officers to investigate serving police officers in serious cases. The problem also arose in Terry Irving's case in the SECOND CJC INVESTIGATION whereby a senior serving police officer [REDACTED] interviewed eyewitnesses on behalf of the CJC. This matter is dealt with in a later part of this submission.

It should be noted that the consequence of any CJC investigation outcome is far-reaching. In Terry Irving's case, the Queensland justice authorities, notably the

[REDACTED]

Attorney General, DPP and Crown Law have seemed to rely strongly on the findings of the two previous CJC investigations (and have accepted as true the evidence of [REDACTED] without any other apparent assessment). The justice authorities' resistance to any claim by Mr Irving has therefore relied on false facts derived in large part from those flawed CJC investigations to this day.

It should also be noted that where CJC findings have been perceived as being adverse to Queensland's interests, Crown Law have challenged the CJC directly on its evidence in Irving's civil trial as being unreliable.⁷

An integrity body lacking integrity is a recipe for ongoing corrupt conduct. Maintaining integrity is a matter of culture, almost as much as it is in enacting legislation. For instance, a CJC spokesman is quoted *The Australian* on 22 November 1999, as saying that "the police officer's conduct had been far from optimal", but "that it was not the job of the CJC to run Mr Irving's appeal".⁸ Mr Irving never asked the CJC to run his appeal – he sometimes had lawyers to do that. What Mr Irving asked the CJC to do was to properly investigate his complaint, and to tell him the truth about what the CJC had found. If the Queensland government chooses to fund and support an anti-corruption body, it is simply not good enough to leave it up to the superior courts to correct any miscarriage of justice earlier identified and kept secret by the CJC.

It is also important to note as a factual threshold issue in Terry Irving's criminal cases that initial eyewitness statements and witness records maintained by QPS established that the robber did not resemble Terry Irving.

The ANZ Bank, Hartley St, Portsmith, Cairns was robbed at 2.15 pm on 19 March 1993. [REDACTED] in [REDACTED] statement dated 23 June 1993 that, after attending the scene and interviewing eyewitnesses, [REDACTED] had arranged the public broadcast on 19 March of the description of the alleged offender and the car.

"At my arrival [at the ANZ bank] on 19 March 1993, I spoke to the three female tellers and they told me something. I then obtained a description of the male who had held up the bank and I broadcasted it."⁹

The *Cairns Post* of 20 March 1993 refers to [REDACTED] of the [REDACTED] unit. According to the *Cairns Post*, [REDACTED] said the gunman was armed with a sawn off shotgun, and carried a sports bag. The *Cairns Post* article goes on to say that:

⁷ For instance, Senior Counsel for the State of Queensland in the Supreme Court case of *Irving v [REDACTED]* in 2020 attacked the oral and documentary evidence of CJC witness, investigator [REDACTED] as unreliable.

⁸ See Roy Ecclestone, *The Australian*, 22 November 1999.

⁹ Statement of [REDACTED] dated 23 June 1993.

[REDACTED]

“the robber was about 183 cm tall, in his early 20’s, of medium build, and with an olive complexion and was wearing his black hair in a pony tail. He was wearing a long-sleeved shirt, with a floral pattern of pink, grey and purple colouring and long dark grey trousers at the time of the holdup. He had a grey handkerchief over his face from the nose down, and was wearing dark sunglasses and a dark beanie which was removed as he left the bank. He was carrying a yellow bag.”¹⁰

As noted in the High Court judgement, the description of the robber “did not suit the accused”.¹¹ At the time of the robbery Terry Irving was aged 37, and eyewitnesses at the time identified the robber as being aged in his early twenties. Further, the robber was identified at the time by eyewitness as being six feet tall. Terry Irving was 5’9”.

THE FIRST CJC INVESTIGATION

Request by Terry Irving dated 20.4.94

Mr Irving wrote to the CJC on 20 April 1994¹² and 10 February 1995¹³ concerning allegations of improper conduct by police who arrested him and charged him with the robbery. There were specific complaints of improper conduct detailed in those letters against two serving Queensland Police Service members, [REDACTED] and [REDACTED]. Mr Irving’s letters two letters are contained at Attachment 1. Several of the matters raised by Mr Irving were subsequently mentioned unfavourably in the 1997 judgement of the High Court. Most of the matters raised in Mr Irving’s letter still remain in contention in the series of Irving cases in the civil jurisdiction.

This submission deals with those matters which are of the most relevance to this Inquiry, as regards the first CJC investigation, It is not conceded that any of the complaints made by Mr Irving raised in the first CJC investigation were not substantiated. In each of the matters complained of, it is submitted that there were facts put forward by Mr Irving to the CJC which supported (and at times strongly supported) findings of alleged misconduct. To deal *seriatim* with the disposition of each allegation would be beyond the scope of this submission.

Mr Irving’s complaint number i to the CJC

¹⁰ Extract from Cairns Post dated 20 March 1993

¹¹ High Court transcript 8 December 1997: “there follows problems in relation to the calling of [REDACTED] who evidently broadcast or authorised the broadcast of a description of the alleged offender which, at least in terms of age and perhaps in terms of height, does not suit the accused. It is a very disturbing situation.”

¹² Letter from Mr Irving to CJC dated 20 April 1994.

¹³ Letter from Mr Irving to CJC dated 10 February 1995.

[REDACTED]

Mr Irving's complaint (number i) was that [REDACTED] made inconsistent statements under oath concerning what [REDACTED] said were hair samples located in items of Terry Irving's clothing. The inconsistency alleged was that [REDACTED] swore an affidavit in support of an application under s. 259 of the Criminal Code for the obtaining of forensic body samples (specifically including hair), which [REDACTED] claimed could be compared to hair said (in the same affidavit) by [REDACTED] to be found on the clothing said to be Terry Irving's. The inconsistency arose when [REDACTED] subsequently gave sworn evidence at Terry Irving's committal hearing on 26 October 1993 that "there was nothing on the clothing after it was examined".

The Prosecution had tendered certain clothing at Irving's committal hearing and at Irving's trial. This clothing was alleged to have been evidence relevant to the charge of armed robbery, that is that eyewitnesses had observed that the robber was wearing various items of clothing.

On 18 May 1993, [REDACTED] charged Terry Irving as an accessory after the fact to the robbery. One only of several eyewitnesses reported that two persons, not one, were said to be seen in a car (admitted as owned by Terry Irving, but loaned to another two persons) leaving the general area of the crime. The remainder of the eyewitnesses to the vehicle sighting only observed one person in the car. Apart from inferential evidence about the car, any forensic evidence (such as hair) alleged to be linked to Terry Irving was significant, as it would have provided the only direct and, it is submitted, direct legally obtained evidence in the case against him.

In the s.259 warrant, [REDACTED] alleged that there was hair on certain unspecified clothing, and hair samples from Irving were needed for forensic comparison to the hairs on the clothing. [REDACTED] swore a warrant on this basis to force forensic hair samples to be taken from him under s.259. In 2021, the Queensland Court of Appeal made a finding of fact that [REDACTED] had contrived to cause Terry Irving to be wrongfully detained, in its judgement that [REDACTED] had acted maliciously in prosecuting Terry Irving in relation to the accessory charge, and awarded him damages (to be assessed) and 50% of costs.

The CJC put to [REDACTED] the following two versions regarding the hair on the clothing ¹⁴

¹⁴ Note: Documents referred to in this section only came to the attention of Mr Irving in 1999, following a FOI request to the Information Commissioner.

[REDACTED]

The CJC interviewed [REDACTED] in a police disciplinary interview on 25 October 1994. [REDACTED] had earlier that day refused to participate in a criminal investigation interview with the CJC.

The investigators asked [REDACTED] how the clothing (the subject of the 259 warrant in respect of the accessory charge) was relevant.

[REDACTED] Now what the specifics are, is this. The Commission is in possession of a copy of a Criminal Code application under section 259 for samples, it is worded in subsection 2 here, the person IRVING is in custody charged with the above matter. Clothing used during the commission of the offences being located by police, amounted here are contained throughout that clothing and they have been taken possession taken by possession of by the police. These samples are required for comparison to those found on the clothing. In the er some committal proceedings held in the er Cairns Magistrates Court on the 26th day of er October 1993, where our friend Mr IRVING... er IRVING was going to committal for armed hold-up, a question was asked of you, these are the transcripts here, did you get any results from those samples or have you got any results. Your reply as recorded here is - No there was nothing on the clothing after it was examined. Er no this has raised some concern as to what exactly you were saying there, bearing in mind this application as I understand it you were saying that you did find clothing and hair on it, would that be correct? “

The two versions given by [REDACTED] were in full, as follows:

Version 1 – Affidavit sworn 19 May 1993

In an affidavit supporting a Form 3 section 259 Warrant sworn on oath before a Magistrate on 19 May 1993.

“The person Irving is on custody charges with the above matter. Clothing used during the commission of the offence has been located by police. Amounts of hair are contained throughout that clothing and they have been taken possession of by police. These samples are required for comparison to those found on the clothing.” ¹⁵

Version 2 Evidence at Mr Irving’s committal dated 26 October 1993

In sworn evidence given by [REDACTED] at Irving’s committal hearing on 26 October 1993:

¹⁵ Section 259 warrant sworn by [REDACTED] on 19.5.93

[REDACTED]

[REDACTED] And did you get any results from those samples, or have you got any results?

[REDACTED] No, there was nothing on the clothing after it was examined.¹⁶

.....

[REDACTED]: "So are there to be any further examinations of those samples taken at all?

[REDACTED]: Only if something else comes back on the shoes. Something obvious, but it doesn't look like it. I've only just sent it down for the comparison of the soles.

[REDACTED]: So, nothing's come up on the shirt?---
No.
Nothing's come up on the trousers?---
No" ¹⁷

[REDACTED] response to CJC Investigators [REDACTED] on 25 October 1994 was as follows:

[REDACTED] Er well I believed was hair.

.....

[REDACTED]: Okay now, did you then forward his clothing and the samples away to any scientific for testing?

[REDACTED]: Now this is where I'm a bit vague because it did happen 18 months ago..

[REDACTED] Yes

[REDACTED] ..but I honestly believe that [REDACTED] ...because we can't do that here..she's not qualified, so we've got to send to Brisbane..

[REDACTED] That's what rm thought, yes.

[REDACTED] ...but I honestly believe that in...going back through my memory, and I couldn't find it on the running sheet, that's what I went to look for, is that she looked at it, and she said no, they're dog hair.

¹⁶ Transcript of committal proceedings [REDACTED] v Irving, Cairns Magistrates Court, 26 October 1993 (No CNS1146A).

¹⁷ Transcript of Committal Proceedings in Cairn Magistrates Court on 26 October 1993, [REDACTED] v Irving: Sworn evidence given by [REDACTED]

....

■ Alright

■ But in..that's why I don't think they were sent away

■ Okay. Okay when did...now, okay, ■ would have told you ■ opinion that they were dog hair, after that date?

■ Yeah

■: So is the procedure up here, do you send it to ■ first and if ■ doesn't think she can do it

■: No

■: ...she forwards it to Brisbane?

■ What..no ...and to the best of my recollection is that I had them ready to send to Brisbane and someone said why don't you get ■ to have a quick look at them here. I don't think it even entered my .. I can't remember it ever thinking oh why..if.Cairns can do it because...

■ Was ■ ..is ■ your local Scenes of Crime officer?

■: Yeah, 'cause I know, 'cause I do all the rapes and things like that, they ca't do anything with those, they all got to go to Brisbane, and I honestly believe that I had them ready in my mind they had to go to Brisbane, but then ■ intercepted with that theory, but I'm not 100 percent on that...

■: Okay.

■'cause I went back to the running sheet but it wasn't in there

■ You...

....

■ So you..did you just dis...t.take a decision well we've got enough evidence we don't need to proceed on the hair sample?

[REDACTED]

knowing that, that I had um not obviously a lot, if it was dog hairs then I'd lost that evidence anyway and then I had identification on him on photoboard by all the staff and of his clothing, so ... I wasn't relying on that only evidence for and that evidence was never ever led at his trial.

....

Thus, during the CJC disciplinary interview [REDACTED] offered a third version of events. [REDACTED] third version of events was that [REDACTED] had not sent the clothing off for forensic examination, because a Police Scientific Officer, who [REDACTED] named as [REDACTED], had told [REDACTED] that the hair on the clothing was "dog hair". That third version of events is repeated in the CJC discipline interview, with some variations of detail, five times. If true, the third version that [REDACTED] told [REDACTED] that the hairs were dog hair went some way to reconciling the inconsistencies between [REDACTED] versions one and two.

However, the facts as established by the CJC do not support [REDACTED] third version of events, and cast doubts about the truth of one or other of the earlier versions sworn by [REDACTED]. [REDACTED] denied that [REDACTED] had ever had such a conversation with [REDACTED]. On 29 November 1994, [REDACTED] was interviewed by CJC Investigator [REDACTED].

[REDACTED] Ok, at any stage during the investigation were you aware that [REDACTED] was going to send them to Brisbane for further examination?

[REDACTED] Well I was led to believe that they might have been further used but I received no further notice of their requirement

[REDACTED]: Ok, do you recall some time around that time, May 1993 ever making a comment to [REDACTED] that it was your opinion that the hairs on the clothing was, was, in fact dog hair?

[REDACTED] No, no

[REDACTED]: OK

[REDACTED]: No, it wouldn't, not on all five, there might have been one or two strands of dog hair amongst fifty hairs but certainly not any proportion would have been, you know any large proportion at all would've been dog hair at all

[REDACTED]: Ok, I see, just for my information though, scientific's changed since I was in the job but, can you make that sort of analysis? [REDACTED]: Well you can make a fair assumption that ah if you've got something that's six inches long, its not going to be dog hair.

[REDACTED]

[REDACTED]: So true

[REDACTED] And it can also see other hairs that are definitely not dog hair [REDACTED] Mmmm

[REDACTED] But you know like I was saying out of the samples I might've collected, I'd have to go and have a look at the ---

[REDACTED] Right no there's no need to go and have a look

[REDACTED] --- at the samples, but there would have been possibly a one percent of dog hair, but there's certainly the dominant proportion of them were not dog hair [REDACTED] At the samples, but there would have been possibly a one percent of dog hair, but there's certainly the dominant proportion of them were not dog hair.

[REDACTED]: That's look, that's fine, that's about all I need to know

[REDACTED]'s denial of [REDACTED]'s third version of events before the CJC should have (and did appear to) raise a warning flag, as [REDACTED] and [REDACTED] had told opposing stories about whether there was dog hair on the clothing, and whether [REDACTED] had ever examined the clothing in the first place. [REDACTED] was apparently invited to participate in a further CJC interview, but declined. Accordingly, a further enquiry was undertaken by [REDACTED], who conducted a taped telephone interview with [REDACTED] on 24 March 1995. [REDACTED] record of that conversation was consistent with [REDACTED] earlier evidence of November 1994 that [REDACTED] had not undertaken any quick corridor examination of any clothing, "due to seriousness of the crime and the consequence of [REDACTED] evidence". The ROI by [REDACTED] was as follows:

"[REDACTED] stated [REDACTED] had no recollection of conducting any examination on a multi-coloured shirt given to [REDACTED] in respect to an armed hold up investigation during May 1994. [REDACTED] stated [REDACTED] was involved in an examination of various articles of clothing which were washed up at Holloways beach. This examination was conducted on the 14th & 15th of May 1993. [REDACTED] referred to [REDACTED] notebook and stated that clothing was suspected of being worn during an armed robbery of the National bank. The clothing consisted of a brown pinstriped fluff long sleeved jumper, black trousers, shoes and a hat. The examination revealed numerous hairs, which in [REDACTED] opinion were 80 to 90% human hair, and the rest animal hair, believed to be dog and cat. The samples are still in [REDACTED] possession as no instructions were given for their delivery to Brisbane for expert confirmation. [REDACTED] claimed [REDACTED] is a meticulous note taker and no notes, or records can be found in respect to any examination of a multi-coloured shirt. I suggested to [REDACTED] to

[REDACTED]

comment on the possibility that [REDACTED] or any other investigation officer requesting a quick dayroom or corridor examination of the multi-coloured shirt. [REDACTED] stated [REDACTED] wouldn't conduct such an examination due to seriousness of the crime and the consequence of [REDACTED] evidence. [REDACTED] indicated the process of hair sampling must be done in a sterile or contamination free environment."

On 28 November 1994, [REDACTED] rang [REDACTED] and told [REDACTED] something. The conversation which took place between [REDACTED] and [REDACTED] on that day has been lost from the remainder of the statement made by [REDACTED] on 18 December 1994, but states as far as it goes "On that same day I was advised by [REDACTED] [REDACTED], a Scenes of Crime Officer, that she had just received a telephone call from" The ensuing next page is the one missing from the statement [REDACTED] wrote in support of [REDACTED] application for medical retirement. It would be a reasonable hypothesis that the nature of the conversation concerned the fact that the [REDACTED] was to be interviewed by the CJC on the following day. The CJC interviewed [REDACTED] on the following day, 29 November 1994.

The CJC attempted to re-interview [REDACTED], but was unsuccessful. [REDACTED] continued to remain on [REDACTED] leave, culminating in [REDACTED] retirement [REDACTED] on 12 May 1995 (two weeks after the CJC completed its report into the first CJC investigation on 26 April 1995).

[REDACTED] second denial of [REDACTED] version of events, and the fact that [REDACTED] was no longer prepared to be interviewed by the CJC, even in relation to a disciplinary interview, should ordinarily have switched on flashing red beacons to the CJC investigators. [REDACTED], as a scientist in a separate area to [REDACTED] at [REDACTED] [REDACTED] in 1993, had no reason to fabricate any story against [REDACTED]. [REDACTED] is today a [REDACTED] It is worth considering in the context of this submission, whether a civilian under police investigation in similar circumstances would have been charged with a criminal offence at this point, given that reasonable belief existed that an offence had occurred, that of allegedly giving misleading or false evidence to the CJC in relation to the 3rd version of events. [REDACTED] three versions also raised squarely the prospect of further allegations of criminal conduct (in relation to the earlier sworn statements in the first and second versions given by [REDACTED]).

THE TWO VERSIONS OF THE CJC REPORT

Failure to disclose to Mr Irving the identity of [REDACTED] and any reference to the denials by [REDACTED] of [REDACTED] third version

[REDACTED]

After all these matters had been investigated, the CJC wrote two letters in response to Mr Irving's complaint. Both are dated 26 April 1995. Both are attached at Attachment 2.

The first letter is addressed to Mr Terry Irving, care of Mr Michael O'Keeffe, Legal Aid Office, Townsville.¹⁸ The second letter is addressed to Deputy Commissioner [REDACTED], Queensland Police Service, Brisbane, for the attention of Chief Superintendent [REDACTED].¹⁹ Both letters appear on first glance to contain the same material, but there are several critical differences between the contents of the two letters, in that significant material contained in the second letter has been deleted from the first.

I received the first letter, on behalf of Mr Irving in early May 1995. Mr Irving obtained the second letter in 1999 as a result of a FOI request to the Information Commissioner. Until 1999 (that is, some 2 years after Mr Irving's exoneration), Mr Irving and I were unaware of the issues which the CJC had raised with [REDACTED].

The CJC made certain findings concerning [REDACTED] explanations about [REDACTED] inconsistent evidence about the clothing (versions 1 and 2), which are common to both letters. The first was:

"Commission was of the view that the matter does not reasonably raise a suspicion that [REDACTED] was being deliberately untruthful in [REDACTED] evidence such as would warrant consideration of criminal charges against [REDACTED]; [and that the Commission has referred] the matter to the Police Service for further investigation and possible disciplinary action against [REDACTED] in the event that [REDACTED] returns to duty".²⁰

The second letter (to Deputy Commissioner [REDACTED]) alone includes the further finding that

"The statement made by [REDACTED] in evidence would appear to be ambiguous and it may be that [REDACTED] has unwittingly misled the Court by failing to give an adequate answer to the question asked of [REDACTED]".²¹

The second letter (to Deputy Commissioner [REDACTED]) alone identifies [REDACTED], and also contains an additional paragraph containing a critical inclusion which is not contained in the first letter. That paragraph is as follows:

¹⁸ Attachment 10: Letter to Mr Terry Irving, Care of Mr Michael O'Keeffe, Legal Aid Office Townsville from [REDACTED], CJC Official Misconduct Division dated 26 April 1995.

¹⁹ Attachment 11: Letter to Deputy Commissioner [REDACTED], Attention Chief Superintendent [REDACTED], from [REDACTED], CJC Official Misconduct Division dated 26 April 1995.

²⁰ See Attachment 10, p 2.

²¹ See Attachment 11, p 3.

[REDACTED]

“The Commission has twice interviewed [REDACTED]. However, [REDACTED] denied examining any clothing at [REDACTED] request that was suspected of having been worn during the armed robbery with which the complainant was charged (as opposed to clothing examined in relation to the armed robbery of another bank for which the complainant was a suspect).”²²

Further, [REDACTED] existence (and thus [REDACTED] evidence) is again deleted from a paragraph in the letter to O’Keeffe, but not in the letter to [REDACTED]

The letter to O’Keeffe states:

“Having regard to the statement made by [REDACTED] at your committal hearing that there was nothing on the clothing after it was examined, the Commission has sought to re-interview [REDACTED] to clarify the matter. Unfortunately [REDACTED] commenced extended sick leave subsequent to the initial interview and it has not been possible to re-interview [REDACTED].”

The letter to [REDACTED] states:

“Having regard to the statement made by [REDACTED] at your committal hearing **and to the account of [REDACTED]** [emphasis added], that there was nothing on the clothing after it was examined, the Commission has sought to re-interview [REDACTED] to clarify the matter. Unfortunately [REDACTED] commenced extended sick leave subsequent to the initial interview and it has not been possible to re-interview [REDACTED].”

Analysis of the CJC Findings:

There is compelling evidence that [REDACTED] sworn evidence at committal on 26 October 1993 was prima facie inconsistent with [REDACTED] sworn affidavit evidence on 19 May 1993. However, the information provided during [REDACTED] investigation by the CJC on 25 October 1994, if true, may have provided the necessary nexus of reconciliation with [REDACTED] sworn evidence at committal on 26 October 1993. But [REDACTED] evidence provided to the CJC during [REDACTED] investigation on 25 October 1994 was in fact wholly inconsistent with the information given to the CJC by [REDACTED] on 29 November 1994 and 24 March 1995, and placed further doubts on the truthfulness of [REDACTED] earlier sworn evidence, rendering genuine doubts as to the truth of all of [REDACTED] evidence regarding the “dog hair” issue .

In the first place, the denial by [REDACTED] raised a prima facie allegation that [REDACTED] had given false information to the CJC, a criminal offence under s 217 of the CJC Act

²² See Attachment 11, p 2.

[REDACTED]

Given the evidence of [REDACTED], the seriousness of the offence of which Mr Irving had been convicted, and that the two statements were made on oath by [REDACTED], it was an improper course for the CJC dismiss the account of [REDACTED] to the magistrate at committal as given “unwittingly”. For this to be true, [REDACTED] explanation to the CJC would have to satisfactorily establish in some way that the evidence [REDACTED] gave at committal was in fact erroneous, and honestly mistaken. Given that [REDACTED] was specifically asked three times by [REDACTED] about whether something had come back on various items of clothing, and [REDACTED] responded “no” each time, [REDACTED] evidence at committal could not be logically excused as unwitting, particularly in the light of the later third version about [REDACTED] purportedly telling [REDACTED] that hair on the clothing was “dog hair”.

The explanation about [REDACTED] telling [REDACTED] it was dog hair, denied as it was by [REDACTED], does not support any hypothesis of honest error.

It is, for similar reasons, difficult to reconcile this material with the CJC finding (made only to Deputy Commissioner [REDACTED]) that [REDACTED] evidence at committal “would appear to be ambiguous”. The evidence, however construed, does not support a conclusion that it is ambiguous. [REDACTED] answer to a question asking whether there were to be “any further examinations” allowed ample opportunity to correct any previous mistake or ambiguity in relation to her multiple answers in the Magistrates Court that “there was nothing on the clothing after it was examined”. [REDACTED] did not make any corrections in her later evidence (on that day or any time when questioned or offered an interview about the matter). [REDACTED] sworn evidence is clear and definite throughout the committal as to [REDACTED] assertion that there was nothing on the clothing. The CJC finding of ambiguity is therefore contrary to the evidence.

The Deletions from the letter to Irving, care of O’Keeffe

The deletions of material in the letter sent to O’Keeffe, have the effect of suppressing material evidence substantiating Mr Irving’s complaint (contained in the letter sent to Deputy Commissioner [REDACTED]), ie that [REDACTED] (as an independent witness) denied [REDACTED] version of events. That information necessitated disclosure, not least of all because Irving’s appeal was before the High Court at the time. It was axiomatic that any alleged forensic evidence containing hairs said to be of the robber should have been immediately analysed, given Mr Irving’s claim of innocence. Further, the evidence pointing to [REDACTED] lack of credibility as a witness of truth in respect of [REDACTED] alleged misleading of the CJC, could only have tended to confirm and strengthen Mr Irving’s assertions in the High Court that he was innocent and that police had deliberately withheld other evidence of his innocence.

[REDACTED]

In the High Court, part of Irving's written submission dealt specifically with the allegation that the Prosecution withheld evidence consistent with Irving's innocence. Documents filed by Irving in the High Court Appeal stated (Applicant's Reply at page 4):

"[Another] witness' evidence alleged the police were withholding evidence, and the police in fact withheld a range of other evidence consistent with the applicant's innocence. The applicant's argument that the withholding of the video was merely a continuation of a series of improper police conduct was both sustainable and cogent."²³

The further evidence of suppression of evidence and possible misconduct and/or perjury discovered by the CJC, independently corroborated as it was, would have been of the utmost value in establishing the full extent of the level of improper police conduct, had Irving's defence team known of it. The fact that the CJC deliberately suppressed this material, which in fact substantiated Irving's complaint and pointed strongly to the wrongful imprisonment of an innocent man, at the very time he was appealing his innocence to the High Court is, on any test, inexcusable.

In addition, the suppression of [REDACTED] evidence renders the substance of the meaning of the O'Keeffe letter quite untrue. The additional information in the [REDACTED] letter is the opposite to the information contained in the O'Keeffe letter. The O'Keeffe letter's context, containing as it does the words "in fact", suggests that the CJC had come to a finding of fact that the reason that the clothing was not sent to Brisbane was because the (unnamed) police forensic officer had verified that the hair was dog hair. There is no real alternative construction to that given by the CJC: that the police forensic officer's explanation as related by [REDACTED] to the CJC, had been accepted by the CJC as the truth.

Irving's legal team (including myself) appearing in the High Court relied on that explanation in good faith. The context did not provide for the crucial fact of [REDACTED] denial. The letter was, therefore, untruthful.

The relevant documents (which disclosed the 3rd version of events, the identity of [REDACTED] and most importantly the fact that [REDACTED] squarely denied [REDACTED] versions of events) only came to the attention of Mr Irving in 1999, following a FOI request to the Information Commissioner.

THE INTERVIEWING OF THE EYEWITNESSES BY [REDACTED] [REDACTED] AND THE TROIs AND WITNESS STATEMENTS

²³ Attachment 12: High Court of Australia *Irving v R* (No B96 of 1996) May 1997: Appellant's Reply, at page 4.

The Robber, the Photoboard, the TROIs and the Witness Statements

interviewed many of the witnesses , and produced by a very large number of written documents (primarily witness transcripts and statements) for the police brief of evidence for the robbery.

It is alleged that initial photoboard identification interviews were conducted (and tape-recorded) by with seven eyewitnesses. Irving consistently denied that he was the robber. Two of the witnesses could not identify a photo of Mr Irving as the robber. Of the remaining four who gave evidence at Mr Irving's trial, no witness was able to satisfactorily identify Mr Irving (within the meaning of the principles laid down in Alexander's case), but mentioned what were plainly equivocal suggestions as to certain similarities to the robber. It is alleged that later caused the evidence given by the four witnesses in their tape-recorded interviews to be firmed up, by substituting statements prepared by for signature by these four witnesses. In each case, it is alleged that the statements prepared by contained false descriptions which had been altered to more closely match Mr Irving's description.²⁴

All seven original tape-recorded interviews were not given to Irving's lawyers prior to trial.²⁵

A summary of the content of the TROIs and the statement prepared by for the witness' signatures are as follows:

Table 3: Identification Evidence:

Transcript of ' Photoboard Interview with dated 18 May 1993 ²⁶	Statement prepared by for signature by dated 24 May 1993 ²⁷
<p>(inaudible) him or him.</p> <p>: Number 5 or number 7?</p> <p>I'd like a side on view.</p> <p>: What features do you remember the most ?</p> <p>He had a very he had a prominent nose. He had</p>	<p>"After looking at the photoboard I can say that I know the male shown in square number 7 was the male who held up the bank on the 19th of March 1993."</p>

²⁴ See paragraphs 99 –108 below.

²⁵ See High Court transcript 8 December 1997.

²⁶ Transcript of Taped Record of Interview between and dated 18 May 1993.

²⁷ Typed Statement prepared by dated 24 May 1993

[REDACTED]

<p>shoulder length hair... and it was dark.</p> <p>[REDACTED] Well, bearing in mind, you know, the hair could have changed, could you have a look at the colour and the facial features, and things like that.</p> <p>[REDACTED] I'd say seven</p> <p>[REDACTED] Number 7? And what features are you -say you believe it's number 7? Will I hold it up? Would that - want me to hold it up for you?</p> <p>[REDACTED] I'd say seven</p> <p>[REDACTED] Seven? Mmm. Seven or five."</p>	
---	--

Table 4: Identification Evidence: [REDACTED]

Transcript of [REDACTED] Photoboard Interview with [REDACTED] dated 29 May 1993²⁸	Statement prepared by [REDACTED] for signature by [REDACTED] dated 29 5.1993²⁹
<p>[REDACTED] The only one that looks familiar to me would be number seven</p> <p>[REDACTED] Number Seven</p> <p>[REDACTED] If I had to pick somebody I would say number seven."</p> <p>.....</p> <p>... I recall him as being of dark olive skin</p> <p>... number 7 sort of looks as though it might be to me but ...</p>	<p>"After looking at the photoboard I can see that I believe that the male shown in square number 7 was the male who held up the bank."</p>

Table 5: Identification Evidence: [REDACTED]

²⁸ Transcript of Taped Record of Interview between [REDACTED] [REDACTED] dated 29 May 1993.

²⁹ Typed Statement prepared by [REDACTED] dated 29 May 1993

Transcript of [REDACTED] Photoboard Interview with [REDACTED] dated 1 June 1993 ³⁰	Statement prepared by [REDACTED] for signature by [REDACTED] dated 1 June 1993 ³¹
<p>[REDACTED]: Okay. Just go slowly and take your time. It may help you to cover up any part of his face or hair or anything that might help you.</p> <p>[REDACTED]: I'm not sure but number 7</p> <p>[REDACTED]: Indicating number 7</p> <p>[REDACTED]: Number 7</p> <p>[REDACTED]: Why are you saying that?</p> <p>[REDACTED]: Just the skin colouring</p>	<p>"She [REDACTED] then showed me a photoboard and I picked the male in number 7 as the male who I think was standing on the corner ."</p>

Table 6: Identification Evidence: [REDACTED]

Transcript of [REDACTED] Photoboard Interview with [REDACTED] dated 1 June 1993 ³²	Statement prepared by [REDACTED] for signature by [REDACTED] (undated) ³³
<p>[REDACTED]: Which One</p> <p>[REDACTED]: This one</p> <p>[REDACTED]: Number 7</p> <p>[REDACTED]: Mmm, but I don't know because I never saw him front on. Perhaps the colour of his skin, I don't - you know because his hair was back.</p> <p>[REDACTED]: Was tied up, yeah, but either cover the hair, some ?</p> <p>[REDACTED]: Yeah, I'm going to the skin and I find I'm tending to look to the skin and the colour of the hair more than anything else at all. But I'm not - I wouldn't say yes, that was him, not at all."</p>	<p>"She [REDACTED] then showed me a photoboard and I picked the male in number 7 as the male who I think was standing on the corner. "</p>

THE SHIRT, THE TROIS AND THE WITNESS STATEMENTS

³⁰ Transcript of Taped Record of Interview between [REDACTED] dated 1 June 1993

³¹ Typed Statement prepared by [REDACTED] for signature by [REDACTED] dated 1 June 1993

³² Transcript of Taped Record of Interview between [REDACTED] dated 1 June 1993.

³³ Typed Statement prepared by [REDACTED] undated.

It is alleged that initial interviews in relation to a multi-coloured shirt allegedly worn by the robber were conducted (and tape-recorded) by [REDACTED] with seven witnesses.

None of the six who gave evidence at trial were able to satisfactorily identify the shirt as being the one worn by the robber. It is alleged that [REDACTED] did the same thing as [REDACTED] had done with the photoboard id with these in relation to the shirt in their tape-recorded interviews. That is, statements prepared by [REDACTED] for signature by these witnesses allegedly contained firmed-up evidence. In each case, it is alleged that the statements prepared by [REDACTED] contained false descriptions which had been altered to more closely match the description of a shirt found in Mr Irving's possession. The shirt evidence of the witnesses [REDACTED] and [REDACTED] are given as examples.

Shirt Identification Evidence: [REDACTED]

Transcript of [REDACTED] Shirt Interview with [REDACTED] dated 18 May 1993 ³⁴	Statement prepared by [REDACTED] for signature by [REDACTED] dated 24 May 1993 ³⁵
<p>[REDACTED] "The cuffs different The cuffs just hang and they've not got ... They didn't have one [inaudible] button" ⁷</p>	<p>"I can say that the shirt I was shown is the shirt that the male was wearing" ⁸</p>

Shirt Identification Evidence: [REDACTED]

Transcript of [REDACTED] Shirt Interview with [REDACTED] dated 1 June 1993 ³⁶	Statement prepared by [REDACTED] for signature by [REDACTED] (undated) ³⁷
<p>[REDACTED] "It wasn't the pattern" ¹³</p>	<p>"The shirt is the vision of the shirt that I saw him wearing that day" ¹⁴</p>

There was no evidence as to the relative frequency of manufacture or distribution of shirts of this type at the relevant time. The dates on several witness photoboard and shirt statements suggest that they were not made contemporaneously with the TROIs.

³⁴ Transcript of Taped Record of Interview between [REDACTED] and [REDACTED] dated 18 May 1993.

³⁵ Typed Statement prepared by [REDACTED] dated 24 May 1993

³⁶ Transcript of Taped Record of Interview between [REDACTED] and [REDACTED] dated 1 June 1993.

³⁷ Typed Statement prepared by [REDACTED] undated.

[REDACTED]

All original tape-recorded interviews (TROIs) relating to the shirt were not provided to Mr Irving's lawyers prior to trial.

ASSESSMENT OF THE CJC FINDINGS

The CJC Letter of 26 April 1995 makes a finding that "all of the witnesses who were interviewed during the investigation recalled the circumstances of the taking of their statements. All of them denied any attempt by [REDACTED] to influence the contents of their statement in any way."

The CJC has made a wrong assumption that the act complained of against former [REDACTED] was that [REDACTED] coerced or forced the witnesses to produce the firmed-up contents of the statements. Such a blunt approach by [REDACTED] never happened. It was thus inadequate for the CJC to assume (and ask questions of the witnesses only in that context), that what happened was that [REDACTED] tried to coerce them when preparing their statements, when the obvious inconsistencies between the TROIs and the statements remained were not questioned.

The sequence of what happened is readily discernible from the existing documents, including the transcripts made from the videos. The fundamental issue which the investigators have failed to investigate is why the witness' identification video transcripts (which were exculpatory of Terry Irving), translated over time to sworn statements which positively identified Terry Irving as the robber. The strong suggestion is that [REDACTED] allegedly caused the information in them to be changed, gave the witnesses copies only of the later altered versions [but not the tapes or transcripts] prior to them giving evidence, and this constituted a serious set of circumstances. An alternative explanation for the firming-up was not in evidence. Yet this necessary line of investigation was not examined by the CJC.

The CJC investigation failed to disclose that Irving's complaint was in fact substantiated: that is the alleged revised descriptions were firmed up. Again, evidence consistent with Terry Irving's innocence was suppressed. The original photoboard transcripts or tapes (none of which adequately identified Irving), were not apparently provided to the witnesses. As stated above, [REDACTED] only provided copies of the video and audio tapes as exhibits deposited into the Magistrates Court records, and the associated covering documentation for the tapes exhibited in the exhibit list prepared by [REDACTED] at committal was confusing and misleading. The defence at committal was not provided with either the videotape or audiotape recordings or transcripts, merely the firmed-up statements.

The CJC investigation in relation to these aspects of Mr Irving's complaint was inadequate, and contributed materially to Mr Irving's continued detention in prison.

THE RETIREMENT OF [REDACTED]

[REDACTED]

The material above reasonably raises the suggestion that [REDACTED] was permitted to retire on the basis that if [REDACTED] did so, [REDACTED] would not be charged with official misconduct or be criminally prosecuted.

There is, therefore, a strong circumstantial trail of events which give rise to a reasonable hypothesis that the Queensland Police Service between November 1994 (when [REDACTED] first denied [REDACTED] 3rd version of events) and April 1995 (when the CJC report was finalised) that an offer of sorts was put to [REDACTED] that [REDACTED] should leave the service, or face disciplinary action, or possibly even criminal charges, on the basis of the CJC investigation findings. Given the evidence of [REDACTED] there would at least be a likely allegation of official misconduct in relation to the third version of events, and the real possibility of [REDACTED] facing criminal charges in respect of [REDACTED] alleged three versions of events.

There is, therefore, a very reasonable hypothesis that the Queensland Police Service allowed [REDACTED] the choice of [REDACTED] retirement or face certain disciplinary action, and/or possible criminal charges.

The difficulty is, of course, that the alleged choice (and subsequent retirement) given to [REDACTED] resulted in a catastrophic miscarriage of justice to Mr Irving.

SECOND CJC INVESTIGATION 1999

Following his exoneration by the High Court, I wrote to the then Attorney General, [REDACTED] seeking an apology, an ex-gratia payment, and an inquiry into the

³⁸ Letter to Mr Terry Irving from [REDACTED] Chief Officer, CJC Official Misconduct Division dated 27 August 1997.

[REDACTED]

circumstances of Terry's Irving's wrongful conviction. [REDACTED] replied that [REDACTED] would ask the CJC to investigate the matter, hereafter called the SECOND CJC INVESTIGATION. [REDACTED] refused Mr Irving's several requests for an independent investigation and for terms of reference. I had pointed out to [REDACTED] the conflict of interest for the CJC investigating itself over Mr Irving's first CJC investigation, and the lack of procedural fairness afforded to Mr Irving concerning [REDACTED] directions to the CJC. For example, my letter to [REDACTED] on 21 December 1998 (See attachment 3, at page 6, headed "fourth issue" (re-stated on 27 August 1999) it was stated:

"The reference to the CJC ignores the natural justice problem associated with it reviewing its own review. The reference to the CJC ignores the fact that the CJC has already determined that it has no jurisdiction in relation to the misconduct of the principal police officer involved. The reference to the CJC appears to lack any terms of reference, or if it has such terms of reference, they certainly have not been formulated in consultation with Mr Irving, the person whose interests are most principally affected."

The CJC subsequently responded to [REDACTED] (Director General) on 16 August 1999 (See attachment 4). Among other matters, the CJC report came up with the explanation that [REDACTED] actions had resulted in Mr Irving's "obtaining an acquittal" [sic]. The second CJC report stated:

"The fact that they [the eyewitnesses participating in the photoboard and shirt identification interviews] were videotaped is referred to in her statement dated 23 June 1993 at pp 1.4 - 1.8. It is significant to note that had [REDACTED] failed to record what the witnesses said during the identification process, there would not have been the evidence upon which your appeal was based. It is because of [REDACTED] actions in videotaping the process that you were ultimately successful in obtaining an acquittal."

As a matter of detail, the High Court quashed Mr Irving's conviction, and ordered a retrial. He was not acquitted. The process followed was that the DPP decided that no retrial would take place, and the Queensland Director of Public Prosecutions, [REDACTED] [REDACTED] duly signed and filed a nolle prosequi in 1998.

In the first place, there were many factors which caused the quashing of Mr Irving's conviction, as follows:

1. The High Court made a very significant concession in departing from its usual practice in not permitting fresh evidence of the tapes to be adduced.
2. The Crown Prosecutor conceded that Mr Irving had not had a fair trial.
3. The Chief Justice, in explaining his comments that Mr Irving's conviction was not "supportable", referred inter alia to the following matters:
 - a) The description of the robber did not suit the accused;

- [REDACTED]
- b) [REDACTED] was not called as a witness at Mr Irving's trial;
 - c) evidence in relation to the bank video not adduced; and
 - d) material [photo and shirt identification tapes and transcripts] which is relevant to cross-examination of identification not in counsel's hands at the time that the trial starts.
4. there was diligence on the part of Mr Irving's legal advisers, in making submission to the High Court regarding the matters in 4 above, and in relation to other issues.
 5. there was diligence on the part of Mr Irving's legal advisers, in discovering and highlighting discrepancies between the majority of the eyewitness' taped records of interview and the typed statements, which were not made available to Mr Irving's defence lawyers prior to trial.

More importantly, in regards to the CJC assertion that [REDACTED] actions were the cause of Mr Irving's acquittal [sic], the truth is very different. The part that [REDACTED] had videotaped (although the video tapes have subsequently been lost) and tape recorded each interview is true. Thereafter, the CJC assertion is simply false.

When [REDACTED] gave evidence at committal, [REDACTED] only provided copies of the audio tapes as exhibits deposited into the Magistrates Court records. No copies of the audio tape transcripts were ever provided to the Courts. No video tapes or audio tapes or transcripts of same were provided to the defence before the trial. The covering documentation for the tapes exhibited at committal was at best confusing, and at worst misleading. Tapes were listed by [REDACTED] in a list of exhibits by consecutive number and consecutive alphabetical letter only (names and dates were omitted) in the exhibit list (See Attachment 5). The names of the witnesses for the audio tape exhibits could only be linked to the respective eyewitness' names by a complicated and lengthy comparative exercise between the exhibit list and [REDACTED] 20-page statement.

No copies of the audio tape transcripts were ever provided to the Magistrates Court (or the District Court for that matter). The defence was not provided with either the videotape or audiotape recordings, or the transcripts prior to committal or trial. Along with many other prosecution documents prepared by [REDACTED], the video-recorded tapes became lost, and have never been found. The audio tapes were not in fact received by Mr Irving until he made an FOI request on 1999, some six years after the committal and trial.

It is submitted that [REDACTED] failed to disclose the various tapes and transcripts allegedly in order to avoid defence scrutiny. It was a simple matter (and consistent with proper disclosure requirements for committal) to provide the tapes and/or transcripts to Mr Irving and his defence lawyers. The inconsistency between the tapes and statements were effectively concealed by the failure to adequately identify and reference any tapes, or to provide any transcripts to the defence. It is a reasonable

[REDACTED]

hypothesis that [REDACTED] did so, in order to allegedly conceal the multitude of evidentially critical discrepancies between what the eyewitnesses said while they were being tape-recorded in the photoboard and shirt identification interviews, and what was contained in the eyewitness statements typed up by [REDACTED] for the eyewitnesses' signatures.

The matter of the provenance of the tapes should have been a red light for the CJC investigators, particularly having regard to the High Court's specific criticism of the specific absence of this evidence at trial that "material which is relevant to cross-examination of identification not in counsel's hands at the time that the trial starts".

In all the circumstances, with the documentation then available to the CJC, the comment that [REDACTED] actions "were responsible for Mr Irving's ultimate acquittal [sic]" serves only to underline how poorly the second CJC investigation was conducted, and such comment borders on stupidity.

Witness Statements: The re-interviews of the Eyewitnesses by [REDACTED] [REDACTED] in 1999.

When [REDACTED], despite the repeated objections of Mr Irving, referred Mr Irving's matter back to the CJC for a second investigation, [REDACTED] ignored obvious conflicts of interest, which became, as is below suggested, actual impropriety.

Chief among the improper processes in the second CJC interview was the alleged process by which the CJC allowed [REDACTED] of the [REDACTED] CIB to re-interview the eyewitnesses.

As head of the [REDACTED] [REDACTED] was in charge of major crime investigations in [REDACTED]. He was [REDACTED] superior officer when [REDACTED] worked at [REDACTED] from 1993 to 1994. Evidence suggests that [REDACTED], unlike many officers in the [REDACTED] formed a good working relationship with [REDACTED]. Although [REDACTED] had left the QPS by the time [REDACTED] was tasked by the CJC in relation to the second CJC investigation, there remained the possibility that [REDACTED] could be re-recruited at some future time. For instance, then Commissioner [REDACTED] wrote to former [REDACTED] in 1996 asking [REDACTED] to consider re-employment. If that event arose, both [REDACTED] would likely be aware that the outstanding CJC allegations of misconduct (and possibly criminal charges) would have to be dealt with prior to any re-engagement.

[REDACTED] interviewed all of the eyewitnesses but one (the witness [REDACTED] was never interviewed) who participated in the TROIs and signed statements typed for their signatures by [REDACTED]. Following these interviews, [REDACTED] prepared a report for the

[REDACTED]

CJC on the outcome of [REDACTED] investigation. [REDACTED] recorded the conversations and made transcripts from them. None of these documents were made known to Mr Irving following the second CJC investigation. The documents were obtained under discovery in 2020 during the series of civil trials of [REDACTED]

During each interview, [REDACTED] has shown, in most cases, an irrelevant (earlier) typed statement to the eyewitnesses. As an illustration, there were 4 documents created for the witness [REDACTED]

1. A statement taken the day after the robbery (20 March 1993) at [REDACTED] CIB, which referred to the robber: "I would say that he was about 6' tall, medium build, olive complexion, black hair, and I saw little curls at the base of his neck.
2. A transcript of the Photoboard identification Taped Record of Interview (TROI) dated 18 May 1993 (ie after Terry Irving was arrested and photographed)
3. A transcript of the Shirt Taped Record of Interview (TROI), also dated 18 May 1993.
4. A typed statement (called an "addendum statement") dated 24 May 1993 which purported to be a statement derived from the identification TROI interviews. This statement was given to each of the witnesses at some stage prior to trial as a "record" of their TROIs identifications.

At no stage did [REDACTED] put to this witness (or any of the others) the content of the typed statement which contained the firmed-up evidence, and ask the witness to compare it to the TROI. [REDACTED] asked the relevant witness whether [REDACTED] had coerced [REDACTED] in making his/her statement, to which the witness answered that [REDACTED] had not. In the example for [REDACTED] above, [REDACTED] showed [REDACTED] typed statement 1, but not [REDACTED] typed statement 4. It was a very limited exercise in evidence gathering.

[REDACTED] reported to the CJC in respect of the witness [REDACTED] that there was no "coercion by [REDACTED] or any other police officer" by the witness.

A similar process occurred in [REDACTED] interview with each of the six eyewitnesses [REDACTED] interviewed. At no stage did [REDACTED] put to any witness the content of the relevant typed statement (the document which contained the firmed-up evidence), and ask the witnesses to comment on the apparent inconsistencies when compared to the TROIs. Thus, each witness was allegedly never adequately questioned about the document which contained the firmed-up evidence.

[REDACTED] thus avoided any direct comparison of the source documents for the firmed-up evidence for each eyewitness. That is, [REDACTED] did not put to any witness questions along the following lines: "You said xxx during the photoboard TROI and the shirt TROI (here's the transcript), but you said xxx in your addendum statement (here's that statement). Why the difference?"

[REDACTED]

[REDACTED] interviews thus led away from the central matter in issue: What was it that caused each eyewitness to change their (at best equivocal) evidence from what they said on tape in the photoboard and shirt TROIs? And why and how had they subsequently allegedly firmed up that evidence to positively identify Irving as the robber in the typed statements that were prepared for their signatures by [REDACTED]. It is clear that [REDACTED] questioning of each witness was directed to the question of whether [REDACTED] had tried to influence or force the relevant witness to sign the statement. There were no questions directed to the content of the evidence each had given in the TROIs. It was a walk in the park, rather than a conscientious investigation, by a senior and experienced police officer.

Having constructed this foundation, [REDACTED] then duly reported to the CJC that

“The entire six persons interviewed claimed that there was no impropriety on the part of [REDACTED] or any other police officer in relation to the obtaining of the original statements or identifying any of the exhibits or the photoboard lineups “

On 16 August 1999, the CJC then duly reported to the Director General of Justice, [REDACTED] and Mr Irving , that there was no evidence of any criminal conduct by any police officer:

“All of the witnesses who were interviewed during this investigation recalled the circumstances of the taking of their statements. All of them denied any attempt by [REDACTED] or any other officer to influence the contents of their statements in any way. In light of that there is no evidence capable of supporting a reasonable suspicion that any conduct on [REDACTED] part, if proved, could constitute a criminal offence such as attempting to pervert the course of justice or perjury. Accordingly, the Commission has determined that no further action should be taken in relation to [REDACTED]”

The other matters raised by the High Court (with the exception of the explanation for [REDACTED]'s absence on the day of the trial) were ignored as issues for investigation by the second CJC investigation. Most importantly, the issue which had seemed to dominate the concern of first CJC investigation ([REDACTED] alleged misleading of the CJC in [REDACTED] various versions about dog hair on the clothing) was not even mentioned by the CJC in its letter to [REDACTED], or to Mr Irving.

Following receipt of the second CJC investigation Report in 1999, [REDACTED] refused to consider ex-gratia compensation on the basis that there had been no criminal conduct. The DPP was not consulted.

[REDACTED]

REQUEST TO [REDACTED] 2005

Mr Irving wrote to [REDACTED] in September 2005, seeking an ex-gratia payment.

[REDACTED] replied on 8 May 2006, as follows:

“Having considered the matters raised by you in recent correspondence and in the past, I am not satisfied that the investigating police or the prosecuting authority, the Director of Public Prosecutions, were guilty of on wrongdoing in the investigation and prosecution of your case which contributed in any material way to your conviction and imprisonment. Nor am I satisfied that there are any other exceptional circumstances in your case which might justify the making of an ex gratia payment to you.”

REQUEST TO [REDACTED] 2006

On 6 July 2006, Mr Irving wrote to Attorney-General [REDACTED] requesting the payment of compensation and the establishment of an independent Commission of Enquiry into Irving’s conviction and wrongful imprisonment.³⁹

On 17 June 2007 Mr Irving and Mr Michael O’Keeffe met [REDACTED] at a Community Cabinet meeting in Bowen. At that meeting, [REDACTED] asked Mr Irving for additional material.

On 22 August 2007, Mr Irving wrote to [REDACTED], enclosing the additional material requested by [REDACTED] e.

On 18.12.2007, Attorney-General [REDACTED] wrote to Mr Irving, stating that [REDACTED] would establish a judicial review of the matter.⁴⁰

On 11 January 2009, the *Brisbane Courier Mail* published a press report by political correspondent Darrell Giles entitled “Words are cheap in a battle for justice”. That press report stated:

“In September 2007, Attorney-General and Minister for Justice [REDACTED] agreed to an independent review of Irving’s case.

.....

[REDACTED] said he was impressed by evidence Irving had presented to him at a Community Cabinet meeting in Bowen the previous June, and in February

³⁹ Attachment 27: Letter from Michael O’Keeffe to the Queensland Attorney-General dated 6 July 2006

⁴⁰ Attachment 28: Letter from [REDACTED] Queensland Attorney-General dated 18 December 2008

[REDACTED]

2008, appointed retired Supreme Court judge [REDACTED] to review the case.

.....

[REDACTED] said [REDACTED] had finished his criminal justice review and would now start on the Irving case, with a report expected before July.”

REQUEST TO [REDACTED] 2009

In March 2009, [REDACTED] was replaced as A-G in unusual circumstances by his successor [REDACTED], who sat on the papers for nine months and then simply abolished the [REDACTED] inquiry. His abandonment of the [REDACTED] inquiry is set out in an article in the *Brisbane Courier Mail* published a press report on 3 January 2009 by Darrell Giles headed “No review after innocent man served four years for robbery”.⁴¹

On 21 December 2009, Mr O’Keeffe, on behalf of Mr Irving, received a letter from [REDACTED] stating that he would not be pursuing the judicial review agreed to by [REDACTED]. [REDACTED] stated:

I have also given serious consideration to your request for a review of the material, but I am not convinced that a review by a retired judge is the best way to reach earliest resolution of your claim for compensation. I am advised that in 1999 you instituted civil proceedings in the Supreme Court against two police officers and the State of Queensland, seeking damages.

On 22 December 2009, the *Townsville Bulletin* published a press report by correspondent Lendl Ryan entitled “*Wrongly accused robber told to sue for compo*”. That press report quoted [REDACTED] as saying:

"There is no evidence of wrongdoing on the part of the police or the Office of the Director of Public Prosecutions.”⁴²

In a subsequent press article in the *Brisbane Courier Mail* on 3 January 2010, [REDACTED] denied that [REDACTED] had ever established the inquiry by [REDACTED]

CONCLUSION

⁴¹ “No review after innocent man served four years for robbery”: By Darrell Giles *Sunday Mail*, Brisbane, 3 January 2010

⁴² “Wrongly accused robber told to sue for compo” *Townsville Bulletin* 22 December 2009, by correspondent Lendl Ryan.

[REDACTED]

This submission refers to improper CCC processes which have resulted in a major miscarriage of justice to Mr Irving. The lack of investigative capabilities has, in Mr Irving's case at least, been a material cause of extending his wrongful imprisonment by a period of 2 ½ years.

The submission also refers to allegedly improper CJC processes which permitted at least one senior Queensland police officer to be deputed to make inquiries on behalf of the CCC to investigate alleged crime and misconduct by another police officer in a serious case.

The Terry Irving cases demonstrates the frequent occurrence of inadequate and insufficient investigative capability over time within the CCC, in circumstances where evidence of serious crimes (eg perjury under the *Criminal Code*) are raised in allegations against serving Queensland police officers, where DPP involvement would appear to be required. There seems to be a lack of clear protocols between justice agencies as to when DPP assessment ought to be sought.

The Terry Irving cases highlights the relationship between the CJC and the DPP (or rather the lack of it). The use of serving police to investigate serious offences by other police (for example the possibility of a charge of perjury against [REDACTED]), was dealt with without any oversight or reference to the DPP. The matters raised by Mr Irving with the CJC were always serious matters – armed robbery under Section 124(2) of the *Criminal Code Act*, of which Terry Irving was wrongly convicted, is punishable by conviction for life⁴³. Section 124(2) of the *Criminal Code Act* also states that if a person commits the crime of perjury, “in order to procure the conviction of another person for a crime punishable with imprisonment for life, the offender is liable to imprisonment for life.”

The Office of the DPP is established with a high degree of independence from political or other interference. It is staffed by trained lawyers. In matters which are clearly very serious criminal investigations, there should at least be a consultative mechanism between the DPP and the CJC as to considerations of evidence involving allegations against police officers of serious criminal conduct, the identification and delineation of conflicts of interest, and related aspects of public policy.

It is arguably the case that establishment of this inquiry is intended to show that the Government is serious about corruption. That sentiment, if true, ignores the reality that successive Queensland Governments have failed to respond to significant recommendations of the previous Fitzgerald Royal Commission.

As one example, the 1989 Fitzgerald Report recommended the establishment of a Criminal Cases Review body (as exists in many comparable jurisdictions) to deal with

⁴³ Under s.411(2) of the *Criminal Code Act* 1899.

[REDACTED]

the over-representation, particularly of innocent indigenous persons (Terry Irving is an indigenous Australian), in prisons, poor police and prosecution practices, and the general plight of those wrongly convicted.

Successive Queensland governments have failed to honour a promised Remediation of Miscarriages of Justice Unit (RMJU), but broke that promise. Hede *et al* said in 1992 (that is the year before Mr Irving was wrongly arrested and convicted) :

“The present Government has persistently promised a Remediation of Miscarriages of Justice Unit (RMJU), but recently shelved the recommendation and threw the issue in the CJC’s direction. This is totally unacceptable and totally insensitive to the victims of Queensland’s police state” ⁴⁴

Nothing has happened since.

Had a RMJU been established following the 1989 Fitzgerald Report, Mr Irving’s claims (if genuinely investigated) may also have resulted in his earlier release from prison than 1997.

The lack of legislative authority to deal with alleged misconduct by police officers if they resign from the QPS.

This practice was an issue in Mr Irving’s case. [REDACTED] was allowed to resign, and received a workers compensation payment of \$100,000, plus a superannuation pension. Mr Irving got 4 ½ years in prison and 25 more years of financial poverty, societal disgrace, unemployment and serious health issues, for something he didn’t do.

This issue of non-accountability for misconduct is the subject of much previous criticism, and that criticism has been in existence for decades. An example is contained in an article in the Courier Mail dated 26 April 2002, headed “Culprits quitting to elude charges”, which states in part:

“CULPRITS QUITTING TO ELUDE CHARGES

“The law allowed police and public servants to be pursued on misconduct allegation charges only while they were still employed by the Government. About 480 police and public servants were thought to have fled their jobs to avoid punishment for misconduct between 1990 and 2000.” ⁴⁵

On April 25 2002, it was reported:

⁴⁴ Hede, Andrew, S Prasser and M Neykan, “Keeping Them Honest: Democratic Reform in Queensland”, 1992, UQP, St Lucia, p 117.

⁴⁵ Culprits Quitting To Elude Charges, *Brisbane Courier Mail*, dated 26.04.02, p2.

[REDACTED]

“Premier Beattie said yesterday the issue was complex but still under consideration.”

Nothing has happened since.

An integrity commission without integrity is a recipe for ongoing unchecked corruption. Public confidence in the institutions of justice is damaged by poor performance by integrity commissions. Corruption investigation is admittedly a difficult matter, but CJC officers’ decisions need to be sound, as they are relied upon by other justice agencies. In the disposition of Mr Irving’s repeated requests for release from prison, and later for restitution, improper CJC findings were erroneously relied upon in decisions made by successive Attorneys General, Crown Law and other agencies, to the detriment of Mr Irving’s liberty and financial restitution, and are still being relied on to the detriment of Terry Irving to this day.

[REDACTED]

Michael O’Keeffe
Retired Lawyer

[REDACTED]

27 March 2022

ATTACHMENTS

- 1 Correspondence from Mr Irving to the CJC dated 20.07.94 and 20.02 95
- 2 Correspondence from the CJC to Mr Irving dated 26.04.95
- 3 Correspondence from the CJC to Deputy Commissioner [REDACTED] dated 26.04.95
- 4 Correspondence from the CJC to Mr Irving dated 16.08.99



- 5 Index to QPS Brief for Mr Irving's Committal dated 13.07.93
- 6 Press Article "Culprits Quitting To Elude Charges", *Brisbane Courier Mail*, dated 26.04.02, p2.

Reg. No 94/7/151

RECEIVED

CJC CLASSIFICATION

COPY

- () Sensitive
- () Confidential
- () Restricted
- () Unclassified



Terry IRVING

Criminal Justice Commission
P.O. BOX 157
NORTH QUAY. Q. 4002.

Dear Sir,

Re; Regina -v- IRVING

I wish to draw your attention to the impropriety & misconduct
of several Queensland Police Officers, namely;

The above mentioned officers have perverted the course of
Justice, in that they lied under oath, misrepresented evidence
& abused their Police powers.

I hereby call upon your office to conduct a full review of all
procedures employed in the above mentioned matters & also in
the following specific instances.

- i) [redacted] did breach the Oaths Act when preparing a
Form III, Section 259 Warrant. In this warrant the detective
stated in paragraph (ii)

"That there are reasonable grounds for believing that the
doing of the acts specified below may afford evidence of
the commission of the said offence/s, the said grounds
being:-

The person IRVING is in custody charged with the above
matter. Clothing used during the commission of the offence
has been located by Police. Amounts of hair are contained
throughout that clothing and they have been taken by
possession of by the Police. These samples are required
for comparison to those found on that clothing."

When questioned by Defence Counsel in relation to these
alleged "samples" [redacted] at the Committal Hearing
on 26.10.93 stated, again under oath:-

"No, no there were no samples located."

- ii) Statements obtained from Bank staff & presented in the
initial brief, show that the Oaths Act requirement, had been
signed on 20th March, 1993. These same signatures were counter-
signed by a Justice of the Peace on 24th May, 1993.

When questioned by Defence Counsel in relation to this unusual
practice, [redacted] at the Committal Hearing on 26.10.93.
stated the reason was:-

"There was no-one in the office that day."

In relation to [REDACTED] it is alleged this Officer has also given false evidence under oath on numerous occasions at both the Committal Hearing, 26.10.93 & the Trial, 08.12.93.

I have been informed by solicitor [REDACTED], of Bowen & Lagois, Solicitors, [REDACTED] that she received statements from a [REDACTED] a [REDACTED] that suggest this two people were harassed & intimidated by [REDACTED] in an attempt to || pervert the course of justice.

I have in my possession documents which support my allegations & I am willing to provide these to your Officers to validate these & several other instances of impropriety.

These matters have been raised with the Attorney-General's || Office, The Office of The Ombudsman, The Director Legal Aid.

I intend to raise them also with the Queensland Law Society.

Yours Sincerely,

[REDACTED]
Terry Irving
20.07.94.

CJC CLASSIFICATION

- () Sensitive
() Confidential
() Restricted
() Unclassified

RECEIVED
16 FEB 1995

10th February, 1995.

Criminal Justice Commission
P.O. Box 137
Albert Street,
BRISBANE. 4002.

your ref: 502/04/16/238 MJS:lmj

Dear Sir,

RE: MY COMPLAINT

COMPLAINTS REGISTRY,

PLEASE ATTACH TO FILE
AND MARK TO ACTION
OFFICER.

16/2/8

I acknowledge receipt of your letter dated 2nd February, 1995.

I thank you for allowing me an extension of time to prepare a further submission relevant to my initial complaint against

Matters for examination in relating to misuse of Police powers should include:

1. Consistent breaches of the Oaths Act by [redacted] ie:

1) In applying for a Form 111, Section 259 search warrant from [redacted] in [redacted] Magistrates Court. [redacted] did deliberately mislead [redacted] in stating under oath that body samples were located on clothing allegedly worn during the commission of the offence.

[redacted] (again before [redacted]) stated under oath on the 28th October 1993 at Committal proceedings (see transcripts) that:

"no samples were located on any clothing"

2. The Form 111, Section 259 warrant was obtained in relation to a charge of Accessory to Armed Robbery yet was tendered as an exhibit in relation to the charge of Armed Robbery.

3. The bench warrant issued in relation to the charge of Armed Robbery was invalid and improper in that it stated ONE teller was robbed of the total amount whereas evidence from the tellers and the bank's accountant indicates TWO tellers were robbed of the total amount taken?

4. Under oath at Committal proceedings [redacted] stated that until advised by the staff of [redacted] on the 28th May 1993, the police had no idea that Australia Post Staff, [redacted] and [redacted] had any evidence to assist in police inquiries.

This contradicts earlier evidence given by [redacted] Cooper and Gough that all the news people and reporters at the vicinity were questioned at the time of the offence.

9

As well, testimony supplied in the initial brief prepared by [redacted] shows statements by [redacted] and [redacted] made on the 19th and 20th March, 1993, stating that they gave [redacted] a [redacted] to [redacted] who was on the telephone [redacted] police, reporting events!

5. In preparing the Initial Brief statements, [redacted] arranged for statements made on the 19th and 20th March 1993, to be witnessed by [redacted] on the 24th May 1993.

Included in these alleged statements all witnesses give a 'revised' and identical description of the alleged offender. I draw your attention to the descriptions given in the media releases by [redacted] in the weeks following the offence.

No I allege that the descriptions in the witnesses statements in the initial brief were doctored and changed by Detectives [redacted] to more closely match my own description. The statements prepared by these officers for the JP to witness would vary considerably from those given and taken down in police notebooks at the time of the offence!

6. [redacted] stated on oath that the photograph used in preparing the 'photo identification board' was shown to [redacted] by [redacted] prior to my arrest on the 17th May, 1993. X *cf his actual evidence*

Where is affidavit? This is a lie! The photo used in the photo i.d. board is one that was taken in [redacted] watchhouse at the time of my arrest. This can be confirmed by comparing the photo on the i.d. board with the one on my file in [redacted] watchhouse as well as checking the photo [redacted] allegedly faxed to local bank managers. I also have in my possession an affidavit by [redacted] attesting that the photo used in the photo i.d. board is definitely not the same photo [redacted] had given to [redacted] during their investigation of [redacted] in March 1993! So what.

7. I allege that [redacted] did not follow proper police procedures during the examination of witnesses while conducting the viewing of the photo i.d. board, in that:

i) the detective personally conducted ALL the interviews with the witnesses.

ii) [redacted] cautioning of witnesses was prejudicial to myself.

iii) the photo i.d. board represented was biased against me as I am the only person represented on the board with long hair!

iv) witnesses were known intimates yet were not cautioned against discussing matters amongst themselves (admitted by witnesses in court transcripts)

v) the staggered viewings, 14th May, 18th May and 1st June and the non-rotation of my photo allowed for admitted collusion of witnesses to have a detrimental effect.

no such admission

8. [redacted] at my trial on the 8th December, 1993 read from [redacted] notebook to the jury a statement allegedly made by [redacted] that "the offender was seen to get into the back seat of your car. This statement was admitted to be false by [redacted] at the Committal hearing on 26th October 1993.

Therefore a blatant lie told by [redacted] while under oath!

9. [redacted] at my trial on the 8th December, 1993 stated that [redacted] was unable to attend Court due to undergoing an operation that day. (see transcripts). The following day His Honour Judge White referred to [redacted] pursuing the clerk of the court from the courtroom?

Was [redacted] in hospital that day being operated on or was [redacted] again lying?

Dear Sir,

I ask that these additional allegations be fully investigated by your office.

I also ask that your office send all correspondence via my solicitor, Mr. Michael O'Keefe,
c/- Legal Aid Office, [redacted] 4810.

The reason for this is the continual breach of Regulations concerning the opening of legal mail at this Centre!

Yours faithfully,

[redacted]
Terry Irving
10th February, 1995

11

ATTACHMENT 2



))

))

Our Ref.: 502/04/16/238 MJS/lmj
Contact Officer: [REDACTED]

██████████ QLD ██████████

[illegible]

proposed obtaining from you) are required for comparison to those found on the clothing.

The Commission notes that the application inter alia related to the taking of samples of your hair.

The Commission further notes that the following evidence was given by [REDACTED] under cross examination at your committal hearing:-

Now the approval for the examination under the Criminal Code, that's been tendered-----?-- Yeah.

-----now, it's correct to say that approval was obtained when he was charged with being an accessory to the crime?-- Yes.

That's correct. Okay. And that subsequent to those samples being taken, he was charged with armed robbery, is that correct?--- Yes.

And did you get any results from those samples or have you got any results?-- No, there was nothing on the clothing after it was examined.

And how do you say that those samples were relevant to the accessory charge?-- Well in relation to the shirt, any sweat or hair or anything like that, that would have been found on the hair (sic) would have been useful to compare with the samples.

[REDACTED] was interviewed in respect of the matter and stated that [REDACTED] observed what [REDACTED] believed to be hair on a pair of trousers and on a shirt found amongst a bag of clothes located in your possession. [REDACTED] stated that [REDACTED] was unable to say what type of hair was on the clothing. However, suspecting that the hair was human hair, [REDACTED] then determined to make an application under section 259 of the Criminal Code to obtain samples of your hair for the purposes of a scientific comparison. [REDACTED] recollection was that [REDACTED] was initially proposing to send the material to Brisbane for examination. However, [REDACTED] first spoke to the local scientific officer of police who told [REDACTED] that the hair on the clothing was dog hair and for this reason the material was not in fact sent to Brisbane for full examination.

Having regard to the statement made by [REDACTED] at your committal hearing that there was nothing on the clothing after it was examined, the Commission has sought to re-interview [REDACTED] to clarify the matter. Unfortunately [REDACTED] commenced extended sick leave subsequent to the initial interview and it has not been possible to re-interview [REDACTED]. However, the Commission is of the view that the matter does not reasonably raise a suspicion that [REDACTED] was being deliberately untruthful in [REDACTED] evidence, such as would warrant consideration of criminal charges against [REDACTED]. Rather the Commission has referred the matter to the Police Service for further investigation and possible disciplinary action against [REDACTED] in the event that [REDACTED] returns to duty.

(1) That statements obtained from bank staff forming part of the brief of evidence against you were lawfully sworn before a Justice of the Peace.

You allege that statements obtained from bank staff contained in the initial brief of evidence were dated 20 March 1993 but were not signed in the presence of a Justice of the Peace until 24 May 1993.

██████████ evidence in respect of this matter at the committal proceedings was as follows:-

I noted that the statements by the tellers, they appear to be witnessed on the same day. That is whether they've made one statement or whether they've made three. It seems to be the day that - of the photo identification. Can you tell me why that was?-- Because we didn't have a Justice of the Peace at the office at the other time.

The Commission has obtained copies of the statements in question and notes that in the case of several bank employees, although the statements are dated 20 March 1993, they were actually sworn by the relevant witnesses before a Justice of the Peace on 24 May 1993.

The Commission is aware that it is a common occurrence for a variety of reasons that witnesses are not asked to swear their statements before a Justice of the Peace on the date that the statement is initially taken from them by police. The Commission considers that there is no impropriety in not having a statement sworn on the date that it is taken. The Commission is therefore of the view that the matter does not reasonably give rise to a suspicion of misconduct or of a breach of discipline on ██████████ part.

(iii) That ██████████ harassed and intimidated possible defence witnesses named Moon and Parker in an attempt to pervert the course of justice.

You allege that you were informed by your former solicitor ██████████ that ██████████ received statements from a ██████████ and a ██████████ suggesting that these two persons had been harassed and intimidated by ██████████ in an attempt to pervert the course of justice.

The Commission has contacted ██████████ in respect of the matter. ██████████ denied having taken any statement from ██████████ or of having any conversation with ██████████ in connection with the matter. ██████████ further stated that ██████████ had taken a statement from ██████████ in which ██████████ had stated that ██████████ could recall you being at a hotel in Cairns during certain hours. However, Ms ██████████ later told ██████████ that ██████████ had been speaking to ██████████ who told ██████████ that ██████████ would have to be absolutely sure that the evidence ██████████ gave was correct otherwise ██████████ could be charged with perjury. As a result ██████████ indicated that ██████████ was no longer prepared to give evidence on your behalf.

██████████ was subsequently interviewed by Commission investigators. ██████████ stated that subsequent to a conversation with a ██████████ person concerning your predicament, ██████████ was contacted by your solicitor and an alibi statement was prepared suggesting that you were seen drinking at the hotel at which ██████████ worked at the time of the offence with which you were charged. ██████████ stated that ██████████ decided not to sign the statement as ██████████ knew that it was wrong. ██████████ furthermore stated that ██████████ had no complaint to make in relation to harassment or intimidation from ██████████ and commented that ██████████ treated ██████████ with respect and in a professional manner at all times.

The Commission is therefore of the view that this allegation has not been substantiated.

- (iv) That a warrant under section 259 of the Criminal Code was obtained in relation to a charge of being an Accessory to Armed Robbery yet was tendered as an exhibit in relation to a charge of Armed Robbery.

██████████ stated when interviewed that at the time of seeking an order under section 259 of the Criminal Code, you were suspected of being an Accessory after the Fact to the armed robbery of the ANZ Bank at Portsmouth on 19 March 1993. Subsequent investigations suggested that you were in fact the principal offender in respect of the robbery, as a result of which you were then charged with the offence of Armed Robbery.

The Commission is of the view that this matter does not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of any police officer.

- (v) That the section 259 warrant was invalid and improper in that it stated that one bank teller was robbed whereas the evidence led at your trial was to the effect that two tellers were robbed of the total amount allegedly taken.

You suggest that the section 259 warrant was invalid and improper in that it stated that one bank teller was robbed of the sum of \$6,100 whereas in fact the evidence led by the prosecution was to the effect that two bank tellers were robbed of this total amount.

The Commission is of the view that this matter does not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of any police officer.

- (vi) That ██████████ falsely swore at your committal hearing that police were initially unaware that several witnesses were able to assist in their inquiries.

You allege that ██████████ gave evidence at your committal hearing that until advised by the staff of ██████████ on 28 May 1993, the police had no idea that Australia Post employees named ██████████ were able to assist in police inquiries. You have suggested that this contradicted earlier evidence given by ██████████ and other police officers named ██████████ that all business people and residents in the vicinity were questioned on the date of the offence.

The Commission has examined the transcript of the committal proceedings and notes that ██████████ gave the following evidence in respect of the matter:-

And what about the post office people, ██████████? When did they first make a statement?-- It was sometime afterwards.

Well, I think you've said on 1 June you spoke to them and showed them the photo board?-- What happened was that the day the door knock was being conducted of the area and I wasn't aware at that stage, that they had actually seen anything and it was only after the ██████████ had been in, they then told me that, well suggested I should talk to the post office staff.

Upon a review of the material, the Commission is unable to discern any statements made by any

police officer involved in the investigation that is logically inconsistent with [REDACTED] evidence that [REDACTED] was unaware that the two Australia Post employees were able to be of assistance in the matter at the time of initial inquiries in relation to the matter.

The Commission is therefore of the view that this matter does not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of any police officer.

- (vii) That the statements of the identification witnesses contained revised and identical descriptions of the alleged offender and that these revised descriptions were fabricated by [REDACTED] to more closely match your own description.

You allege that the descriptions of the offender in the witness statements contained in the initial brief of evidence were doctored and changed by [REDACTED] to more closely match your own description. The Commission notes that you have provided no evidence in support of this allegation. Furthermore, the Commission observes that the witness statements in question were sworn to be true and correct by the witnesses concerned before a Justice of the Peace.

The Commission is of the view that the proper forum for such an allegation to be made was at your trial, at which time you were represented by counsel acting on your instructions. However, the Commission notes that none of the matters which you now allege were put by your lawyer to investigating police at that time. The Commission can not act in substitution for an appellate court and in the absence of cogent evidence suggesting that [REDACTED] deliberately fabricated evidence, it is of the view that this matter does not reasonably raise a suspicion of misconduct or of a breach of discipline on their part.

- (viii) That [REDACTED] falsely swore at your committal hearing that the photograph of you used as part of the photo identification board was shown to [REDACTED] by [REDACTED] prior to your arrest on 17 May 1993.

You allege that [REDACTED] stated on oath that the photograph of you included in the photo identification board was shown to [REDACTED] by [REDACTED] prior to your arrest on 17 May 1993. You suggest that this evidence was untrue because the photograph of you contained on the photo identification board was one that was taken in the [REDACTED] watchhouse at the time of your arrest.

The Commission notes that the evidence of [REDACTED] at your committal hearing in this regard was as follows:-

Do you know if those photos were the same ones that were used in the photo board, at all? Have you seen the photo board?-- It was shown to me at one stage, but look I can't recall. I don't know what photos [REDACTED] showed me now. Look I really - I don't know what photos it was showed.

Perhaps if you were shown the photo board, you could just say whether you'd seen those ones before?

Exhibit 13.

U

[REDACTED] *I think it's number 7, if I'm right?-- Yeah, I've seen this.*

Now was that the photo you were shown of Mr Irving?-- Well not - I don't think it was in that form.

Right?-- Cut out like that.

Was it the same or similar?-- I'd have to say yes, I suppose, yeah. Yeah, that's what - I'm going on recollection here, you realise.

Having regard to the above extract, the Commission is of the view that you have overstated [REDACTED] evidence on the point. It is apparent from the above quote that [REDACTED] was at pains to emphasise that [REDACTED] was unaware what particular photos were shown to [REDACTED] by [REDACTED]. When pressed on the point by your counsel, although [REDACTED] answered affirmatively that the photo shown to [REDACTED] by [REDACTED] was the one included on the photo board, [REDACTED] qualified [REDACTED] answer by stating that [REDACTED] was relying purely on [REDACTED] recollection of the matter.

The Commission is of the view that this allegation does not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of [REDACTED]

(ix) That [REDACTED] did not follow proper police procedures in relation to the use of the photo identification board to obtain identification evidence against you.

You allege that [REDACTED] did not follow proper police procedures during the process of showing the photo board containing your photograph to the various witnesses to the armed robbery in the following specific respects:-

- (i) The detective personally conducted all the interviews with the witnesses.
- (ii) [REDACTED] cautioning of witnesses was prejudicial to you.
- (iii) The photo board was biased against you as you were the only person shown thereon with long hair.
- (iv) The witnesses were not cautioned against discussing matters between themselves.
- (v) The viewing of the photo board by the several witnesses was staggered and your photograph was not rotated on the photo board, with the effect that witnesses then had the opportunity to collude against you.

The Commission is of the view that the appropriate forum in which to have raised these issues was at your trial, but notes that your counsel did not seek to raise these issues at that time. As previously noted, the Commission can not act in substitution for an appellate court. In relation to allegation (iii) above, the Commission has obtained and viewed the twelve photographs contained on the photoboard in question, and notes that numerous persons whose photographs were used on the photoboard had long hair. The Commission has not discerned any unfairness in the manner of the photoboard's compilation, and is therefore of the view that this allegation has not been substantiated. The Commission is of the view that the remaining matters do not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of [REDACTED]

- 7 -

- (x) That at your trial [REDACTED] gave false evidence in reading an entry from [REDACTED] notebook recording an alleged statement by [REDACTED] which statement had been admitted by [REDACTED] to be false at your committal hearing.

You allege that at your trial on 8 December 1993 [REDACTED] read from [REDACTED] official police notebook a statement allegedly made by [REDACTED] that: "the offender was seen to get in to the backseat of your car". You have further alleged that this statement was admitted to be false by [REDACTED] when [REDACTED] gave evidence at your committal hearing on 26 October 1993. You further allege that [REDACTED] therefore told a blatant lie whilst under oath.

The Commission notes that the statement of which you have complained was given in evidence by [REDACTED] when [REDACTED] was relating to the court a conversation allegedly had between [REDACTED] and you at [REDACTED] on 17 May 1993, which conversation was shortly thereafter recorded in [REDACTED] official police notebook. [REDACTED] evidence was that the statement in question was put to you in the course of this conversation. The Commission also notes that it was not suggested by your counsel to [REDACTED] that this statement was not made to you in the course of the conversation at [REDACTED]. The Commission further observes that [REDACTED] was merely seeking to relate the conversation that occurred with you and was not giving evidence as to the truth or otherwise of the statement in question. Finally, the Commission is unable to discern any admission by [REDACTED] at your committal hearing to the effect that the statement in question was false, as you have alleged.

The Commission is therefore of the view that this matter does not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of [REDACTED].

- (xi) That [REDACTED] falsely swore at your trial that [REDACTED] was unable to give evidence because [REDACTED] was undergoing an operation on that day.

You have alleged that [REDACTED] gave evidence at your trial that [REDACTED] was then unavailable because [REDACTED] was undergoing an operation, whereas the transcript suggests that [REDACTED] was in fact in the precincts of the court on the following day.

The Commission notes that [REDACTED] was asked the following question at your trial:-

[REDACTED] is [REDACTED] having an operation or something today?--
That's correct yes.

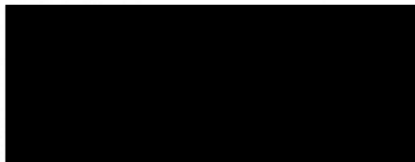
The Commission also notes that in the course of your sentencing on the following day the trial judge made reference to [REDACTED] having just left the court.

The Commission is of the view that this matter does not reasonably raise a suspicion of misconduct or of a breach of discipline on the part of [REDACTED].

- 8 -

For the reasons given above the Commission proposes no further action in relation to your various complaints.

Yours faithfully



Acting Chief Officer
Complaints Section
Official Misconduct Division



CRIMINAL JUSTICE COMMISSION

Professional Standards Unit

N/R

28 APR 1995

Telephone: (07) 360 6060

Facsimile: (07) 360 6060

Reference Number

Your Ref.:

Our Ref.:

502/04/16/238 MJS/lmj

Contact Officer:

26 April 1995

PRIVATE AND CONFIDENTIAL

Deputy Commissioner [REDACTED]
Queensland Police Service
100 Roma Street
BRISBANE QLD 4000

ATTENTION: [REDACTED]

Dear Sir

RE; COMPLAINT OF TERRY IRVING AGAINST [REDACTED]
[REDACTED] AND [REDACTED]
[REDACTED]

The Commission is in receipt of a complaint from the abovenamed person alleging various improprieties on the part of the abovenamed police officers relating to the matter in which they investigated an armed robbery in Cairns in 1993 of which the complainant was subsequently convicted. In addition the complainant alleged that the abovenamed police officers gave false evidence in various respects either at his committal hearing or at his subsequent trial.

The complaint has been investigated by the Commission and on the basis of matters raised in the course of the investigation, the Commission is of the view that insofar as the complaint is directed against [REDACTED] the matter has not been substantiated.

It therefore recommends that no reference to the matter, adverse to [REDACTED] be made upon his file.

A specific allegation made against [REDACTED] was that [REDACTED] made a sworn statement in support of an application for the complainant's examination pursuant to section 259 of the Criminal Code that was inconsistent with [REDACTED] subsequent evidence at the complainant's committal hearing concerning whether any hair samples were located on items of the complainant's clothing seized by police.

The Commission notes that in [REDACTED] sworn application for the section 259 warrant [REDACTED] relevantly stated:-

- 2 -

The person Irving is in custody charged with the above matter. Clothing used during the commission of the offence has been located by police. Amounts of hair are contained throughout that clothing and they have been taken possession of by police. These samples are required for comparison to those found on the clothing.

The Commission notes that the application inter alia related to the taking of samples of the complainant's hair.

The Commission further notes that the following evidence was given by [REDACTED] under cross examination at the complainant's committal hearing:-

Now the approval for the examination under the Criminal Code, that's been tendered-----?-- Yeah.

-----now, it's correct to say that approval was obtained when he was charged with being an accessory to the crime?--Yes.

That's correct. Okay And that subsequent to those samples being taken, he was charged with armed robbery, is that correct?---Yes.

And did you get any results from those samples or have you got any results?-- No, there was nothing on the clothing after it was examined (emphasis added).

*And how do you say that those samples were relevant to the accessory charge?--
- Well in relation to the shirt, any sweat or hair or anything like that, that would have been found on the hair (sic) would have been useful to compare with the samples.*

[REDACTED] was interviewed in respect of the matter and stated that [REDACTED] observed what [REDACTED] believed to be hair on a pair of trousers and on a shirt found amongst a bag of clothes located in the complainant's possession. [REDACTED] stated that [REDACTED] was unable to say what type of hair was on the clothing. However, suspecting that the hair was human hair, [REDACTED] then determined to make an application under section 259 of the Criminal Code to obtain samples of the complainant's hair for the purposes of a scientific comparison. [REDACTED] recollection was that [REDACTED] was initially proposing to send the material to Brisbane for examination. However, [REDACTED] first spoke to the local scientific officer of police, [REDACTED] who told [REDACTED] that the hair on the clothing was dog hair. For this reason the material was not in fact sent to Brisbane for full examination.

The Commission has twice interviewed [REDACTED]. However, [REDACTED] denied examining any clothing at [REDACTED] request that was suspected of having been worn during the armed robbery with which the complainant was charged (as opposed to clothing examined in relation to the armed robbery of another bank for which the complainant was a suspect).

Having regard to [REDACTED] evidence at the committal hearing and to the account of [REDACTED] the Commission has sought to re-interview [REDACTED] to clarify the matter. Unfortunately [REDACTED] commenced extended sick leave subsequent to the Commission's initial interview of [REDACTED] and it has not been possible to re-interview [REDACTED]. However, the Commission is of the view that the

- 3 -

matter does not reasonably raise a suspicion that [REDACTED] was being deliberately untruthful in [REDACTED] evidence, such as would warrant consideration of criminal charges against [REDACTED]. The statement made by [REDACTED] in evidence would appear to be ambiguous and it may be that [REDACTED] has unwittingly misled the court by failing to give an adequate answer or explanation to the question asked of her. The Commission has therefore determined to refer the matter to the Police Service for further investigation and possible disciplinary action against [REDACTED] in the event that [REDACTED] returns to duty.

The Commission has determined that the remaining allegations against [REDACTED] have not been substantiated.

For your assistance I enclose the following material:-

- (i) [REDACTED] application under section 259 of the Criminal Code dated 19 May 1993.
- (ii) Transcript of [REDACTED] evidence before Cairns Magistrates Court on 26 October 1993.
- (iii) Statement of [REDACTED] dated 28 November 1993.
- (iv) Transcript of interview of [REDACTED] dated 25 October 1994.
- (v) Transcript of interview of [REDACTED] dated 29 November 1994.
- (vi) Summary of interview of [REDACTED] dated 24 March 1995.

Kindly advise the Commission of the outcome of any disciplinary action taken in this matter.

Yours faithfully

[REDACTED]
Acting Chief Officer
Complaints Section
Official Misconduct Division

Encl.

3
ATTACHMENT 3

Michael O'Keefe

21 December 1998

[REDACTED]
Attorney General and Minister for Justice
State Law Building
GPO Box 149
BRISBANE QLD 4001

Dear Attorney,

TERRY IRVING

Terry Irving has passed to me your fax of 18 December 1998, and asked me to thank you for that fax and to reply on his behalf, as his attorney. I might also take the opportunity to thank you for your letter of 12 November 1998 in reply to previous correspondence from Terry Irving, myself, and [REDACTED] to you or Agencies within your portfolio responsibility.

Terry has considered the matters raised in both your letters carefully. We note that you have stated that you consider the issues raised by Terry's case to be of the utmost importance. We also note that you have on no less than three occasions in your letter stated that various processes will be dealt with "as soon as possible".

Our difficulty with your response is that we have so little other detail, and some of the processes you speak of are, with respect to your advisers, seemingly misdirected. Your letter, while long on sentiment, is short of recognition of many of the most important specifics raised with you in previous correspondence. When taken as a whole against the history of delay and inaction in the handling of the four critical issues in this case since the end of the High Court proceedings over a year ago, your letter does not instil us with confidence.

We earnestly hope to continue a level of liaison with your office. We would, however, respectfully ask that you now acknowledge that some of the threshold issues involved will be addressed. We do so in an attempt to alleviate some of the very real anguish caused by recent probably well-intentioned but misdirected attempts to achieve a resolution of the four issues which we have raised with your office. We will be frank and candid about our concerns.

We ask you to reassess several key decisions you have taken. We feel that after you have heard our concerns you will have no trouble in coming to the view that these decisions need reassessment. We ask you also to recognise our deep concern at the way Mr Irving has been treated by the State of Queensland since 1993.

I should acknowledge that there has been some movement on the four issues raised in our previous correspondence with you. While we acknowledge that it was a welcome relief that the Director of Public Prosecutions advised Terry's solicitor in October that the Director proposed to discontinue the criminal proceedings, your Department's contribution to other progress has been, in large part, disappointing. For the sake of completeness (and you will forgive me for being tedious, but like you, I am concerned to ensure that you have all the facts), the four issues are listed below.

First Issue

We are grateful for your intervention in relation to the Director's notification of intention to discontinue the criminal proceedings. I might also add that the Director himself had the courtesy to personally call [redacted] (Terry Irving's criminal law solicitor) on 1 October to advise of his decision. That said, the Director's decision was inexcusably late, having regard to the time elapsed since the High Court decision, and the time elapsed in response to representations to his office. It is still the case that the Director has not got around to filing the nolle prosequi (and thereby formally terminate the proceedings and release Terry from his present bail conditions), but in terms of Terry's priorities in relation to the Commission of Inquiry and compensation issues, we are not complaining about this technicality. We accept the Director's decision will in due course be formalised and made known to the Court, and that in practical terms, his current bail conditions are, since the Director's decision of 1 October, effectively otiose. It may, however, be useful if you could see your way clear to give him a gentle reminder to file the nolle and let Terry's criminal solicitor know.

Issue 2

Your officers handled issue 2 with a singular lack of distinction: that is, the issue of the setting aside of the Criminal Injuries Compensation Orders made in 1995 in favour of [REDACTED]. Despite the early and very specific written alerts provided to you in my letters of 6 July 1998 and 14 September 1998 that there would be significant distress caused to these three [REDACTED] unless your Department intervened administratively, the [REDACTED] were compelled to go to Court on 30 October and 6 November 1998 and suffer the manifest distress, humiliation expense and inconvenience of several appearances in the District Court in Cairns. These are not wealthy [REDACTED]. They feared they would have to pay back their compensation. They had to take time off work. One member of the victim's family was extremely distressed on 30 October outside the Court. Your Department's inability to act in a timely way to contact either the three tellers, their families or Terry did nothing to alleviate that distress.

Your letter of 12 November states that "If the Court orders that compensation to the victims are vacated, the victims will retain their entitlement to ex gratia payment". In fact, by the time you wrote this letter, His Honour Judge Daly of the District Court in Cairns had already finalised the matter (on 6 November 1998), a fact about which you were obviously unaware. Your Department was in a good position to have moved to contact the three tellers and Terry, and assist the smooth passage of this issue. Instead Terry and the [REDACTED] all turned up in Court, anxious, upset and, above all unassisted. We have no idea how much it cost them in lost work time, in legal fees etc. You might also appreciate that Terry had to run his own case at his own expense and inconvenience, a multitude of paperwork, costs of service, attendances at Court. By writing to you as we did, Terry and I believed that you would take appropriate steps to avoid the embarrassment and sadness (and costs) for these [REDACTED] and Terry. Sadly we were mistaken. Attorney, it was all over by the time you got around to sending your first letter!!

Third Issue

I turn now to the third issue, that of the claim for criminal injuries compensation for Terry Irving's long period of wrongful imprisonment. You stated in your letter of 12 November to me that the question of compensation must await the outcome of a CJC Enquiry into possible misconduct of as yet unstated officials. This decision, which you say was taken on advice, is deeply disturbing, and Terry Irving and I sincerely hope, capable of immediate correction. We are at a complete loss to understand your advisers' thinking in this regard, and ask you please to not further delay Terry's compensation for wrongful imprisonment.

The approach you have taken ignores humanitarian concerns, is legally insupportable, and in our view serves no purpose other than to delay the payment of compensation on just terms to this man who has suffered enough already at the State's hands.

In the first place, the CJC should not be further dealing with this matter. My letter of 6 July specifically sought that an independent Commission of Enquiry be established. That request was made bypassing the CJC deliberately, because the CJC has already informed Terry that it has no jurisdiction to deal with the question of misconduct against the principal police officer concerned. [REDACTED]

[REDACTED] wrote to Terry on 27 August 1997, and informed Terry that the question of disciplinary proceedings could not be pursued for jurisdictional reasons. By all means, if you feel it necessary, ask the CJC to look at some matters relevant to your portfolio responsibilities, but in so doing, please do not delay Terry's compensation on just terms, nor substitute the CJC for a proper Commission of Enquiry.

As a threshold natural justice issue, it is inappropriate that the CJC look at the matter again when it has already said it has no jurisdiction. It is grossly unfair to Terry that you determine for no substantial reason that he must await the outcome of deliberations of an agency which has already decided it is not able to do anything. It is even more disturbing to realise that your reference to the CJC (which we must assume was timely and took place some time ago) has not been followed up by a prompt response from the CJC that it has already looked at the matter and has found, as a threshold issue, that it has no jurisdiction. Rather than instil confidence, the inescapable conclusion for us is that our papers have been sitting on a desk somewhere, awaiting attention.

Secondly, the existence or degree of misconduct of public officials is not a relevant factor in determining liability for the State to pay compensation for wrongful imprisonment. Such an approach is in contravention of Australia's international legal obligations, and is contrary to the practice that has been adopted by the State of Queensland.

The State's obligations to pay compensation for wrongful imprisonment derive from the International Covenant on Civil and Political Rights. That international convention (ratified by Australia on 13 November 1980) provides (at Article 14(6)):

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact

shows conclusively that there has been a miscarriage of justice the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in issue is wholly or partly attributable to him."

When ratifying the Convention in, Australia expressly entered the following reservation:

" That the provision of compensation for miscarriages of justice in the circumstances contemplated in Paragraph 6 of Article 14 may be by administrative procedures rather than pursuant to specific legal provision."

By adoption of the convention, and having regard to the administrative procedures previously adopted in the State of Queensland, the international obligation is, having regard to the principles in Teoh's case ((1994) 49 ICR 409), almost certainly enforceable under municipal law.

The International Covenant deals only with the question of whether or not a miscarriage of justice has occurred, and whether or not, the miscarriage has occurred because of the non-disclosure of some fact (wholly or partly) by the person who has suffered the punishment. It does not refer at all to the question of whether the conduct of a some other person is a relevant consideration which must be taken into account.

Moreover, Queensland practice is that punitive or exemplary damages has not historically been a relevant head of damages in exgratia payments. Either yourself or [REDACTED] as Attorney General dealt with the case of [REDACTED]. The quantum statement delivered by Counsel for [REDACTED] in that matter did not seek exemplary damages, and it is no doubt axiomatic that the State did not include provision for such head of damages in awarding exgratia compensation to [REDACTED]. Nonetheless, if, as your letter of 12 November infers, exemplary damages now forms part of the administrative procedures of the State of Queensland for the purposes of quantum of compensation, we will naturally be interested in considering fully the effect of this apparent admission on the question of a further quantum of damages that might be paid in the light of any finding of misconduct against any public official, and its relevance to our other remedies at law.

To date, there has been no admission, or any indication whatever, that the State of Queensland accepts responsibility for what happened to Terry Irving. The conduct of the Crown through the whole of the High Court Case was characterised by an extraordinary intransigence in its refusal to accept that miscarriages of justice had occurred. [REDACTED] Crown Counsel, conceded only on the day of the final High Court hearing, (and then only

after a bollocking from the Chief Justice) that Terry Irving had not had a fair trial. That concession was inexcusably late. The time that elapsed from the time of the High Court decision and the decision by the Director of Public Prosecutions was almost 10 months, an inexcusable delay, having regard to the simplicity of the issue and the history of representations. The Legal Aid system failed, as commented on by the Chief Justice of the High Court so baldly in his judgement of 8 December 1998. Legal Aid Queensland is, if nothing else, maintaining its near-perfect record of refusal to assist Terry, with its most recent refusals to fund either of Terry's actions in the District Court in Cairns during 1998. The lack of action by your Department in dealing with the 2nd issue of criminal injuries compensation was unprofessional and did your Department no credit. The fact that the 3rd issue of compensation for Terry has now been shunted off to the CJC for no good reason gives Terry Irving the distinct impression that, as with every single episode in this sorry process, the question of the future of his entitlement to compensation on just terms will almost certainly be similarly characterised by a gruelling, protracted and humiliating Dutch auction over the amount of compensation he may or may not eventually receive.

Fourth Issue

As stated above, we have the deepest concerns as to why this matter has been referred to the CJC. Whatever your intention in so doing, the reference has the obvious and cruel effect of delaying the payment of compensation to Terry. The reference to the CJC ignores the natural justice problem associated with it reviewing its own review. The reference to the CJC ignores the fact that the CJC has already determined it has no jurisdiction in relation to the misconduct of the principal police officer involved. The reference to the CJC appears to lack any terms of reference, or if it has, such terms of reference, they certainly have not been formulated in consultation with Mr Irving, the person whose interests are most principally affected. Your reference to the CJC flatly ignores the offers referred to in my letters of 6 July 1998 and 14 September 1998 to provide the Commission of Enquiry with a brief directed to the various matters which may constitute misconduct in this case. You will see, therefore, that the reference to the CJC seems, on a reasoned analysis, to be ill-considered and more a matter of expedience, rather than a genuine attempt to cause the serious issues raised by the High Court to be soundly investigated. In short, your reference to the CJC sits uncomfortably with your assertion that you need to "have all the information".

We also have significant reservations about whether the CJC is equipped by experience or capacity to make the judgements necessary to assess adequately the quantum of damages which ought be paid to Terry Irving, in terms of the matters raised below.

We repeat again that the appropriate body for review of the circumstances of this case is an independent Commission of Enquiry. That it is the practice that has been adopted in other jurisdictions where a similar miscarriage of justice has occurred at the hands of the State. I invite you to consider the approach of the Government of South Australia to establish a Royal Commission in 1984 to investigate the wrongful imprisonment of [REDACTED] in respect of his wrongful conviction for murder. I also invite you to consider the Royal Commission established by the New Zealand Government in respect of the wrongful imprisonment of [REDACTED] in 1979. I also invite you to consider the decision of the Canadian Government to establish a Judicial Commission of Enquiry in 1990 to enquire into the wrongful imprisonment of [REDACTED] for a murder which he did not commit.

Where to from here

It would be helpful if the State of Queensland would, from this day forward, approach this case on the basis that the State has made a series of mistakes: that is, at least accept the findings of fact which the High Court has already made. They are not, and can never under our system of justice be, in dispute. They require no further analysis. They exonerate completely Terry Irving from culpability of any crime. We ask you to adopt this approach because if you examine them honestly and objectively, you will see that a range of people, sadly large in number, contributed by their mistakes to Terry's wrongful imprisonment. While some of these were private citizens, a larger number of them were officials and servants of the State. Notwithstanding the complete lack of public scrutiny of this case thus far, we are confident that all of them now know what they did wrong. Some of the mistakes were understandable and innocent, and were caused by others, perhaps innocently, misleading them. Other mistakes were caused by incompetence. These are facts which the High Court has accepted, and are matters of public record. You can read them in the High Court judgement. It may be that in time, other courts may well find that still others have done more than just the mistakes made known by the High Court, but at this stage, we believe on manifestly reasonable grounds that there is a sound basis for the State of Queensland admitting that it should immediately accept its responsibility towards Terry.

The natural corollary of this is that the State of Queensland should move immediately to set in place the payment of compensation to Terry Irving. To maintain confidence in the criminal justice system it is important that miscarriages of justice are seen to be redressed, and promptly so. You will understand that Mr Irving has been a very patient and persistent man. He has never been daunted by the prospect of officialdom intervening improperly in his very real experience of what constitutes the liberty of the subject in the State of Queensland. He has pointed out fearlessly the

mistakes of police officers, lawyers, prosecutors, public servants, and members of the judiciary. He argued his case all the way to the High Court, and successfully so. He can honestly say that, with the exception of the Judges of the High Court, no Australian in a position of service to the State has yet acted with honour in this whole sad episode. As a victim of wrongful imprisonment, Terry Irving has suffered at the hands of the justice system itself. This very institution, with which you as an Attorney-General and I as a legal practitioner, both pride ourselves so greatly, failed him grievously.

We ask you to reconsider the position stated in your letters of 12 November 1998 and 18 December 1998. We ask you specifically to move now to provide compensation on just terms to Mr Irving. We ask you to consider, in providing that compensation to Terry Irving, the following matters.

1. Loss of liberty
2. The physical and mental harshness and indignities of incarceration
3. Loss of reputation
4. Humiliation and Disgrace
5. Pain and Suffering
6. Loss of Enjoyment of life
7. Loss of potential normal experiences, such as contact with family, or social learning in the workplace
8. Loss of contact with his children in their developmental years
9. The shame unjustly inflicted on his family, especially his children
10. The effect of that unjustly inflicted shame on the relationship with his children
11. The loss of financial support for his family, especially the financial losses suffered by his children
12. Loss of livelihood, including loss of earnings
13. Loss of future earning abilities and future financial security, including by way of superannuation benefits made by employers
14. Other foregone developmental experiences, such as education or social learning in the normal workplace
15. Loss of civil rights
16. Loss of social intercourse with friends, neighbours and family
17. Threats and harassment while in prison by fellow inmates and staff
18. Subjection to prison discipline, including punishments imposed legally (having regard to the fact that a wrongfully convicted person might understandably find it harder to accept the prison environment), prison visitation, transportation away from family, and diet.
19. accepting and adjusting to prison life, knowing it was all unjustly imposed
20. Adverse effects on his future, specifically the prospects of employment, relationships, social status, physical and mental health, and social relations generally.

We ask you to consider compassionately the following sentiments, expressed by Professor Archibald Kaiser, in his study *Wrongful Conviction and Imprisonment: Towards an End to the Compensatory Obstacle Course*, (Windsor Yearbook of Access to Justice, 1989)

"Surely few people need to be told that imprisonment in general has very serious and psychological effects on the inmate. For the wrongfully convicted person, this harm is heightened, as it is hardly possible for the same innocent person to accept not only the inevitability but the justice of that which is imposed upon him. For the person who has been subjected to a lengthy term of imprisonment, we approach the worst case scenario. The notion of permanent social disability due to a state wrong begins to crystallise. The longer this distorting experience of prison goes on, the less likely a person can ever be whole again."

We ask you to accept that it is axiomatic that the effect of all of these indignities has been extended and made worse by the very real perception that the State is yet to accept the wrongs inflicted on him.

We ask you as Attorney General to apologise to Terry Irving, on behalf of the State of Queensland, for the wrongs inflicted on him.

We ask you again to establish an independent Commission of Enquiry to enquire into the circumstances of the wrongful conviction of Terry Irving

We ask that you set terms of reference for that Commission of Enquiry.

We ask that Terry Irving be consulted prior to the setting of terms of reference for that Commission of Enquiry.

I remind you again of the offer made in my very first letter to discuss any of the matters raised in our correspondence with you. I am available on the phone at all times for discussion with yourself. You will find my contact numbers at the beginning of this letter.

We look forward to your urgent response to the matters raised herein.

May Terry and I wish you and your staff a very merry Christmas and a happy
and prosperous New Year

Yours faithfully

Michael O'Keeffe



Attorney-General and Minister for Justice and Minister for The Arts

OFFICE: Level 18, State Law Building, 50 Ann Street, Brisbane Q 4000, Australia. POSTAL: GPO Box 149, Brisbane Q 4001, Australia.
TELEPHONE: (07) 3239 3478 FACSIMILE: (07) 3220 2475

18 December 1998

Mr Terry Irving
[REDACTED]

Dear Mr Irving

I refer to our previous correspondence.

I consider the issues raised by your matter to be of the utmost importance.

I have instructed the Director-General of my Department to provide [REDACTED] responses to all outstanding concerns in respect to your matter as soon as possible. The Director-General has referred your matter to the CJC. I am informed by the Director-General that on as recently as Friday 11 December 1998, the matter was still being considered by the CJC.

I understand your anxiety that you must be caused by the delays in this matter. However, please be assured that we are undertaking all steps necessary to bring this matter to a resolution as soon as possible.

Please contact my senior advisor [REDACTED] whenever you need to. [REDACTED] is fully apprised with this matter and I have instructed [REDACTED] to ensure that your matter is dealt with as soon as possible.

In order to fairly deal with your matter, it is necessary that I have all the information. I have received advice that it is appropriate that I wait for the CJC response prior to taking any action and I have asked the CJC to deal this matter at the first opportunity.

I will be in further communication with you in the near future.

Yours faithfully

[REDACTED]
[REDACTED]
**ATTORNEY-GENERAL
MINISTER FOR JUSTICE AND
MINISTER FOR THE ARTS.**

23-AUG-1999 11:40

TOSCO OFFICE SUPPLIES CNS

61 87 4831 3773

P.02



CRIMINAL JUSTICE COMMISSION

Telephone: (07) 3360 6060

Facsimile: (07) 3360 6333

E-mail: mailbox@www.cjc.qld.gov.au

Our Reference: 502-15-35-030 / UA
Contact Officer: Mrs U A Anderann

IN-CONFIDENCE

16 August 1999

PRIVATE AND CONFIDENTIAL

Mr T Irving
[REDACTED]

Dear Mr Irving

RE: YOUR COMPLAINT

I refer to the Commission's letter of 20 April 1999 and its further inquiries in respect of this matter which were conducted as a result of the decision of the High Court in your case and further evidence of relevance to your original allegations which arose in the context of the appellate proceedings.

Following your successful appeal to the High Court no decision was made as to whether there should be a retrial until the matter was brought to the attention of the Director of Public Prosecutions, [REDACTED] on 1 October 1998. [REDACTED] then decided that there would not be another trial, given the state of the evidence. Your solicitor, Mr Michael O'Keefe, wrote to the Attorney-General on 6 July 1998 complaining about the delay in making that decision and about the failure to respond to correspondence sent to the Office of the DPP. The Commission has determined that this is not a matter which gives rise to a reasonable suspicion of official misconduct and accordingly it does not intend to take any action in relation to that aspect of the complaint.

The police officer who arrested you and who conducted the identification interviews in question, [REDACTED] has since resigned from the Queensland Police Service. In these circumstances, for the Commission's jurisdiction to be enlivened there would need to be some evidence capable of supporting a reasonable suspicion that any misconduct on [REDACTED] part, if proved, could constitute a criminal offence.

All of the witnesses who were interviewed during this investigation recalled the circumstances of

IN-CONFIDENCE

557 Coronation Drive, Toowong Qld 4066, Australia
PO Box 137, Brisbane Albert Street, Qld 4002, Australia

23-AUG-1999 11:41

TOSCO OFFICE SUPPLIES CNS

61 07 4031 3773

P.03

IN-CONFIDENCE

Page 2

the taking of their statements. All of them denied any attempt by [REDACTED] or any other officer to influence the contents of their statements in any way. In light of that there is no evidence capable of supporting a reasonable suspicion that any conduct on [REDACTED] part, if proved, could constitute a criminal offence such as attempting to pervert the course of justice or perjury. Accordingly, the Commission has determined that no further action should be taken in relation to [REDACTED]

The Commission also made enquiries as to [REDACTED] whereabouts on the day of the trial. [REDACTED]

[REDACTED] Certainly, there is an insufficient basis for alleging that [REDACTED] committed perjury or deliberately misled the court.

The Commission is therefore of the view that no further action should be taken in relation to [REDACTED]

As [REDACTED] points out in her affidavit, [REDACTED] videotaped the process of showing the clothing and the photo board to the witnesses. The fact that they were videotaped is referred to in [REDACTED] statement dated 23 June 1993 at pp14 - 18. It is significant to note that had [REDACTED] failed to record what the witnesses said during the identification process, there would not have been the evidence upon which your appeal was based. It is because of [REDACTED] actions in videotaping the process that you were ultimately successful in obtaining an acquittal.

The Commission considered whether to make any procedural recommendations to the DPP concerning the reliability of photo board identification evidence. However, since this matter went to trial the DPP has issued Direction No 5 of 1998 which requires the legal officers and Crown Prosecutors to formulate a view as to the cogency of identification evidence only after obtaining a copy of the video tape of the process and listening carefully to the words actually spoken and not to rely solely on a witness statement compiled by a police officer and signed by the witness. Although this direction resulted from a different case of armed robbery than yours, it specifically addresses the problem which arose in your trial. Therefore it is unnecessary to make any further procedural recommendations in that regard.

IN-CONFIDENCE

23-AUG-1999 11:42

TOSCO OFFICE SUPPLIES CNS

61 07 4031 3773

P.04

IN-CONFIDENCE

Page 3

Consequently, I have informed the Director-General of the Department of Justice, [REDACTED]
[REDACTED] that the Commission will not be taking any further action in relation to this
complaint.

Yours sincerely

[REDACTED]

[REDACTED]

Director
Official Misconduct Division

IN-CONFIDENCE

ATTACHMENT 5



INDEX TO BRIEF

11/92

COURT: Magistrates PLACE [REDACTED] DATE: 13.07.93
 POLICE OFFICER: [REDACTED] RANK & NO. [REDACTED]
 STATION: [REDACTED] CONTACT No. [REDACTED] TERM. ID: CNSC01
 DEFENDANT/S: TERRY IRVING
 (2) _____
 (3) _____

CHARGE No.	STATUTE	SECTION	SHORT TITLE	C.O.R. No.
1.	C/CODE	409-411	ARMED ROBBERY	93/61372

WITNESS No.	NAME	PAGE No.
1.	[REDACTED]	1-20
2.	[REDACTED]	21-32
3.	[REDACTED]	33-35
4.	[REDACTED]	36-38
5.	[REDACTED]	39-40
6.	[REDACTED]	41
7.	[REDACTED]	42-45
	[REDACTED]	46-47
	[REDACTED]	48-49
8.	[REDACTED]	50-52
	[REDACTED]	53
9.	[REDACTED]	54-56
10.	[REDACTED]	57-59
11.	[REDACTED]	60-62
12.	[REDACTED]	63-64
	[REDACTED]	65-66
13.	[REDACTED]	67-69
14.	[REDACTED]	70-72

To,

O/C Police
 Prosecutions Corp.
 CAIRNS

15.	[REDACTED]	73-74
16.	[REDACTED]	75-79
17.	[REDACTED]	80-82
18.	[REDACTED]	83-85
19.	[REDACTED]	86-87
20.	[REDACTED]	88-90
21.	[REDACTED]	91-94

EXHIBIT No.	DESCRIPTION
1.	One set of photographs of scene
2.	One Street Map - Indicating location of Bank
3.	One set of photographs of vehicle owned by IRVING
4.	One Receipt Dated 12.12.92
5.	One Photocopy of a Deposit Slip
6.	Two RACQ Cards bearing the name of T IRVING
7.	Two Registration Plates - 682 BBI
8.	One set of Photographs taken at 307 Draper Street, Cairns
9.	One Pair of Dunlop Sandshoes
10.	One Multi coloured shirt
11.	One Micro Tape Marked "A"
12.	One C90 Tape Marked "A"
13.	One Micro Tape Marked "B"
14.	One C909 Tape Marked "B"
15.	One Video Tape Marked "1"
16.	One Audio Tape Marked "1"
17.	One Video Tape Marked "2"
18.	One Audio Tape Marked "2"
19.	One pair of Black Sandshoes
20.	One pair of Black Trousers
21.	Two Teller Printouts - ANZ Bank
22.	One Criminal Code Warrant - Section 259
23.	One C90 Audio Tape marked "S"
24.	One Receipt Dated 19.05.93
25.	One Micros Tape marked "C"

- | | |
|-----|--|
| 26. | One C90 Tape Marked "C" |
| 27. | One Photoboard |
| 28. | One Video Tape Marked "3" |
| 29. | One Audio Tape Marked "3" |
| 30. | One Micro Tape Marked "D" |
| 31. | One C90 Tape Marked "D" |
| 32. | One Video Tape Marked "4" |
| 33. | One Audio Tape Marked "4" |
| 34. | One Video Tape Marked "5" |
| 35. | One Audio Tape Marked "5" |
| 36. | One Pair of Blue Rubber Thongs |
| 37. | One Certified Copy of the Registration of a Company - ANZ BANK |

FREEDOM OF INFORMATION ACT
DOCUMENT HAS BEEN RELEASED
UNDER THE FOIA ACT 1992
BY THE QLD POLICE SERVICE



* COURIER MAIL - 26.04.02

Culprits quitting to elude charges

Matthew Franklin
STATE POLITICAL EDITOR

ABOUT 580 police and public servants facing misconduct investigations since 1990 had quit before they could be prosecuted, Crims and Misconduct Commission (CMC) chairman Brendan Butler said yesterday.

Mr Butler said the law allowed police and public servants to be pursued on misconduct allegations charges only while they were still employed by the Government.

Mr Butler said the resignations "might not be a bad thing" because, in any case, those under suspicion had left the public service and allowed it to move forward.

Under Queensland law, public servants and police found to have committed criminal offences can be arrested regardless of whether they still work for the Government.

But the CMC can investigate less serious misconduct offences only for as long as the alleged culprit works for the Government.

Last year State Parliament's all-party criminal justice committee called on the Government to consider changing the law so the CMC could pursue such cases even after the public servants fled the public service to avoid punishment.

The committee said misconduct tribunals should be able to make declarations that such people would have been dismissed or punished had they remained in government employment.

Premier Peter Beattie said yesterday the issue was complex but still under consider-

ation. Mr Butler told The Courier-Mail about 480 public servants were thought to have had fled their jobs to avoid punishment for misconduct between 1990 and 2000.

He said about 100 more were thought to have left the service under similar circumstances since the start of 2000.

Mr Butler said that in many instances people resigned when they would have been sacked any way.

"In many cases from the point of view of the public sector, it's not a bad result," he said. "If people choose to go because they're not prepared to put up with the scrutiny of the process well then they are no longer an issue for the public sector."

But he said if a person was alleged to have offended against a child there was a risk they could re-offend.

Opposition Leader Mike Horan said Mr Beattie had been tardy in dealing with the POJC recommendation.

He said people who left the public service under a cloud already faced the punishment of losing their jobs.

But in such circumstances, investigations simply stopped, denying police and public service managers the chance of getting to the bottom of systemic problems that might have allowed or encouraged the misconduct.

"If when they leave it is the end of the matter, it's hard to put in place changes that might stop the problems happening again," Mr Horan said. "Mr Beattie should look closely at this and think about how allowing these investigations to continue might help improve the public service."