

Independence

trustworthiness

accountability

vigilance

integrity

Independent Police Conduct Authority Review of Operation Austin

December 2007



IPCA

Independent Police Conduct Authority
Whāia te pono, kia puawai ko te tika



December 2007

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Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY
REVIEW OF OPERATION AUSTIN

December 2007

1. INTRODUCTION

- 1.1 “Operation Austin” is an exceptional, major criminal investigation of serious historical sexual offending committed by police officers and others in New Zealand.
- 1.2 The standard of investigation, support for victims, quality assurance, attention to detail, completeness, innovation, command, briefings, and best practice achieved by Operation Austin, when measured against the New Zealand Police Manuals of Best Practice for ‘Major Operations’ and ‘Investigations – Sexual Offences’, and against other major operations of recent times, are clearly of a level of excellence several grades above what would normally be expected of an historical criminal investigation on this scale.

BACKGROUND

- 1.3 Operation Austin was established in February 2004 under the command of Detective Superintendent Nick Perry in response to the publication in January 2004 of allegations by a young woman, Louise Nicholas, that she had been raped by police officers in Rotorua in the early 1980s. The allegations centred on Bradley Keith Shipton, Robert Francis Schollum and Clinton Tukotahi Rickards. At the time the allegations were made public, Mr Shipton and Mr Schollum were no longer serving members of the New Zealand Police but Mr Rickards was, as Assistant Commissioner and District Commander responsible for Auckland City Police District and the wider Auckland metropolitan area.

**COMPLAINTS
ABOUT OPERATION
AUSTIN**

- 1.4** A total of fifteen separate complaints about Operation Austin were received by the Police Complaints Authority (PCA) from Assistant Commissioner Rickards and one complaint from Mr Steve McDowall. Assistant Commissioner Rickards also made statements in public and to the Authority critical of the police investigation. As a result, Authority investigators conducted a comprehensive review of Operation Austin and of Messrs Rickards' and McDowall's complaints.

**INVESTIGATOR
PROFILES**

- 1.5** Operation Austin involved a total of thirty sworn and eighteen non-sworn or contract staff over the course of the investigation, some of whom are still working on the ongoing operation. To assess the experience and calibre of the staff, the review profiled 20% of the sworn staff and 22% of the non-sworn staff.
- 1.6** The sworn sample group brought a total of 127 years service to Operation Austin, including investigative and operations experience with the New Zealand Police. Each is an experienced Detective and their profiles include expertise as analysts, criminal investigators, child abuse and adult sexual assault investigators, and expertise in complex file management, use of technology including the Criminal Investigation Database (CID) system and covert operations. This sample group was typical of the wider Operation Austin sworn team profile.
- 1.7** The sampled non-sworn staff were drawn from Wellington, Canterbury and Southern Districts and worked on Operation Austin between February and August 2004. One remains on the investigation as an analyst and CID specialist. Two members had fifty-seven years sworn service between them before retiring, with a further nineteen years service as non-sworn members. Another was a CID specialist and had worked as a stenographer on many serious criminal investigations.
- 1.8** Again, the non-sworn sample group mirrored the sworn group in that they brought investigative experience and skills, specialist analytical experience and broad experience of operational policing. The group was also typical of the wider Operation Austin non-sworn team profile.

ADULT SEXUAL
ASSAULT POLICY
COMPLIANCE

1.9 Whilst it was impractical to expect every member of Operation Austin to have received training in the Adult Sexual Assault Policy, nevertheless at least one investigator was trained, and the Second in Command is a specialist in this aspect of dealing with victims. In addition, all team members had a training session from the New Zealand Police National Co-ordinator of Child and Sexual Abuse Investigations. Several investigators were also experienced Child and Sexual Abuse investigators from police districts.

COMPLAINANTS

1.10 The protocols adopted by Operation Austin for dealing with complainants and subsequent prosecutions, where that course was taken, were found to be of the highest standard.

INTEGRITY
& EFFICACY

1.11 All members of the Operation Austin team applied the highest standards of ethics and professionalism to all investigative disciplines necessary to achieve the best possible result for each complainant who had contact with the police.

1.12 The investigation was devoid of any form of bias towards a desired or preconceived outcome. The indictments against each of the accused were filed by the Crown Solicitor, Christchurch, following thorough, independent and objective analysis of all the available evidence. No prosecutions were brought without such close scrutiny and independent review by the Crown, and quality legal opinions were provided throughout the investigation on all key matters.

LEADERSHIP

1.13 The leadership of Operation Austin was found to be of the highest standard at all levels.

COMMAND

1.14 All the Command elements of Operation Austin were clear, concise and regularly updated to depict the current status and reporting lines of the investigation at all times (Appendix 'A').

**INVESTIGATION
PLANS &
OBJECTIVES**

1.15 Investigation Plans and Objectives were maintained on a regular basis throughout the criminal investigation. As new complaints emerged, Investigation Plans and Objectives were updated, often weekly, in order to maintain and reinforce the focus and purpose of the investigation (Appendix 'B').

BRIEFING NOTES

1.16 The same attention to detail and quality apparent in the Investigation Plans and Objectives can clearly be seen in the 'Briefing Notes' recorded and used by Operation Austin. Conferences were recorded on a daily basis and were generally chaired by the Operation Commander or the Second in Command.

FILE MANAGEMENT

1.17 Experts in complex file management and the CID system were purposefully selected for Operation Austin. The file structure and use of protocols for the protection of victim identities significantly exceeded the standards laid down as best practice by the New Zealand Police. The high standards achieved in this Operation enabled a smooth and effective disclosure process in an investigation that was complex and demanding, given the number of accused and counsel involved.

1.18 In addition, Operation Austin took the unique step of commissioning an independent quality assurance review of all disclosure to ensure that all material which should have been disclosed was disclosed. An Operation Austin investigator was also appointed as Disclosure Manager.

**VICTIMS
INVESTIGATION
PHASE**

1.19 A major part of the review of Operation Austin has been to report on its Integrity and Efficacy. In the process, the Authority examined in some detail the way in which victims' complaints were dealt with by the police.

1.20 There were fifty cases in all that were referred by Operation Austin to the PCA for review. Twenty-five were then examined in depth by the Operation Austin Review team for the Authority. It was decided that ten required further scrutiny and follow up by Operation Austin.

- 1.21 At October 2007, of those cases that required follow-up, four have completed the process adopted by the Operation Austin investigation team. The rest will be completed now that the trial of Detective Inspector John Dewar is over.
- 1.22 While most of the victims who became part of the Operation Austin inquiry have been thoroughly and professionally dealt with, there are nevertheless a small group who might surface again in the future for a variety of reasons. Historical sexual complaints have a propensity to emerge sometimes years later, often as a result of post traumatic stress and the need to talk about these things as part of the rehabilitation process.
- 1.23 The policy initiated by Operation Austin for dealing with victims is excellent and goes well beyond what has been the norm in the past. It is yet another example of the Operation having left no stone unturned in its efforts to rectify the damage to the victims and to the Police's reputation by a few rogue elements within their ranks.

CONCLUSIONS AND
RECOMMENDATIONS

- 1.24 i) **Complaints against Operation Austin:** Each complaint from Assistant Commissioner Clint Rickards and Mr Steven McDowall has been thoroughly investigated. The Assistant Commissioner's comments about the standard of leadership and investigation are entirely at odds with what was disclosed during this comprehensive review, which included interviews with all material witnesses and thorough scrutiny of all relevant documents.
- ii) **Duration:** In response to the criticism that Operation Austin took too long, the review finds there would be some truth in that if the investigation had only focused on the Nicholas case. However, the inquiry was almost overwhelmed by new matters virtually every week. New allegations were reported on a regular basis and many of these had remarkable similarities to the Nicholas case. The investigation by its very nature needed to be, and was, thorough. So by a combination of the volume of complaints and the depth and complexity of the issues it is not at all surprising or questionable that the investigation took as long as it did.

- iii) **Police Complaints Authority:** It is clear that the relationship between Operation Austin and the Police Complaints Authority in terms of full disclosure of all documentation, response times for requests for information, and the professional demeanour of both parties remains productive, objective and professional throughout.
- iv) **Recommendations – File Management & Disclosure:** The overall file management practices adopted by Operation Austin set new standards for how a major operation should be conducted by the New Zealand Police. The Authority recommends that the lessons learned in this regard are submitted to the Assistant Commissioner responsible for Planning & Policy with a view to upgrading the New Zealand Police Manual of Best Practice accordingly.
- v) **Recommendations – Victims Rights Act 2002:** Many of the Victim Management practices initiated by Operation Austin are 'ground breaking' and the Authority recommends they be incorporated into the New Zealand Police Manual of Best Practice. Examples include the appointment of an investigator as Victim Liaison Officer for each complainant throughout the prosecution process, the involvement of Victim Support staff, support in the precincts of the courts, and the maintenance of a Victim Contact Register (example, Appendix 'C').



Background

INDEPENDENT POLICE CONDUCT AUTHORITY
REVIEW OF OPERATION AUSTIN

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2. BACKGROUND TO THE PCA REVIEW OF OPERATION AUSTIN

- 2.1 On 28 January 2004, the Commissioner of Police Rob Robinson advised the Police Complaints Authority (PCA) that the media were about to break a story in which a young woman, Louise Nicholas, alleged she had been raped by police officers in Rotorua in the early 1980s. On 31 January 2004, the story broke on TVOne and in the Dominion Post newspaper.
- 2.2 A criminal investigation known as 'Operation Austin' was established immediately under the command of Detective Superintendent Nick Perry to investigate Louise Nicholas's allegations which centred on Bradley Keith Shipton, Robert Francis Schollum and Clinton Tukotahi Rickards. (By January 2004 Mr Shipton and Mr Schollum were no longer serving policemen but Mr Rickards was.) Operation Austin began with thirteen police officers and support staff but, over the period of the investigation, the team more than doubled in size.
- 2.3 The media reports about Louise Nicholas's allegations and the way they were handled by the police, in particular by former Detective Inspector John Dewar, also resulted in the Government initiating Commission of Inquiry into Police Conduct headed by Dame Margaret Bazley.
- 2.4 The PCA elected not to conduct its own investigation at the same time as the other two inquiries but to defer action until it received a report from the Commissioner of Police on the findings of Operation Austin. Instead, it was agreed that PCA investigators would monitor the police investigation closely

and that process continued until the culmination of the trial and sentencing of John Dewar in October 2007.

- 2.5 Mr Rickards was suspended from duty as Assistant Commissioner and District Commander responsible for Auckland City Police District and the wider Auckland metropolitan area at the start of Operation Austin. On 22 November 2007 he resigned from the New Zealand Police and did not therefore face a scheduled internal disciplinary hearing.
- 2.6 In July 2004, Mr Rickards wrote the first of nine letters to the Police Complaints Authority. In them he outlined fourteen separate complaints about various aspects of Operation Austin. The then Authority (Judge Borrin) did not act on any of the complaints primarily because matters related to the investigation were still before the courts.
- 2.7 However, after receiving a comprehensive letter from Mr Rickards at the end of August 2006, the PCA (Justice Goddard) instructed Authority investigators to conduct a comprehensive review of Operation Austin and to investigate each of Mr Rickards' complaints at the same time.
- 2.8 Mr Rickards had also made a number of derogatory statements in public and to the Authority about the overall integrity and efficacy of the police investigation. The Authority received one further complaint from him by email in August 2007. The PCA investigators were instructed to investigate these as well.
- 2.9 On 23 March 2007, the PCA received an additional letter of complaint from Steven McDowall, former All Black and a friend of Mr Rickards who had called him as a defence witness during one of the trials that had resulted from Operation Austin.
- 2.10 This matter was also investigated in parallel with the complaints received from Mr Rickards.

3. BACKGROUND TO OPERATION AUSTIN

- 3.1 By 2003, there were a significant number of police officers who had come to dislike Assistant Commissioner Rickards. Anonymous letters were received by the Police about his general behaviour and this culminated in information being

given to the Dominion Post. A reporter, Philip Kitchins, investigated and wrote the article about Louise Nicholas.

- 3.2 It was the publication of the allegations made by Louise Nicholas at the beginning of 2004 that triggered Operation Austin and the Commission of Inquiry into Police Conduct.
- 3.3 Louise Nicholas has always lived, worked and socialised in the Rotorua area apart from about three months in 1982 when she stayed with the family of a police officer attached to the Murupara Police Station. In Rotorua, the Nicholas family was involved in Search and Rescue and therefore police were always around.
- 3.4 In 1988 she married and began counselling for sexual abuse she had suffered in 1985 and earlier. At the end of 1991 she told her father-in-law about this earlier abuse. It primarily concerned three police staff, Messrs Shipton, Schollum and Rickards and four other police officers known as the 'Murupara Four'. Mr Schollum was also one of them.
- 3.5 The allegations involved group sex and indecency with Louise Nicholas from the age of thirteen until she was eighteen. During these years, when she claimed she was vulnerable, she was subjected to consistent abuse.
- 3.6 On 13 January 1993, Louise Nicholas approached Senior Sergeant Ray Sutton and made a number of allegations about the claimed offending by Police officers.
- 3.7 Initially Senior Sergeant Sutton asked for a woman officer to deal with the matter but it was taken over by former Detective Inspector John Dewar who took a series of statements from Louise Nicholas. Detective Inspector Dewar arrested and charged Constable 'A' with sexual violation of Louise Nicholas when she was thirteen years old. There were three trials culminating in an acquittal. The first two were abandoned because of hearsay evidence given by Detective Inspector Dewar. In the third trial, Constable 'A' was found not guilty and costs were awarded against the Crown.

- 3.8 As a result of the costs decision and criticism of Detective Inspector Dewar by Judge Michael Lance QC, Assistant Commissioner Bruce Scott asked Detective Chief Inspector Rex Miller to investigate Detective Inspector Dewar's failed investigation. Although Detective Inspector Dewar's actions were criticised, and his investigations of other matters reported by Louise Nicholas were found to be substandard, no action was taken against him.

4. OPERATION AUSTIN'S TERMS OF REFERENCE

- 4.1 Operation Austin's terms of reference were:
- a) to investigate the original allegations of rape made by Louise Nicholas;
 - b) to investigate the investigation of her original complaint in 1993;
 - c) to review a previous investigation of these matters conducted by retired Detective Chief Inspector Rex Miller; and
 - d) to investigate any other criminal activity identified during the course of the operation.

5. CRIMINAL PROSECUTIONS RESULTING FROM OPERATION AUSTIN

- 5.1 Criminal prosecutions for the Rape and Sexual Violation of Louise Nicholas between September 1985 and December 1986 were brought against Messrs Shipton, Schollum and Rickards.
- 5.2 All three also faced charges of Unlawful Detention and Indecent Assault of Complainant 'A' between November 1983 and August 1984.
- 5.3 By February 2007, these criminal prosecutions had been completed. All three accused were acquitted.
- 5.4 Operation Austin also re-investigated the original allegations made by Louise Nicholas and the role played by former Detective Inspector John Dewar in their investigation and the subsequent trials. As a consequence, Mr Dewar was arrested in May 2005 and charged with four counts of attempting to Obstruct, Prevent or Defeat the Course of Justice.
- 5.5 In July/August 2007, Mr Dewar was tried at the High Court in Auckland and found guilty of Perverting the Course of Justice. In October 2007, he was sentenced to four and a half years in prison.

6. OTHER RESULTING PROSECUTIONS

6.1 The investigations by Operation Austin ultimately led to contact with fifty women and allegations by more than half of them against Messrs Shipton, Schollum, Rickards and/or Dewar.

6.2 Four of those investigations were significant and resulted in prosecutions:

i) In February 2004, a former Rotorua police officer, Complainant 'B', alleged that she had been raped by the Waikato District Commander, Superintendent Kelvin Powell.

Superintendent Powell was later tried and acquitted.

ii) In April 2004, Complainant 'C' alleged that in the New Year of 1989 she had been raped by five males including Messrs Shipton and Schollum at a surf lifesaving tower in Mt Maunganui.

At their trial in the Wellington High Court in June 2005 Messrs Shipton and Schollum were convicted of the rape and abduction of Complainant 'C' and sentenced to eight and a half years and eight years in prison respectively.

iii) In July 2004, a pistol was found during a search of Mr Shipton's address. He was arrested and charged with possession of the pistol and later convicted in the Tauranga District Court.

iv) During the same search at Mr Shipton's house a number of his police notebooks were found which contained nicknames and telephone numbers. One of the telephone numbers was identified by Operation Austin staff as belonging to Complainant 'D'.

The Operation's enquiries resulted in Messrs Shipton, Schollum and Rickards facing charges of Abduction and Indecent Assault – that Complainant 'D' was restrained with handcuffs while a bottle was inserted in her vagina. She was 16 years old at the time.

All three accused were acquitted.



Operation Austin Review: Overall Assessment of Integrity and Efficacy

INDEPENDENT POLICE CONDUCT AUTHORITY
REVIEW OF OPERATION AUSTIN

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7. BACKGROUND

- 7.1** One of the principal aims of the PCA review of Operation Austin was to assess the integrity and efficacy of the operation as a whole.
- 7.2** The review assessed whether or not:
- a) Operation Austin demonstrated any form of bias towards a desired outcome;
 - b) the appropriate degree of integrity was achieved, as defined below;
 - c) appropriate standards of investigation were achieved;
 - d) appropriate decisions were taken; and
 - e) all matters were dealt with in accordance with Police policy, best practice and procedures.
- 7.3** The review was conducted by the PCA in accordance with Section 17(1) (a) of the Police Complaints Authority Act 1988.

8. POLICE COMPLAINTS AUTHORITY INVESTIGATORS

- 8.1** Former Commissioner Richard Macdonald and former Acting Deputy Commissioner and Acting Assistant Commissioner Roger Carson were engaged by the PCA as investigators to conduct an overall review of Operation Austin and to investigate the complaints received from Messrs Rickards and McDowall.

- 8.2 They were assisted by Authority investigator, Phil Shepard, who has served 34 years with the Police in the United Kingdom and who actively monitored Operation Austin from when it began in February 2004.

9. REVIEW METHODOLOGY

- 9.1 The review of Operation Austin began on 23 April 2007 and concluded on 20 July 2007.
- 9.2 All investigative activity undertaken by Operation Austin was measured against New Zealand Police Manuals of Best Practice which deal with 'Major Operations' (Volume One) and 'Investigations – Sexual Offences' (Volume Three).
- 9.3 All complaints and the overall review of the integrity and efficacy of Operation Austin were allocated a separate investigation phase.
- 9.4 Each phase of the review was then subjected to detailed analysis which included:
- i) the retrieval and scrutiny of relevant documentation from the Operation's Investigative file and the Administrative file;
 - ii) the interview of witnesses where necessary; and
 - iii) a summary together with findings for each phase.
- 9.5 The review team's witness interviews in New Zealand were generally conducted face-to-face and all were digitally recorded. A hard copy summary was also made of each interview.
- 9.6 Interviews of witnesses overseas, e.g. London, Indonesia, Australia, were conducted by telephone and also digitally recorded and summarised.
- 9.7 In all cases, detailed Interview Plans were prepared before each interview and in most cases given to each witness, providing the opportunity for research where required.
- 9.8 **Victims Investigation Phase** – The Authority conducted a separate Victims Investigation to examine the appropriateness of the Operation Austin response to each of the twenty-five victims whose complaints were investigated in detail. This included consideration of the extent to which the New Zealand

Police Adult Sexual Assault Policy 1998/1 and the Victims Rights Act 2002 had been complied with. (See Victims Phase Review, sections 21 to 24.)

- 9.9 Each complainant was interviewed by Operation Austin investigators. In the majority of cases these complainants were approached by police as a result of information from other interviews.
- 9.10 However, in addition to the twenty-five complainants who fell into this category, there were an additional twenty-five people who were contacted by Operation Austin as the result of hearsay: for example, a telephone call indicating a person may have been sexually violated.
- 9.11 When that person was contacted by Operation Austin, it was determined that either the incident had never occurred or the person did not wish to proceed any further and make a formal complaint.
- 9.12 The appropriateness of the contact and response by Operation Austin to each of these twenty-five people was also carefully examined by the review investigators.

10. TERMS OF REFERENCE

- 10.1 In addition to the matters defined as 'best practice' set out in Volume One of the New Zealand Police Manual of 'Best Practice for Major Operations', the review considered:
 - a) directives and any Terms of Reference issued in establishing Operation Austin; and
 - b) public statements by Police, politicians and significant others about the purpose of Operation Austin.

FINDINGS

- 10.2
 - i) All four components of the Terms of Reference were found to have been thoroughly investigated.
 - ii) Apart from the Prime Minister's announcement that a Commission of Inquiry into Police Conduct had been established, and confirmation from Commissioner Robinson that a criminal investigation was underway, there was no other public commentary about Operation Austin by politicians or significant other interested parties. This was entirely appropriate.

11. SELECTION OF OPERATION AUSTIN TEAM

- 11.1 The Review considered the selection and composition of the Operation Austin team, including previous experience and any historical links to nominated suspects.
- 11.2 The Operation Austin Commander, Detective Superintendent Nick Perry, was the Southern District Commander at the time he was asked by Deputy Commissioner: Operations, Steve Long, if he would be prepared to travel to Wellington and take command of the criminal investigation, 'Operation Austin'.
- 11.3 Because of the early decision to use the Criminal Investigation Database (CID) system and the need to have expertise available for complex file management, Detective Superintendent Perry turned to a number of investigators within Southern District whose expertise he was familiar with. The decision to bring these staff on board proved highly beneficial.
- 11.4 In terms of the remainder of the investigation team, Detective Superintendent Perry asked all District Commanders what staff they could spare. He stayed away from the Bay of Plenty District for obvious reasons.
- 11.5 Deputy Commissioner Long confirmed a conscious decision was made to recruit people from the South Island because many of the allegations were centred on the Bay of Plenty. The final team members came from Wellington, Canterbury and one or two other Districts.
- 11.6 Although the selection process was left to Deputy Commissioner Long and Detective Superintendent Perry, Commissioner Robinson made it very clear that no one was to be employed on the Operation Austin investigation team where there were any real or perceived conflicts of interest. In other words, no one would work on the inquiry if they had had anything to do in the past with Messrs Rickards, Shipton, Schollum or any other police officers who became suspects.

FINDINGS

- 11.7 i) All staff were asked if they had any prior connection to or involvement with Messrs Rickards, Shipton, Schollum, or any other suspect in the enquiry, before joining the team.
- ii) Not all staff approached wanted to join Operation Austin and they were not pressed for their reasons.

12. INVESTIGATOR PROFILES

- 12.1 Operation Austin engaged a total of thirty sworn and eighteen non-sworn/contract staff over the course of the investigation, some of whom are still working on the ongoing Operation.
- 12.2 In order to assess the experience and calibre of staff engaged to work on Operation Austin, the review profiled 20% of the sworn staff and 22% of the non-sworn staff.

FINDINGS SWORN STAFF:

- 12.3 In summary, the sampled sworn staff were drawn from Auckland, Canterbury, Wellington and Southern Districts. Five were involved from the outset (February 2004) and one, Detective Inspector Vaughan, still remains as the officer-in-charge of the ongoing investigation.
- 12.4 This sample group brings to Operation Austin a total of 127 years service, including investigative and operational experience, with the New Zealand Police. Three of them have twenty-six years, twenty-nine years and thirty-five years service respectively. Amongst other qualifications, each is an experienced Detective and their profiles include expertise as analysts, criminal investigators, child abuse and adult sexual assault investigators; and expertise in complex file management, use of technology including the CID system, and covert operations.
- 12.5 As an indication of the potential of the group, during the course of Operation Austin one member was promoted to assume command of the New Zealand Police Centralised Monitoring Centre before recently transferring to the Bay of Plenty District as Area Commander. Another took up a posting in 2006 as Police Liaison Officer representing the New Zealand Police at the Embassy in Jakarta, Indonesia. The Operation Commander, Detective Superintendent Perry, was selected for the high profile role of Police Liaison Officer for the New Zealand Police based in London.
- 12.6 The general investigative profile and experience of this sample group is typical of the wider Operation Austin sworn team profile.

FINDINGS
NON-SWORN
STAFF:

- 12.7 The sampled non-sworn staff were drawn from Wellington, Canterbury and Southern Districts. All were engaged between February 2004 and August 2004. One remains active on the investigation as an Analyst and CID specialist.
- 12.8 Two non-sworn members have fifty-seven years sworn service between them before retiring and continuing with a further nineteen years ongoing service as non-sworn members, one as an Electronic Monitoring Bail Assessor.
- 12.9 Again, the non-sworn sample group mirrors the sworn group inasmuch as they bring investigative experience and skills, specialist analytical experience, and broad experience of operational policing. One is a CID specialist and has worked as a stenographer on many serious criminal investigations.
- 12.10 The general investigative profile and experience in this sample group is also typical of the wider Operation Austin non-sworn team profile.

13. ASSESSMENT
OF LEADERSHIP

- 13.1 The leadership of Operation Austin at all levels was found to be of the highest standard. The following observations were unsolicited and willingly volunteered to the review team.
- 13.2 In terms of the leadership and management of Operation Austin, former Commissioner Robinson said that at all times the investigation was of the highest quality and this applied to both Deputy Commissioner Long in his oversight role on behalf of the Commissioner and the Operation Austin Commander, Detective Superintendent Perry. Commissioner Robinson said, "Nick Perry was engaged, had the detail at his fingertips throughout the investigation and the liaison with Long was very good."
- 13.3 The former Deputy Commissioner: Operations, Steve Long, described the leadership of Operation Austin Commander, Detective Superintendent Perry, as "first class". "So was his management of the investigation, his problem solving and HR skills."

- 13.4 Senior members of the team also spoke highly of the Operation Commander. Detective Inspector Clement, initially Second-in-Command of Operation Austin, described Detective Superintendent Perry as “an excellent leader”. “He had a fine grasp of the facts. You didn’t second guess him. Although the structure was different, it worked well. Perry was the buffer between the Police Exec. and the Austin team.”
- 13.5 Detective Senior Sergeant Haughey, File Manager on Operation Austin, described Detective Superintendent Perry’s leadership as “outstanding”. “Perry made decisions and gave directions and from my point of view I would work with him anywhere at any time again.”
- 13.6 Detective Senior Sergeant Haughey also said, “Deputy Commissioner Steve Long came in on a regular basis, probably once a week, to show the flag and have a cup of tea with the staff and this was appreciated.” He said Deputy Commissioner Long attended some staff meetings to show support.
- 13.7 Detective Senior Sergeant Haughey described Detective Inspector Mike Clement’s attention to detail as “outstanding” and added “this was one of the best if not the best team I have ever worked on in my time with Police [thirty-four years].”
- 13.8 The prosecutor, Crown Solicitor Brent Stanaway, said of his meetings with Operation Austin staff in Wellington, “From the top down, Nick Perry, Mike Clement, Steve Vaughan, everyone was very professional and communication was very good.”
- 13.9 Mr Stanaway added, “Perry demonstrated real leadership and real character. Clement was very fanatical about detail and left no stone unturned. Indeed it was largely because of Clement’s attention to detail that the Crown succeeded against Shipton and Schollum. Clement turned over every stone. For sheer ‘investigative grunt’ as a Crown Prosecutor I could not have asked for anything more.”

FINDING

- 13.10 i) Leadership of Operation Austin was found to be of the highest standard at all levels.

14. ASSESSMENT OF INTEGRITY AND EFFICIENCY

- 14.1 Integrity** – In this review “integrity” is defined as ‘the possession and application by the Operation Austin team of firm principles and steadfast adherence to high moral, ethical and professional standards’.
- 14.2** The review also paid particular attention to quality, thoroughness, best practice and completeness in all aspects of the work completed by the Operation Austin team.
- 14.3 Efficacy** – For the purposes of this review, “efficacy” is defined as ‘the ability to produce a desired amount of a desired effect’.
- 14.4** Applied to Operation Austin, the review considered amongst other things, the extent to which political instructions or advice given to Commissioner Robinson, Deputy Commissioner Long and/or Detective Superintendent Perry on how Police might respond to the Louise Nicholas, and subsequent allegations by Complainant ‘E’, influenced the ‘desired effect’ sought by Operation Austin.
- 14.5** In other words, the review looked carefully for any suggestion of bias towards a preconceived outcome.

FINDINGS INTEGRITY

- 14.6** i) Without exception the review found that all members of the Operation Austin team applied the highest standards of ethics and professionalism across all the investigative disciplines necessary to achieve the best possible outcome for each complainant who had contact with Police.
- ii) The standards of quality, attention to detail, completeness, innovation and best practice achieved by Operation Austin when measured against the New Zealand Police Manuals of Best Practice for ‘Major Operations’ and ‘Investigations – Sexual Offences’, and against other major operations of recent times, clearly sit at a level of excellence several grades above what would normally be expected of an historical criminal investigation on this scale.

FINDINGS
EFFICACY

- 14.7 i) From its inception in February 2004, Operation Austin remained firmly focused on the criminal investigation of the Louise Nicholas allegations and subsequently on all other matters of criminality that emerged.
- ii) The review found there was not the slightest evidence, at any time or by any individual, from the Commissioner of the day to each member of the investigation team, to support the suggestion there was a 'hidden agenda', bias or preconceived outcome.
- iii) Every allegation was investigated thoroughly by Operation Austin and objectively tested. The fact that the principal suspects were former or serving police officers – including an Assistant Commissioner – was not found to be in any way a factor or consideration when determining culpability.
- iv) The charges that were ultimately presented in court against each of the accused were the product of objective analysis of the available evidence and thorough independent review by the Crown.

15. ADHERENCE TO
NEW ZEALAND
POLICE BEST
PRACTICE

- 15.1 The first benchmark against which Operation Austin was reviewed in terms of best practice can be found in Volume One of the New Zealand Police Manual of Best Practice which deals with 'Major Operations' and, in particular, in Volume Three dealing with 'Investigations – Sexual Offences'.
- 15.2 All investigation work undertaken by Operation Austin also had to be shown to adhere to the Adult Sexual Assault Investigation Policy 1998/1 which sets out the police commitment to victims of adult sexual assault (an adult being someone seventeen or older). Investigators must adhere to the policy both in spirit and in deed.
- 15.3 The review looked for evidence that Operation Austin investigators ensured all victims were provided with support and kept informed of the progress of the investigation.
- 15.4 The review also considered how well individual members of the Operation Austin team were trained in all aspects of investigating adult sexual assault complaints.

FINDINGS

- 15.5 i) Because Operation Austin was unprecedented in terms of its scope and duration, the New Zealand Police Manuals of Best Practice by themselves were not very helpful. Operation Commander Detective Superintendent Perry drew a comparison with Scotland Yard which uses living documents for manuals of best practice and updates them on a much more regular basis.
- ii) While it was impractical to expect every member of Operation Austin to have received training in the Adult Sexual Assault Policy, nevertheless at least one investigator had that training and the Second-in-Command, Detective Inspector Stephen Vaughan, is a specialist practitioner in this aspect of dealing with victims.
- iii) Several other members of the investigative team were experienced Child and Sexual Abuse investigators in Police Districts.
- iv) In addition, the Operation Austin team received a training session from the New Zealand Police National Coordinator of Child and Sexual Abuse Investigations.

16. STRUCTURE
AND COMMAND

- 16.1 In the context of a major investigation like Operation Austin, best practice requires the lines of command and team members' roles to be clearly communicated. These must be updated as the operation or investigation develops and changes over time.
- 16.2 In major investigations, the use of Command Charts is important in instructing new investigators and support staff in their role and reporting lines.

FINDINGS

- 16.3 i) Operation Austin management paid particular attention to the requirement for clear communication lines. Numerous Command Charts were identified in the course of the review (example, Appendix 'A').
- ii) The Command elements of Operation Austin in all respects were found to be clear, concise and regularly refreshed to show the current status and reporting lines of the investigation at all times.

17. INVESTIGATION PLANS & OBJECTIVES

17.1 The review looked for the scope and quality of all Operation Austin Investigation Plans and the extent to which Investigation Objectives were established and updated or revised as the investigation unfolded.

17.2 Specific issues looked for included:

- i) The planning for and use of investigative phases;
- ii) Assigned tasks and all written directives;
- iii) Purpose of and accountability for tasks;
- iv) Daily briefing and conference notes;
- v) Command charts;
- vi) Leadership by the Operation Commander and Phase Leaders;
- vii) Quality of correspondence including statements, job sheets, affidavits, search warrants, letters, etc.;
- viii) Legal opinions; and
- ix) Use of trial transcripts.

FINDINGS

- 17.3 i) Investigation Plans together with Investigation Objectives were maintained on a regular basis for the duration of the criminal investigation.
- ii) As new complaints emerged, Investigation Plans and Objectives were updated, often weekly, in order to maintain and reinforce the focus and purpose of the investigation.
- iii) Plans provided a graphic illustration of how rapidly the criminal investigation was developing in the first few months of 2004. For example, the Investigation Plan for 1 March 2004 set out six separate Investigation Objectives. By 9 March 2004 there were fourteen objectives reflecting several new complaints received in the intervening period (Appendix 'B').
- iv) Each Plan clearly articulated the task, purpose, responsibility for completing the task, any relevant comments and sign-off once completed.

18. BRIEFING NOTES
& SYNOPSIS

18.1 Conferences took place on a daily basis and were generally chaired by the Operation Commander or the Second-in-Command. A stenographer recorded each conference and any actions arising from it.

18.2 In addition to the briefing notes, a 'Synopsis' of the events which had occurred and the actions taken up to a point in time was provided to the Commissioner, Deputy Commissioner and Crown Solicitor throughout the investigation.

FINDINGS

18.3 i) The Commissioner, Deputy Commissioner and Crown Solicitor told the reviewers they were kept well briefed throughout Operation Austin.

ii) The same attention to detail and quality apparent in the Investigation Plans and Objectives can be clearly seen in the 'Briefing Notes' recorded and used by Operation Austin.

iii) The records are detailed but concise. Significantly, each investigator was able to contribute, thus ensuring a good level of communication amongst the whole team which was critical given the complexity of the investigation.

iv) As well as being a useful briefing tool, the use of a current synopsis at various times during the investigation also proved invaluable in preparing numerous affidavits in support of search warrants; letters to the Crown Solicitor seeking legal opinions on various issues; and ensuring investigators working at a distance at the forward base in the Bay of Plenty District Headquarters in Rotorua were abreast of all developments.

19. DOCUMENT &
FILE MANAGEMENT
& DISCLOSURE

19.1 Initially Operation Austin was established to investigate the allegations made by Louise Nicholas. As the investigation progressed, other complainants were identified and interviewed.

19.2 As additional complaints were received, they were assigned an Investigation number as well as a unique Victim Code. To ensure the security of all complainants' details, investigation documents were filed by number not by name.

- 19.3 Security staff at the Police Information and Technology Service Centre (ITSC) ensured the server for Operation Austin was particularly secure and there could never be any unauthorised access. ITSC staff also provided an excellent service in maintaining the Criminal Investigation Database (CID).
- 19.4 In the course of the review of Operation Austin, all administration documents were examined.
- 19.5 Administrative documents and material relating to individual complainants' investigations that were relevant to each aspect of the complaints made by Messrs Rickards and McDowell were also examined.

FINDINGS

- 19.6 i) There is a lack of standard practice in the use of the Criminal Investigation Database (CID) across all New Zealand Police Districts.
- ii) Experts in complex file management and the use of the CID were purposefully selected for Operation Austin.
- iii) The file structure and use of protocols to protect victim identities significantly exceeded the standards laid down as best practice by the New Zealand Police.
- iv) The high standards of file management in this case made possible a smooth and effective disclosure process which proved to be complex and demanding given the number of accused and counsel involved.
- v) Operation Austin took the unique step of commissioning an independent quality assurance review of all disclosure to ensure that all material which should have been disclosed prior to a hearing in court was disclosed.
- vi) That independent review occupied 120 hours and was followed by a second review by the Crown Solicitor which took a further twenty hours.
- vii) Together with the appointment of an Operation Austin investigator as Disclosure Manager, the file management practices adopted set new standards for major operations in the New Zealand Police.

20. CROWN
SOLICITOR, LEGAL
OPINION & QUALITY
ASSURANCE

- 20.1 Legal opinions were sought on all important issues. Andrew Jack, Police Chief Legal Advisor, was involved from the beginning as an advisor to the Commissioner and other senior managers involved with Operation Austin as well as interested parties outside the Police.
- 20.2 Because the inquiry escalated rapidly, Operation Austin Commander Detective Superintendent Perry decided to bring in the prosecutor, Crown Solicitor Brent Stanaway, in May 2004 to help expedite matters, which worked well. By August 2004, Operation Austin had commenced the briefing phase, converting witness statements into a brief of evidence that can be used in court, which ran in parallel to the investigation proper.
- 20.3 The Crown Solicitor travelled from Christchurch to Wellington on more than one occasion to be directly involved in Operation Austin team meetings and talk through entire files.

FINDINGS

- 20.4 i) Feedback from the Operation Austin team about the performance of the Crown Solicitor and his team was very positive.
- ii) In terms of quality of the legal opinions provided, Deputy Commissioner Long gave as an example the opinion regarding charges to be laid against Messrs Shipton, Schollum, Rickards and Dewar and the consideration of sufficient evidence versus high public interest. This opinion was peer-reviewed by the then Deputy Solicitor-General, Nicola Crutchley.
- iii) Deputy Commissioner Long said it was this opinion in particular that gave him the confidence to go ahead and lay the charges. He described the legal opinions he saw as "solid".
- iv) Detective Senior Sergeant Haughey confirmed that all the legal opinions he saw were of a very high standard. In his opinion, the prosecutor, Crown Solicitor Brent Stanaway, and Second Counsel Mark Zarifeh did an extraordinary job and "were the voice of calm, legal reason throughout the investigation".

FINDINGS CONT.

- v) The peer review of Crown Solicitor Brent Stanaway's opinion of the charges to be laid, which was carried out by Nicola Crutchley, former Deputy Solicitor-General, is a very good example of the quality assurance measures used in this investigation.

- Vi) The independent review of disclosure carried out by Heidi Wrigley, of Ronanye Hollister-Jones Lellman, Barristers & Solicitors, Tauranga and in turn reviewed by the prosecutor Crown Solicitor Brent Stanaway is a further example.



Operation Austin Review: Victims Phase Review

INDEPENDENT POLICE CONDUCT AUTHORITY
REVIEW OF OPERATION AUSTIN

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21. INTRODUCTION

21.1 A major phase of the Operation Austin Review was to report on the integrity and efficacy of Operation Austin. As part of the process, it was decided to examine in some detail the way in which various victims' complaints were dealt with by police.

21.2 As in this case, reports of adult sexual assault may be made years after the event. The review of Operation Austin considered the manner in which investigators dealt with or considered:

- a) the victim's right to choose not to report the assault at the time;
- b) their reasons for those choices;
- c) the evidence offered by the victim;
- d) the availability of other evidence;
- e) the availability of witnesses;
- f) any applicable legal precedents; and
- g) the suspect's response.

21.3 Victims came to the notice of Operation Austin's police team from various quarters, a significant proportion as a result of news media publicity surrounding court trials and the Commission of Inquiry into Police Conduct headed by Dame Margaret Bazley, and other media comment. Operation Austin categorised these victims into two groups:

- i) those whose complaints were of a level of significance that required them to be reported to the Police Complaints Authority; and
- ii) those who for one reason or another did not need to be reported to the Police Complaints Authority.

21.4 The two groups comprised fifty cases in all, equally divided. All fifty cases were reviewed by the Authority's investigators. The first group of twenty-five cases were examined in depth by the Operation Austin Review team. Of these complaints it was decided that ten cases required further scrutiny and follow-up with Operation Austin.

21.5 These cases were discussed at length with Detective Inspector Vaughan on 9 July 2007. Most of them are still going through various stages of investigation by Operation Austin and will eventually culminate in a report to the PCA. The work carried out by the police on these cases was checked against a Victims Template previously prepared by the Operation Austin Review.

22. ADHERENCE TO THE VICTIMS' RIGHTS ACT 2002

22.1 The review considered the application of the provisions of the Victims' Rights Act 2002 to this major criminal investigation.

FINDINGS

- 22.2
- i) The Authority has rarely encountered the breadth, depth and quality of Victim Management practices adopted by Operation Austin.
 - ii) Many of these practices are 'ground breaking' and the Authority recommends they be incorporated into the New Zealand Police Manual of Best Practice.
 - iii) Examples include the appointment of an investigator as Victim Liaison Officer for each complainant throughout the prosecution process; the involvement of Victim Support staff; on-site support in the precincts of the court; and the maintenance of a Victim Contact Register.
 - iv) For example, in the case of Louise Nicholas, who was assigned a full time Victim Liaison Officer, the Victim Contact Register (Appendix 'C') runs to twenty-five pages and records the date, time, reason and result of each contact by Operation Austin.
 - v) The Victim Contact Register for Complainant 'C' provides a further example of the excellent interaction and support provided.

23. OPERATION
AUSTIN'S
INVESTIGATIVE
APPROACH TO
COMPLAINANTS

23.1 Each complainant was interviewed by Operation Austin investigators.

23.2 In the majority of cases, complainants were approached by Police as a consequence of information received during other interviews. Because the Police approach was generally unexpected, complainants' responses were varied. They fell into four main categories:

- i) a denial of any knowledge of the alleged offending or suspects;
- ii) an acknowledgement of consensual sexual relationships with suspects;
- iii) an acknowledgment of criminal offending but no complaint laid; and
- iv) acknowledgement of criminal offending and a formal complaint taken.

23.3 Where a formal complaint was made, Operation Austin used the following process with each complainant:

- i) a formal interview and statement were taken and investigators were encouraged to use an Interview Plan;
- ii) each interview generated a formal investigation plan;
- iii) the complainant was consulted about how the investigation would be pursued;
- iv) the investigation was completed;
- v) the finalised file was submitted to the Crown Prosecutor for a legal opinion on whether there was enough evidence to lay charges and public interest;
- vi) the legal opinion was discussed with the complainant and reasons for not being able to proceed explained;
- vii) complainants could seek their own independent legal advice. Where they did access was provided to a Police legal advisor if required; and
- viii) the complainant was told the final outcome of the investigation.

23.4 The documents and material gathered during the course of investigating a complaint were managed as follows:

- i) each complaint file was separated into two parts – an Investigation file and Administration file;
- ii) when each complainant investigation was complete, a detailed summary of the whole process was submitted to the Detective Inspector: Second-in-Command of Operation Austin with the recommendation that the investigation be closed and filed accordingly.

FINDINGS

23.5 i) The protocols adopted by Operation Austin for contact with complainants, and subsequent prosecution where that followed, were of the highest standard.

- ii) It is clear that throughout the investigation a premium was placed on using an empathetic but pragmatic process with all complainants.

24. OPERATION
AUSTIN VICTIMS
POLICY

24.1 Operation Austin adopted a policy in dealing with all victims once a complaint had been made which used the same basic guidelines:

- i) a police liaison person was appointed for that victim;
- ii) victim support was available if required;
- iii) a lawyer chosen by the victim and representing the interests of the victim was appointed in selected cases if required;
- iv) a full range of options was explained to the victim and time given to consider them. The options might range from taking no further action (if, for example, the suspect was already serving a jail term) to proceeding with a prosecution if the evidence was found to exist;
- v) in all cases where prosecution was a possibility, the full facts were put before a Crown Prosecutor for an opinion. This proved very worthwhile because of the historic nature of many of the complaints and the difficulty in gaining convictions in such cases;

- vi) once a decision was reached, the reason was fully explained to the victim; and
- vii) once the prosecutions are completed (post the Dewar trial) every victim will receive a letter from Operation Austin. They will also receive a final visit from a police officer to assess how they are coping and whether they need further support.

24.2 Currently, of the twenty-five cases reported to the PCA by Operation Austin and reviewed in depth, only four have completed the above process. The rest will be finished over the next few months, now the Dewar trial is over.

FINDINGS

- 24.3 i) The victims who came through Operation Austin have been thoroughly and professionally dealt with. Nonetheless, further complainants may surface at some time in the future for a variety of reasons.
- ii) Operation Austin's policy initiative in dealing with victims is an excellent one and goes well beyond what has been the norm in the past. It is yet another example of Operation Austin leaving no stone unturned to try and rectify the damage done to the victims and to the Police's reputation by a very few rogue elements within its ranks.



Operation Austin Review: Conclusions and Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY
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25. COMPLAINTS ABOUT OPERATION AUSTIN

- 25.1** Assistant Commissioner Rickards and Mr Steven McDowall made a number of written complaints to the Police Complaints Authority about Operation Austin. Those complaints have been thoroughly investigated and the findings relayed to Messrs Rickards and McDowall by the Authority.
- 25.2** In addition, Assistant Commissioner Rickards made a number of statements in public that were critical of the police investigation and its efficacy and integrity. These complaints have also been thoroughly investigated by the Police Complaints Authority.

FINDINGS

- 25.3** i) The Assistant Commissioner's public comments about the standards of leadership and investigation are entirely at odds with and not supported in any way by the evidence disclosed by this comprehensive review which included interviews of all material witnesses and a thorough scrutiny of all relevant documents.
- ii) The Authority noted a particular thread running through many of the Assistant Commissioner's complaints. He has tended to be over selective in much of the material placed before the PCA as the basis for his complaints. A tendency to overstate some issues to the point of exaggeration was also noted.
- iii) It appeared to the Authority that whilst the Assistant Commissioner has accused others of bias, he has on occasions engaged in precisely the same behaviour.

26. DURATION OF OPERATION AUSTIN

- 26.1 The review addressed criticism from some quarters that Operation Austin could have been completed within a shorter time frame.
- 26.2 Operation Commander, Detective Superintendent Perry's focus was on credibility. In his view, Operation Austin was "going into 'uncharted waters' both in terms of scope and duration which was unprecedented".
- 26.3 Detective Superintendent Perry initially believed the investigation could be completed within six months or less. However, after six weeks it was apparent it would take much longer. The inquiry was almost overwhelmed by new issues and allegations virtually every week, many remarkably similar to the Louise Nicholas case. For that reason, the investigation needed to be very thorough.
- 26.4 Staff worked weekends for a month just to keep up, but as more cases came in, all of them inter-related, the volume of work grew and Detective Superintendent Perry could not see how to investigate and process it any faster. In the first nine months the investigation team worked twelve days on before days off.
- 26.5 At one point the question arose as to whether the police should draw a line because there were so many new matters every week. It was decided to address each and every new complainant without exception.
- 26.6 It was a particularly challenging inquiry, especially as the main suspects were themselves very experienced in police investigation methods. Commissioner Robinson also referred to the "tyranny of time" and the ability or inability of witnesses to recall events from so long ago.
- 26.7 In addition, there was significant pressure from the Commission of Inquiry into Police Conduct to find out how much longer the Operation would take, because the Commission was unable to proceed while the same issues were under criminal investigation. Detective Superintendent Perry resisted those demands with support from Deputy Commissioner Long and Commissioner Robinson.

FINDINGS

- 26.8 i) There would have been some truth in the criticism that the investigation took too long if it had focused only on the Louise Nicholas case. However, the Operation was almost overwhelmed by new matters and allegations virtually every week. Many of these allegations were remarkably similar to the Louise Nicholas case.
- ii) The combination of the volume of complaints and the depth and complexity of the issues has rendered it unsurprising that the investigation took as long as it did.

27. OPERATION
AUSTIN INTERACTION
WITH THE PCA

- 27.1 The Police Complaints Authority was involved with Operation Austin from an early stage. PCA investigators took an active monitoring role from early on and this has continued to the present time.

FINDINGS

- 27.2 i) It is clear to the Authority that the relationship between Operation Austin and the PCA, both in terms of full disclosure of all documentation, response times for requests for information, and the professional demeanour of all practitioners for both parties, has remained at a productive and objective level throughout.

28. RECOMMENDATIONS
FROM THE REVIEW OF
OPERATION AUSTIN

- 28.1 As a result of the review by the PCA of Operation Austin, I make the following recommendations to the Commissioner of Police:
- i) **File Management and Disclosure** – I recommend that lessons learned during Operation Austin in file management and disclosure be submitted to the Assistant Commissioner responsible for Planning and Policy with a view to upgrading the New Zealand Police Manual of Best Practice accordingly.
- ii) **Victim Rights Act 2002** – many of the practices adopted by Operation Austin in supporting victims were ‘ground breaking’ and I recommend they be incorporated into the New Zealand Police Manual of Best Practice.



The Hon. Justice Goddard

INDEPENDENT POLICE CONDUCT AUTHORITY



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