



CRIMINAL JUSTICE
COMMISSION

**A REPORT OF AN
INVESTIGATION INTO THE
CAPE MELVILLE INCIDENT**

SEPTEMBER 1994

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ISBN 0 7242 6057 9

Printed by Goprint, Brisbane



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Dear Sirs

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report into the investigation of the Cape Melville Incident.

Yours faithfully

R S O'REGAN QC
Chairman

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PART I
INTRODUCTION

CHAPTER 1

THE COMMISSION'S INVOLVEMENT IN THE CAPE MELVILLE INCIDENT

1.1 THE GENESIS OF THE INQUIRY

On 12 January 1994, the Criminal Justice Commission¹ received a letter from Mr Doug Slack MLA, Shadow Minister for Environment and Heritage, and Member for Burnett. Attached to it was an anonymous letter dated 28 November 1993 alleging 'corrupt intervention' by Dr Craig Emerson, the Director General of the Department of Environment and Heritage. (A copy of the anonymous letter is appendix 1). The anonymous letter asserted that:

- Two persons had been charged with National Parks offences at Cape Melville concerning foxtail palms. One of the defendants was Paul Barbagallo. Paul Barbagallo is the brother of David Barbagallo who worked in the Premier's Department;
- David Barbagallo was with his brother Paul and others when one of two vehicles being used by the party was taken by a park ranger on 11 November 1993. David Barbagallo was supposedly checking Starcke Station in connection with its purchase by the Government. Starcke Station adjoins Cape Melville National Park;
- When 'certain people' learnt of the matter, Dr Emerson instructed senior officers of the Department in Cairns to hire a vehicle with government funds to replace the vehicle which had been seized. Mr G Kelly and Mr G Wellard were nominated as the senior officers;
- Another instruction was that no charges were to be laid against the offenders;
- The Fauna Squad police became involved and pursued a proper investigation. Pressure was applied on them not to charge Paul Barbagallo;

¹ Hereinafter called the "the Commission" or "the CJC"

- Dr Emerson is involved with Barbagallo's sister in Vision 2000 (sic) and there was a female on the foxtail palm seed collecting trip with Paul Barbagallo. Drugs and a pipe were found by police in a lady's bag in the four wheel drive vehicle which was seized;
- The park ranger involved, Mr Pat Shears, had been told his presence was no longer required and his employment was to cease with the National Parks and Wildlife Service the following week after eight years work with the Department.

The anonymous letter queried why anyone who had committed an offence should be assisted to escape prosecution because of "contacts in high places". It also questioned why a vehicle should be supplied to the offenders before a proper investigation had taken place.

Mr Slack, in his covering letter, stated that he regarded the allegations outlined in the anonymous letter as "most serious". He added that he believed that the allegations warranted a full investigation by the Commission.

1.1.1 The Identity of the Anonymous Complainant

While the Commission has suspicions about the identity of the author of the anonymous letter it is unable to prove who he or she is. Each of the likely candidates was questioned about the letter and denied writing it. The identity of the author of the letter was not material to determining the substance of the allegations and as there was no likelihood of the complainant being convicted of having made a wilfully false complaint the Commission determined that this aspect of the matter did not warrant further investigation.

All of the allegations of impropriety contained in the letter have been found to be untrue.

If the Commission's suspicions about the identity of the letter's author are accurate it is reasonable to assume that he/she was maliciously motivated because he/she would have known the allegations were false or could have had inquiries made to disprove them. The allegations put the most negative slant on actions which have now been shown to be reasonable and proper.

Suspicious about the motives of the anonymous complainant also arise as a result of the complainant choosing to bring the matter to the attention of a member of the Opposition rather than reporting the allegations to the Commission, the Police Service, the Ombudsman or the Minister for the Environment and Heritage.

By reporting the matter anonymously to a person who could reasonably be expected to attempt to use the matter for party political advantage, the complainant made the productive investigation of the matter more difficult and more costly than if the complainant had adopted any of the alternative courses referred to above.

1.2 THE COMMISSION'S INITIAL ASSESSMENT OF THE COMPLAINT

On 13 January 1994, the Acting Director of the Official Misconduct Division, directed that officers of the Complaints Section undertake preliminary inquiries to enable the Commission to assess whether the allegations reasonably raised a suspicion of official misconduct by any person holding a position in a unit of public administration. Before the completion of this task, the Commission received a further letter dated 2 March 1994 from Mr Slack. It outlined further information Mr Slack had received concerning the matter. In the letter, Mr Slack expressed the view that while no firm conclusions could be drawn from any of the material, it raised sufficient concerns to make investigation by the Commission "imperative".

On 11 March 1994, the assessment of the matter was completed. During the assessment, the Commission identified matters which it considered required investigation. On 14 March 1994, a media statement was released by the Commission advising of this assessment. The media statement counselled that:

No adverse inference against any person should be drawn from the Commission's decision to undertake an investigation.

A full investigation of the allegations was immediately commenced.

1.3 THE COMMISSION'S JURISDICTION

The jurisdiction of the Commission to investigate any particular matter is circumscribed by the provisions of the *Criminal Justice Act 1989*². In order for the Commission to investigate the allegations, it had to be satisfied that if substantiated, the conduct alleged would fall within one of the heads of jurisdiction provided for in the Act. The Commission considered that the matter fell squarely within the purview of section 29(3)(d) of the Act. This section provides that it is a function of the investigative unit of the Commission, namely the Official Misconduct Division, to investigate cases of:

- (i) alleged or suspected misconduct by members of the Police Service; or
- (ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration;

that come to its notice from any source, including by complaint or information from an anonymous source.

The definition of "unit of public administration" in section 4(1) of the Act includes "departments". The Department of Environment and Heritage and the Premiers Department clearly come within this definition. Persons such as David Barbagallo and Dr Emerson were unquestionably holders of an appointment in a unit of public administration. It matters not that David Barbagallo had ceased his employment in the Premiers Office when the Commission's inquiry commenced - section 31(2)(c).

In broad terms, "official misconduct", as it relates to a holder of an appointment in a unit of public administration, includes behaviour which may directly or indirectly affect the honest and impartial discharge of public functions or which constitutes a breach of trust placed in an individual by reason of his appointment to the unit of public administration or which involves the misuse of official information. In addition, it must either be conduct which constitutes or could constitute a criminal offence or a disciplinary breach which provides reasonable grounds for the termination of the services of the subject officer.

2

Hereinafter called "the Act"

1.3.1 Calls to Widen the Inquiry

During the course of the investigation, requests were made by Mr Slack, Shears³ and others to widen the investigation to include claims of extensive widespread illegal activity in Far North Queensland relating to fauna and flora smuggling and drug and gun running. These wider and more general issues did not fall within the ambit of section 29(3)(d) which is described above because there was no basis on which to suspect that persons holding positions in a unit of public administration were involved. The only other possible head of jurisdiction to justify the inclusion of these matters in the Commission's inquiry is section 23(f)(iv) of the Act. So far as it is relevant that section provides that the responsibilities of the Commission include -

... in discharge of such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police Service or other agencies of the State, undertaking -

- i)
- ii)
- iii)
- iv) investigation of organised or major crime.

The claims made in relation to fauna smuggling and other illegal activity in Far North Queensland lacked particularity and related to events which occurred a long time ago. They were unlikely to be able to be effectively investigated. The Commission considered that even if sufficient evidence had been forthcoming, there was no basis upon which the Commission could conclude that the issues could not be appropriately or effectively investigated by the Queensland Police Service, officers of the Department of Environment and Heritage and/or the Australian Customs Service. The Commission, therefore, determined not to widen the ambit of the investigation.

³

In the interest of economy and consistency surnames are used without the customary title. Generally honorifics and titles will be used only on the first occasion a person is mentioned. No discourtesy is intended.

1.4 ISSUES FOR CONSIDERATION

The issues for consideration were formulated with careful regard to the Commission's jurisdiction and in particular, the provisions of the Act. Generally, the investigation was to focus on whether any acts of official misconduct had been committed in respect of the events surrounding, relevant to and consequent upon the seizure of a motor vehicle belonging to Paul Barbagallo at or near Cape Melville National Park on 11 November 1993 by Patrick Shears, then an officer of the Queensland National Parks and Wildlife Service, including:

- the investigation and reporting of those events;
- the actions of David Barbagallo and Dennis Atkins (another employee of the Premier's Department) relevant to these events;
- the circumstances in which David Barbagallo and Dennis Atkins travelled to North Queensland during the period 12 to 14 November 1993; and
- the failure of the Department of Environment and Heritage to renew the contract of employment of Patrick Shears.

In the course of the inquiry, another allegation capable of further investigation was made to the Commission. A journalist with *The Sunday Mail*, Ms Pat Gillespie, provided the Commission with information that she had been given concerning a Mr David Cochran of Sheldon Palms.

Gillespie advised that she had been informed that Cochran had told a number of people that when investigated by Detective Sergeant Gavin Ricketts of the Wildlife Squad over foxtail palms in 1992, he contacted David Barbagallo. According to Cochran's version of events, as reported by Gillespie, he telephoned David Barbagallo threatening to divulge information to police about Paul Barbagallo's foxtail palm smuggling activities if the investigation into him (Cochran) was not stopped. Gillespie added that Cochran had shown people David Barbagallo's telephone numbers which were kept in his private telephone directory.

As this allegation raised the suggestion that there may have been corrupt interference into the investigation of Cochran by one of the parties referred to in the original complaint, the Commission considered it appropriate to investigate this matter as well.

CHAPTER 2

THE INVESTIGATION AND THIS REPORT

2.1 LOGISTICS OF THE INVESTIGATION

During the assessment process the Commission interviewed Mr Slack and Mr Shears. Thereafter, once it was determined that the Commission's jurisdiction was enlivened, all available witnesses were interviewed by officers of the Commission. No witness thought to have relevant information refused to co-operate with the inquiry.

In all, forty-four witnesses were interviewed and numerous departmental files were examined. (A list of the witnesses interviewed is appendix 2).

Officers of the Department of the Environment and Heritage co-operated fully with the Commission and provided all records sought.

There was considerable dispute among various witnesses about aspects of the location where the events under investigation occurred. In order to assess the responses of the Department of Environment and Heritage to Shears' seizure of a vehicle, the Department's response in general to the smuggling of foxtail palm seeds and the reasonableness of Shears' actions, it was considered necessary for the Commission to obtain first-hand independent evidence of the physical aspects of the locality. Therefore, the officer presiding over the hearings, the detective primarily responsible for the investigation in company with the Regional Manager, Far Northern Region, Department of Environment and Heritage (who had been on extended leave when the central events occurred) and Shears, flew to Cape Melville National Park on 15 May 1994. Access by road was not possible because of the wet season.

The Premier's knowledge and approval of travel undertaken by two of his staff was relevant to issues being considered by the Commission. The Premier contacted the Chairperson and assured the Commission of his desire to co-operate in any way felt necessary. The Commission submitted to the Premier a list of written questions to which he promptly provided written answers.

Also relevant to the inquiry was the approval and acquittal of the expenses incurred by the Premier's staff when they travelled to Far North Queensland. The Auditor-General agreed to examine these aspects of the matter and promptly provided the

Also relevant to the inquiry was the approval and acquittal of the expenses incurred by the Premiers staff when they travelled to Far North Queensland. The Auditor-General agreed to examine these aspects of the matter and promptly provided the Commission with a written report detailing his findings. (That report is appendix 3).

In excess of 1,500 work hours were expended by staff of the Commission during the course of the investigation. The investigative hearings were presided over by Mr Michael Barnes the Chief Officer of Complaints Section, Official Misconduct Division. Mr Russell Pearce, Senior Legal Officer of the Commission, and Barrister, was appointed counsel assisting.

Other than the Auditor-General who undertook an examination and provided a report free of charge to the Commission, no external consultants were retained.

2.2 INVESTIGATIVE HEARINGS

In view of the seriousness of the allegations, the complexity of some of the issues raised and the degree of public interest generated by political and media comment, the Commission considered that the main participants in the events investigated should be required to give evidence on oath and have their versions tested by cross examination. It was therefore decided to convene a series of investigative hearings pursuant to the power granted to the Commission by section 25(1) of the Act, which authorises the conducting of hearings in relation to any matter relevant to the discharge of the Commission's functions or responsibilities.

The investigative hearings commenced on 9 May 1994. The Commission sat on a total of 14 days over a three week period terminating on 3 June 1994. Eight of the hearing days were held in Cairns. It was the first occasion on which the Commission had held investigative hearings outside Brisbane. The holding of the hearings in Cairns rather than Brisbane had a number of advantages:

- **Cost:** It cost less to send three Commission staff members to Cairns than it would have to bring the fourteen witnesses who gave evidence there to Brisbane;
- **Efficacy:** Witnesses who were identified during the evidence were able to be immediately interviewed and in some cases called before a hearing. Witnesses were able to be recalled with a minimum of inconvenience.

Documents which were referred to by departmental officers were able to be immediately obtained and used in the hearing. Arrangements were easily made for the Commission officers to attend at Cape Melville.

- **Convenience of Witnesses:** Most of the senior officers of the Far Northern Region of the Department of Environment and Heritage were called to give evidence. It is impossible to predict with any accuracy how long any given witness' evidence will take. If the hearings had been held in Brisbane all of those officers would have been summoned for the same or following days. By holding the hearing in Cairns the Commission was able to keep witnesses advised of the progress of proceedings and this minimised the time they were away from their offices. This applied equally to other witnesses.

The Commission greatly appreciated the generosity of the Honourable Justice Barry of the Family Court who permitted the Commission to use the facilities and hearing room of the Family Court in Cairns. The Commission also appreciated the courtesy and assistance of the staff of the Family Court Registry in Cairns.

The Cairns sittings were also assisted by Assistant Commissioner R Dargusch who made available the services of a constable to act as hearing room orderly. The investigation had very little to do with the conduct of police officers and Mr Dargusch's assistance is therefore all the more commendable.

In all, 27 persons were called and gave evidence before investigative hearings. A number of these persons were recalled to give evidence on a second occasion in order to clarify matters which had arisen since their first appearance before the Commission. (A list of those who gave evidence before the hearings is appendix 4).

Each person who was required to give evidence was served with a summons issued pursuant to section 74 of the Act. The schedule to the summons advised the witness of the matters under investigation about which he or she was required to give evidence.

All witnesses were advised of their right to have legal representation during the hearing. Those who chose to appear unrepresented were advised that if, at any stage during the hearing they felt in need of legal advice, an adjournment would be granted to enable that to occur.

2.2.1 Hearings Closed to the Public and the Non-Publication of the Evidence

The provisions of the Act impose a prima facie obligation upon the Commission to hold hearings open to the public. However, by virtue of section 90(2) of the Act, the Commission may order that a hearing be closed to the public if it considers that an open hearing would be unfair to a person or contrary to the public interest having regard to the subject matter of the hearing or the nature of the evidence expected to be given.

At the initial session of the hearings the terms of reference of the inquiry were read in public and submissions were made by counsel assisting as to whether the hearings should be held in open or closed session.

On the basis of counsel's submissions, the presiding officer concluded that an open hearing would be unfair to persons who were to be adversely mentioned in evidence and to some of the witnesses who would be called before the hearing. He also concluded that it would not be in the public interest for the hearing to be open to the public. Those conclusions were based on the following considerations:

- Some of the witnesses to be called had been charged with criminal offences arising from the events under investigation. In investigative hearings witnesses can be compelled to answer questions even if the answers incriminate them. Whilst those answers could not be used against the witness in criminal or disciplinary proceedings, the publication of those answers could jeopardise the chance of those persons receiving a fair trial. Indeed, such publication may even have amounted to a contempt of the court in which charges were to be heard;
- Other witnesses to be called were required to give evidence which would traverse the events surrounding the charges which had already been laid. The premature publication of the evidence of those witnesses would similarly have adversely affected the chances of those persons who had been charged receiving a fair trial;
- There was always the possibility that, as a result of the investigation, certain persons may have been charged with criminal or disciplinary offences. The premature publication of the evidence to be given could equally have adversely effected those possible charges in the same manner as outlined above;

- The issues under investigation were contentious and had attracted significant public comment. If the hearings had been open to the public, the evidence of witnesses would likely have been widely publicised. It was considered foreseeable that this may have either intentionally or unintentionally influenced the recollections and/or evidence of witnesses called later in the proceedings. It was considered that it was in the public interest to ensure that the efficacy and the integrity of the investigation was not jeopardised in this way;
- As a result of the investigation already conducted by the Commission prior to the investigative hearings commencing it reasonably expected that evidence would be given at the hearings which could adversely reflect upon the character credit and reputation, not only of the witnesses but also of other persons about whom allegations of impropriety had been made. Those people would not during the course of the proceedings have the benefit of cross-examining or countering the effect of any such adverse evidence;
- The Commission had always indicated that it had intended to present to Parliament a full report of its investigation. The report was to contain a precis of the evidence gathered and the reasons for and the bases of the Commission's conclusions and any recommendations it made. It was considered, therefore, that the public would be fully informed.

Each witness called was invited to make submissions on the question. None submitted that the hearings should be conducted in public with the exception of Shears, who wished the record to show that he considered public hearings more appropriate. However, neither he nor his legal representative, who was present throughout his evidence, responded to the invitation to make submissions on why the hearing should be held in public session. His solicitor in response to an invitation to make submissions upon the question answered, "No, my client just simply wants it noted on the record." In the absence of any submission the Commission concluded that, for the reasons enunciated on the opening day of the hearings.

For the same reasons it was ordered that the hearings be conducted in closed session, it was considered appropriate to make an order pursuant to section 88 of the Act forbidding publication of the evidence given by witnesses. In accordance with an undertaking given to witnesses who appeared before it, the Commission

has recently varied the non-publication order to provide that it shall cease to have effect from the time this report is tabled in the Legislative Assembly.

Notwithstanding the ruling made on the first day of the investigative hearing, a number of submissions were received requesting that subsequent hearings be open to the public. It is appropriate that the Commission set out the matters submitted in support of those calls for public hearings, and the Commission's response to them.

- a) *The inquiry relates to the involvement of the Premier's personal staff and a Director-General of the Department, who is an active member of the Labor Party.*

Complaints involving allegations against departmental heads of varying political persuasion and ministerial staff are not new to the Commission, which stands on its record of investigating such matters impartially and independently of any political interference or influence. It has managed to do this without holding a plethora of very expensive and protracted public inquiries. Such inquiries are reserved for chronic matters of great public importance, such as jury manipulation, systemic abuse of mentally incapacitated and the dumping of liquid waste.

Whether Emerson is a member of any political party is a matter of complete indifference to the Commission and it is not relevant to the conduct of the inquiry.

- b) *An open inquiry would be more protective of public servants whose jobs may be put in jeopardy by their giving evidence.*

The provisions of the Act are designed to protect the safety, career and reputation of all persons who give evidence to or otherwise assist the Commission by furnishing information or producing any record to it. It is difficult to see how a public inquiry would afford any greater protection. Indeed, evidence given in public could adversely reflect upon the character, credit, reputation or career of witnesses or other people mentioned.

Furthermore, persons who for reasons, whether real or imagined, are reluctant to come forward with relevant evidence are even less likely to do so when faced with the prospect of being publicly identified and examined by counsel representing those they accuse of misconduct.

During the investigative hearings, a number of officers from the Department of Environment and Heritage, including the Regional Director of the Far Northern Region, the Regional Manager and a Senior Conservation Officer gave evidence. Each was asked at the commencement of his evidence, whether he wished the hearings to proceed in open or closed session. None objected to the closed session or submitted that the hearings should be open to the public.

- c) *The very nature of the closed inquiry means that witnesses will arrive without knowledge of what may have been said about them and, if a public report is inconsistent with what they know of proceedings, from their own involvement, they will not be free to say so.*

Investigative hearings are frequently held in closed sessions for the very reason that particular witnesses may not be aware of the testimony of other witnesses. Clearly, the objective is to gather independent truthful evidence. If the hearings remain open to the public and the evidence is widely published, then such publication may either intentionally or unintentionally influence the recollection or the evidence of witnesses called later in the proceedings. If there is a danger of this happening an open inquiry cannot be in the public interest. The ascertainment of the truth is surely the paramount consideration.

In this regard, the hearing procedures are no different from interviews conducted during a police investigation. It is not proper police practice to provide witnesses with copies of the interviews conducted with various other witnesses prior to obtaining a full account from the witness being interviewed. Indeed, the conduct of the practice by the now disbanded Internal Affairs Section of the Queensland Police Service in this regard was severely criticised by Commissioner Fitzgerald (as he then was) when he said in his report "Some of the procedures adopted have been amazing; for example, disclosing the material available to suspected police officers prior to interrogation..."

Before publishing this report and reaching any conclusions adverse to any person, the Commission afforded each person the opportunity to respond to possible conclusions adverse to them. They were, in effect, furnished with provisional conclusions and given the opportunity to place before the Commission any response they wished to make concerning the provisional

conclusions. Those responses were taken into account by the Commission in reaching the conclusions contained in this report.

The suggestion that the witnesses would not be free to say whether the Commission's conclusions or other aspects of the report were inconsistent with their knowledge of the matter has no validity because the Commission's non-publication order no longer applies. Each witness was advised during the hearing that this would be the case.

- d) *It is not believed that the issue of saving a few weeks in time, or the possible extra costs factor, are justifiable reasons to restrict an inquiry to secrecy, particularly when government figures are involved. In the present circumstances, this is highly inappropriate, as an accusation could be levelled that the government of the day is controlling the outcome of an inquiry, where findings could be embarrassing to it, by simply restricting the budget of the CJC.*

Like all government funded organisations, the Commission works to a fixed budget within which the Commissioners decide the priorities. Time and budgetary considerations did not compromise a thorough investigation of this matter independent of any political ramifications. No Minister or member of the Government sought to interfere in the inquiry. There was no reasonable apprehension of such interference which would have justified a decision to conduct public hearings.

- e) *From weekend media reports witnesses are already refusing to present evidence, and some are considering their position in view of the hearings being secret.*

Reports in the press that two witnesses had refused to be interviewed in relation to the inquiry because the hearings would be conducted in private, were misleading. The Commission had intended to interview two persons nominated by Mr Slack in order to discover whether they had any substantive information relevant to the investigation. The nature of the information the Commission had been advised they possessed did not lead it to suspect they had information relevant to this inquiry. They declined to be interviewed. It was not correct to say that they had been summoned to an investigative hearing. This step was not taken because the Commission had no basis on which to reasonably conclude that either of them had evidence relevant to the inquiry.

- f) *While the Chairman, (presiding officer) Michael Barnes may be a person of the highest integrity, the very fact that he was a member of the Executive of the Labor Lawyers Association (as late as 1992) raises doubts about the appropriateness, under his Chairmanship, of a closed inquiry when Labor figures were involved, and an adverse outcome could have damaging political repercussions for the Labor Party.*

This submission received wide publicity. The suggestion that Barnes' past membership of a quasi-political association of lawyers should disqualify him from presiding over investigative hearings convened in relation to this matter, was rejected. The Chairperson publicly stated his support for Barnes in which he expressed the view that not only as a matter of personal judgement but also based on his performance as a Chief Officer of the Complaints Section, the Chairperson had no doubt as to Barnes' ability to impartially discharge his statutory responsibilities. The Chairperson accepted Barnes' assurances that his involvement with the Labor Lawyers Association was no more than a casual social interest and that he valued his reputation for professional independence far higher than any sympathies he may have for any political party. It is, indeed, churlish in a democratic and pluralist society that a public officer should be subjected to such a public and unprovoked attack because of his personal political preferences without any evidence to demonstrate any reasonable apprehension of bias or partiality. Barnes has never been a member of any political party but even if he had, as the presiding officer, he had no adjudicative or determinative powers but merely facilitated the gathering of evidence. The framing of conclusions and recommendations and the report itself, is the product of the work of many officers and was only published when it reflected the view of the Commission.

Although not directly relevant to the question of whether hearings should have been open or closed, it is appropriate at this stage to refer to a further submission made to the Commission, namely that counsel assisting the hearings, Russell Pearce,

shares Chambers with, and is a close associate of Townsville barrister Durward, who was a defence barrister for Paul Barbagallo

and in those circumstances, Mr Pearce should be stood aside from his position as counsel assisting. Pearce, in fact, ceased sharing chambers with Durward some twelve months previously. In any event, it is quite common and totally appropriate for counsel from the one set of chambers to appear

against each other. The fact that barristers share chambers in no sense inhibits their complete independence. This independence is recognised both at law and in the ethics of bar practice. There was absolutely no basis to remove Pearce from his role as counsel assisting.

2.2.2 Allegations of Unauthorised Use of Documents Tendered During Hearings

On 18 May 1994, the Commission received a facsimile letter dated 17 May 1994 from Mr Slack. Mr Slack advised that

Some very disturbing allegations have been made to me based on the sighting of copies of documents that have been given to the CJC

The letter continued, that if a proper or satisfactory explanation was not forthcoming, then it was obvious that the inquiry had been compromised and that new personnel should be appointed to conduct it. He added that in the interests of public confidence, it would then be absolutely essential for the inquiry to be open.

Mr Slack outlined that it had been claimed to him that photocopies of "two articles" which had been handed to the Commission by Shears on Friday 6 May 1994, were seen to be in the possession of Mr Stephen Todd during the hearing of charges against Paul Barbagallo in the Innisfail Magistrates Court on Friday 13 May 1994. Mr Todd was Paul Barbagallo's solicitor during that hearing and before the Commission. Mr Slack identified the two articles as:

- 1) A photograph from *The Sunday Mail*, on the top of which Shears had written.
- 2) A photocopy of a mud map Shears had drawn of the Cape Melville area.

Mr Slack reported that it was claimed that Paul Barbagallo saw and handled both documents throughout the hearing in the Innisfail Magistrates Court. Mr Slack stated that he could not think of any circumstances where the defence lawyers for Barbagallo should have possession of documents handed to the Commission by Shears.

Mr Slack also asserted that it was believed that Paul Barbagallo's barrister, Stuart Durward, had quoted during the hearing in the Magistrates Court from a statement handed to Detective Sergeant Gavin Ricketts by Shears on 17 November 1993. Mr

Slack queried how the defence barrister had obtained a copy of that statement. This statement was a log or diary of events compiled by Mr Shears.

During the examination of Paul Barbagallo before the investigative hearing of the Commission in Cairns on 12 May 1994, the two documents given to the Commission by Shears, and referred to in Mr Slack's correspondence, were shown to Paul Barbagallo and copies given to his counsel. This was entirely appropriate and in accordance with the usual practice adopted when examining witnesses in either a court or hearings of this kind. Paul Barbagallo was cross-examined in respect of these documents. As the examination of Paul Barbagallo had not been finalised at the conclusion of his evidence on that day, he was not excused from further attendance but merely stood down. He was required to give further evidence. It was not thought appropriate that his counsel be required to return all documents prior to the examination of his client being concluding. The Commission does not consider that counsel assisting at the hearing acted improperly in this regard.

The Commission wrote to Durward and outlined to him the allegations that had been made. The Commission sought details of any use he may have made of these two documents during the Magistrates Court hearing. He was also asked to assist by furnishing to the Commission the name of the person who provided him with the copy of the statement of Shears which had been handed to Detective Sergeant Gavin Ricketts on 17 November 1993 and from which Durward had apparently quoted during the Magistrates Court hearing.

By facsimile dated 1 June 1994, Durward responded to the Commission. He confirmed that the photocopy of a photograph of a National Park sign and a photocopy of the sketch of the Cape Melville National Park had been furnished to him by counsel assisting during the investigative hearings. He stated that these documents were not used during the Magistrates Court proceedings on 13 May 1994, except for the purpose of comparison, at the bar table, with maps and sketches of the National Park which had been tendered by the police prosecutor during the proceedings.

Durward stated that he had obtained a copy of the statement Shears gave to Detective Sergeant Ricketts from solicitors in Brisbane. Printed on the documents is

Tabled by Mr Slack during question time 25/2/94.

case in a prosecution of criminal charges or, as the case may be, disciplinary proceedings.

Therefore, in considering whether to report to the Director of Prosecutions with a view to the prosecution of criminal charges, the Commission must be mindful of the sufficiency of the evidence and make some assessment of its weight and reliability in light of the standard required to establish guilt in criminal proceedings, namely beyond reasonable doubt.

Similarly, in considering whether to make a report to an authority for the purpose of disciplinary action, the Commission must be mindful of the sufficiency of the evidence and make some assessment of its weight and reliability in light of the standard of proof in disciplinary proceedings, namely, on the balance of probabilities which varies according to the gravity of the finding to be made. This standard is often called the *Briginshaw* principle or the standard of "reasonable satisfaction" and in applying it the Commission adopts the statement of Sir Owen Dixon in *Briginshaw v. Briginshaw* (1938) C.L.R. 336 at pp. 361-362 where he stated:

'Reasonable satisfaction' is not a state of mind that is attained or established independently of the nature and consequence on the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences following from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect references.

Therefore, when concluding that the report should be referred to the principal officers of units of public administration in which certain officers are employed, the Commission considered that it had to be satisfied at least to the *Briginshaw* standard that there was sufficient evidence to warrant the taking of disciplinary action.

Quite apart from the referral of the report to the bodies referred to above the Chairperson is authorised by section 33 to take any action he considers desirable. In this case he has chosen to refer the report to the Commission constituted by himself and three part time Commissioners.

The Commission has determined that pursuant to section 26 of the Act a copy of the report shall be forwarded to the Chairperson of the Parliamentary Criminal

Justice Committee, the Speaker of the Legislative Assembly and the Minister for Justice and the Attorney-General.

The Act, by section 93, requires the Commission to include in each of its reports its recommendations and an objective summary of all matters of which it is aware that support, oppose, or are otherwise relevant to its recommendations. That section also authorises the Commission to include in a report any comments it may have on the matters reported on.

2.4 THE DURATION OF THE INVESTIGATION. DID IT TAKE TOO LONG?

The information initially referred to the Commission by Mr Slack was from an anonymous informant. The Commission has been criticised in the past for investigating anonymous complaints but it remains of the view that there may be valid reasons for people wishing to keep their identity confidential when referring allegations to the Commission. The Commission seeks to assess the veracity of all allegations which may enliven its jurisdiction irrespective of the identity of the informant. However, when the information is supplied by someone who declines to disclose their identity it is more difficult to assess its reliability because such informants rarely provide sufficient detail or particulars. The Commission also needs to be alert to the possibility that anonymous informants may be motivated by malice and their allegations baseless.

Indeed, as a result of an amendment made to the Criminal Justice Act in 1992, the Commission is prohibited from investigating anonymous complaints if the Chief Officer is of the opinion that the complaint lacks substance.

For these reasons, the Commission proceeded cautiously in this case and determined to investigate the complaint only after a thorough initial assessment which involved the undertaking of interviews in Far Northern Queensland and a debriefing of the person at the centre of the allegations, Patrick Shears.

Shears was not easy to locate and the Commission was obliged to await his convenience on a number of occasions when it sought information from him.

On 11 March 1994, the Commission determined that a full investigation was warranted and in the ensuing three months the witnesses were interviewed, the

investigative hearings were convened, departmental files were examined and expert consultants were briefed.

The duration of the investigation was extended as a result of the political controversy that evolved around the matters under inquiry. Members of the Opposition, on a number of occasions, raised fresh but related allegations which the Commission considered it was obliged to investigate.

Unwarranted attacks on the probity of the Commission's officers who presided over the investigative hearings and acted as counsel assisting during those hearings diverted resources which would otherwise have been applied to resolving the real issues under investigation. The need to insulate the Commission from such criticisms also resulted in this report being more detailed and exhaustive than forensic values alone would dictate.

The investigation, the collation of the material gathered and the drafting of this report were undertaken by staff of the Complaints Section of the Commission. During the period that this matter was being dealt with the Complaints Section received approximately 1,375 fresh complaints and finalised approximately 1,368 complaints. Many of the complainants and subject officers involved in those matters undoubtedly considered the allegations raised in their matters, at least, of equal importance or significance to the issues thrown up by the Cape Melville Incident.

While it is undoubtedly true that the issues raised by this complaint are very serious the Commission has an on-going obligation to attend to the numerous other complaints it continues to receive. The Commission has continually reviewed and adjusted its complaint handling process to enable it to expedite the finalisation of complaints.

The Commission considers that it would have been derelict in its duty to the numerous other complainants if it had left their matters to one side and focused all of the resources of the Complaints Section on the Cape Melville Incident simply because of the party political dimensions of this matter.

This matter was handled without the recruiting of any additional staff or the briefing of any private practitioners.

Therefore, having regard to the multi-faceted and changing nature of this matter, the need to investigate and report upon it in exhaustive detail and the continuing

growth of the work load of the Complaints Section, the Commission considers that this matter has been finalised with reasonable expedition.

PART II
THE EVIDENCE

CHAPTER 3

THE BACKGROUND

3.1 BRIEF OUTLINE OF EVENTS

3.1.1 Introduction

At about midday, on Remembrance Day 1993, after traversing approximately two and a half kilometres on foot, ranger Patrick Shears came upon Paul Barbagallo's Toyota Landcruiser utility at the end of an unauthorised vehicle track in the heart of Cape Melville National Park. Shears was familiar with the location as it was in the close vicinity of a foxtail palm strand recognised by Shears as an area frequented by those involved in the unlawful poaching of foxtail palm seeds.

Shears believed he was on the trail of foxtail palm seed smugglers. He had tracked the vehicle from where it left the main track outside the National Park and had observed where the vehicle had driven around an official sign posted prominently at the boundary to the National Park and barricades of fallen timber designed to repel trespassers. When he found the vehicle, he saw that it had been left unlocked, unattended and with the key in the ignition. He saw that the vehicle's fuel tanks were full. As he expected of smugglers, he also saw several loaded firearms and a chainsaw in the rear tray. He heard voices and deduced that there was more than one person in the vicinity.

Shears was in little doubt he had stumbled upon seed smugglers at work.

He determined to avoid the potential risk to his personal safety in confronting the smugglers. Instead, he climbed into the vehicle and drove it away, even though he knew that this action was contrary to the explicit instructions given to him by his superiors.

The owner of the vehicle, Paul Barbagallo, and his companions were a short distance away in the midst of a foxtail palm stand. They claim they were merely taking photographs of the foxtail palms when without any obvious explanation, they found themselves stranded without a vehicle, a long, hot walk from their base camp.

photographs of the foxtail palms when without any obvious explanation, they found themselves stranded without a vehicle, a long, hot walk from their base camp.

When Shears ultimately came face to face with Paul Barbagallo at Cooktown Police Station almost 48 hours after he had driven from the foxtail palm habitat in Cape Melville National Park, he also found himself confronted by an unknown man whom he later identified as Paul Barbagallo's brother, David, Principal Private Secretary to the Premier of Queensland and close friend and associate of the Director-General of the Department of Environment and Heritage, Dr Craig Emerson.

In the succeeding weeks and months these incidents and others related to them grew into a public controversy which has been referred to the Cape Melville Incident.

This report examines the conduct of the people involved in the Cape Melville Incident with a view to determining whether any criminal conduct, official misconduct or conduct warranting other disciplinary action occurred.

3.1.2 The Foxtail Palm

The foxtail palm, or *Wodyetia bifurcata*, is a species of palm endemic to Cape Melville in Far North Queensland. It has, in recent years, gained popularity as an ornamental palm, and is in relatively high demand both within Australia and overseas.

In response to this demand, a valuable trade in the foxtail palm has developed, and seeds of the foxtail palm have, for some years, been stolen from Cape Melville National Park to cater for that trade.

3.1.3 Pat Shears is sent to Cape Melville

On 13 September 1993, Patrick Shears, who had a long history of periodic or temporary employment as a National Parks ranger, was yet again engaged by the Department of Environment and Heritage as a ranger. It was proposed that Shears would conduct surveillance and other activities at Cape Melville with a view to frustrating the poaching of foxtail palm seeds, expected to begin with the seasonal ripening of seeds from October or November. With the assistance of two Aboriginal elders, who were to be introduced by Shears to principles of national park management, Shears travelled to Cape Melville and there commenced the erection of signposts and barricades, which he designed to prevent entry to areas of foxtail palm

habitat. He also began covert surveillance, monitoring the movements of persons entering and leaving Cape Melville National Park.

On Tuesday, 9 November 1993, Paul Barbagallo, a banana farmer with properties near Innisfail in North Queensland, set out with a number of companions, including his neighbour, Gordon Uechtritz, on a camping, fishing and shooting expedition to Bathurst Bay, which borders Cape Melville National Park. The Barbagallo party travelled in two four wheel drive vehicles owned by Paul Barbagallo, arriving at their Bathurst Bay destination late on the afternoon of Wednesday, 10 November 1993.

The following morning, Thursday, 11 November 1993, Barbagallo and his companions left their campsite at Bathurst Bay and explored the surrounding areas in one of the two four wheel drive vehicles. That vehicle was ultimately driven into Cape Melville National Park along an unauthorised but well-defined track, and was left unlocked and unattended while the Barbagallo party climbed an area of Melville Range, they claim, to view and photograph a foxtail palm habitat.

Paul Barbagallo was familiar with the location, having previously visited the foxtail palms on two occasions. On his first visit to the area, Paul Barbagallo had, in company with a nurseryman, unlawfully removed several hundred foxtail palm seeds, some of which Paul Barbagallo propagated and planted along the driveway of his property.

Some short time after the Barbagallo party had entered Cape Melville National Park on 11 November 1993, Ranger Shears and his companions discovered tracks indicating that a motor vehicle had recently breached barricading and ignored a signpost that they had previously erected upon an unauthorised track into the National Park. Following the vehicle tracks to the park boundary, Ranger Shears instructed his companions to remain with the departmental vehicle at the boundary, while he set off, alone, searching along the "smugglers' track".

3.1.4 Pat Shears Seizes the Vehicle

At a point where the unauthorised track peters-out near the foot of a mountain, Ranger Shears discovered Paul Barbagallo's unattended motor vehicle, which he then promptly seized. Shears drove the vehicle out of Cape Melville National Park and subsequently secured it at the Ranger's Station at nearby Lakefield National Park. Shears reported his actions by telephone to a police officer at Cooktown, who alleges he advised Shears to take the vehicle back.

At Lakefield, Shears informed a superior, Peter Stanton, of his earlier encounter with seed smugglers. Stanton, a former Regional Director of the Department of Environment and Heritage, counselled Shears against immediately reporting the seizure to Regional Office in Cairns, fearing that the senior officers there would not approve of Shears' forceful action.

Stanton undertook to advise Regional Office himself, but he had no intention of reporting the matter until he returned to Cairns - possibly as late as Saturday; his justification being:

I didn't trust the people that might be concerned in the matter. ...In my experience in the Department ...it was safer to leave the matter in the hands of the police, let them prosecute under their powers than to place it in the hands of the Department and run the risk of interference, and political interference at that...

Stanton applauds Shears' action in seizing the vehicle, testifying that in all the circumstances, he would have done exactly the same thing. He claims to have held a "naive" belief that Shears' action had proven just how serious the situation had become at Cape Melville, reinforcing the need for further patrols. He views Shears' action as a positive step against, what he believes, to be widespread illegal activity.

On the evening of 11 November 1993, Shears and his companions camped at Kalpowar Crossing, a short distance from Lakefield Ranger Base. During the night, Shears flagged down a passing Army patrol. According to the patrol commander, Shears requested armed assistance as he had had a confrontation with drug smugglers earlier in the day. Shears allegedly told the patrol commander that he had confiscated a vehicle and automatic weapons, and that he proposed returning to where the confrontation took place "to sort them out".

3.1.5 Regional Office in Cairns hears of the Seizure

It was this exaggerated version of events which ultimately reached the Regional Office of the Department of Environment and Heritage at Cairns on the afternoon of Friday 12 November 1993, causing, not surprisingly, a degree of concern and panic; not just for the safety of Shears and his companions, but for the welfare of persons stranded at Cape Melville or elsewhere, and the potential liability of the Department if litigation followed.

The Regional Director, Greg Wellard, took immediate steps to contact Shears and have him recalled to Cairns. He also had enquiries commenced to launch searches for Shears and any persons Shears may have left stranded without a vehicle. He was concerned that persons left stranded should be re-united with their vehicle as quickly as possible. Wellard's concern also caused him to report what little he knew of the incident to his Minister, through her Senior Ministerial Policy Adviser, Damien McGreevy.

Significantly, it has been established that neither Wellard, nor any other officer of the Department of Environment and Heritage, knew of the identity of the owner of the vehicle seized by Shears until the following morning, Saturday, 13 November 1993.

Before his deployment to Cape Melville National Park, Shears had been given express and clear instructions that he was not to engage wrongdoers, and was to avoid any situation which might lead to a confrontation with law-breakers. Although he thought that the instruction came from bureaucrats who "did not know what it was like out there", Shears says he did not really consider the matter at the time of his action. According to Shears:

...They - they didn't understand the situation. I can't - you know, as far as I am concerned, I have to weigh up - when anything happens I have to weigh up what - the best thing to do, and in this case I had to do it pretty quick.

And in those circumstances you felt entitled to overrule or disregard any direction they had given you back then? --- That's right, yes.

3.1.6 David Barbagallo and Dennis Atkins go to Cooktown

On Friday 12 November 1993, David Barbagallo and Dennis Atkins travelled from Brisbane to Cooktown, arriving late in the afternoon of that day.

David Barbagallo was at that time the Principal Private Secretary to the Premier of Queensland. David Barbagallo is also the brother of Paul Barbagallo. Dennis Atkins was, and still is, the Director of the Media Unit within the Office of the Premier.

David Barbagallo and Atkins had travelled to Cooktown, to conduct an inspection of nearby Starcke Pastoral Holding, as an advance to an official visit to that property by the Premier. Starcke Pastoral Holding is situated between Cooktown and Cape Melville and, in certain areas, borders Cape Melville National Park. At that time, the

Queensland Government was considering the purchase or compulsory acquisition of that property.

David Barbagallo and Atkins claim that they had previously accepted an offer made by Paul Barbagallo to direct or guide them from Cooktown to Starcke Pastoral Holding on Saturday 13 November 1993. To this end, it had been proposed that Paul Barbagallo would return to Cooktown from his campsite at Bathurst Bay on either the evening of Friday 12 November 1993, or the morning of Saturday, 13 November 1993.

The drive from Bathurst Bay to Cooktown takes a substantial period of time. Nonetheless, it is clear that Paul Barbagallo undertook that journey during the afternoon and evening of Friday 12 November 1993. He was accompanied by Gordon Uechtritz. He completed the return journey, from Cooktown to Bathurst Bay, alone, the following day.

Paul Barbagallo and Uechtritz met with David Barbagallo and Atkins early on the morning of Saturday, 13 November 1993, and the four visited the Cooktown Police Station to report the "theft" of Paul Barbagallo's motor vehicle. This they did, only to be advised by Sergeant Murphy, the Officer in Charge of the Cooktown Police Station, that the vehicle had not been stolen, but rather, had been seized by the park ranger.

Sergeant Murphy suggested that the four return a short time later, by which time he expected to arrange for Ranger Shears to attend the Police Station so that the matter of the seizure might be discussed. Such a discussion, or confrontation, took place later that morning in the presence of Sergeant Murphy.

Prior to and immediately following the meeting with Ranger Shears, both David Barbagallo and Atkins had conversations with Dr Craig Emerson, the Director-General, Department of Environment and Heritage, with whom they otherwise shared close associations. David Barbagallo, Atkins and Emerson claim that these conversations were either an enquiry as to the scope of Ranger Shears' powers, or otherwise innocuous.

Emerson, in the incorrect belief that Shears' had seized a vehicle required by David Barbagallo and Atkins for their official government business, telephoned Wellard, to ascertain what had taken place. The possibility of hiring an alternative vehicle was discussed, although arrangements did not progress very far and this possibility was abandoned when matters subsequently became clearer.

There is evidence that before, during, and after the meeting between Ranger Shears and Paul Barbagallo at Cooktown Police Station, there were various telephone calls to and from officers of the Department of Environment and Heritage and other agencies. Gradually, a picture of the events that had transpired at Cape Melville on 11 November 1993 was pieced together - albeit that an accurate picture would take months to develop.

There is no evidence of any attempt to interfere with or frustrate any efforts by police to investigate offences committed by Paul Barbagallo and members of his group.

Wellard, as Regional Director, expressed concerns about the sufficiency of evidence and the lawfulness of Shears' actions, but took no step to influence the Fauna Squad's investigation or prosecution of Paul Barbagallo and Gordon Uechtriz.

On 24 November 1993, Pat Shears' contract of employment with the Department of Environment and Heritage was terminated prematurely. His termination was, at the very least, indirectly related to his actions on 11 November 1993 but strictly speaking, his early termination was of his own choosing.

From soon after the seizure a theory developed which postulates that the relationship between Paul Barbagallo and his brother, together with David Barbagallo's political connections, were the catalyst for a conspiracy within the Department of Environment and Heritage aimed at protecting Paul and David Barbagallo, which in the process, damned Pat Shears.

All the necessary ingredients for such a theory existed in abundance: information, misinformation, disinformation, and a host of personal animosities and political agendas.

On 12 January 1994, the Criminal Justice Commission received a letter from Mr Doug Slack MLA, Shadow Minister for Environment and Heritage. Mr Slack had attached a copy of an anonymous letter alleging "corrupt intervention" by Dr Emerson in this matter.

On 11 March 1994, after an initial assessment of the matters raised in Mr Slack's correspondence, the Criminal Justice Commission commenced its investigation of the Cape Melville Incident.

The suggestion that there has occurred any conspiracy, or improper interference, or influence, has been conclusively found to be entirely without foundation.

direction of the foxtail palm habitat ("smugglers' track no. 3").

4 November 1993

Barricades and signpost are erected by Shears and his two assistants on "smugglers' track no. 3".

5 November 1993

David Barbagallo is interviewed by Board of Directors of Distributed Systems Technology Centre Pty Ltd and formally offered the position of Chief Executive Officer.

6 November 1993

Mario Barbagallo and acquaintances depart Cairns on the charter launch *Sagitta* bound for the Flinders Group.

7 November 1993

Two small Army patrols commence an exercise at Cape Melville for a period of seven days.

8 November 1993

David Barbagallo meets with representatives of Distributed Systems Technology Centre Pty Ltd and formally accepts the offer of appointment.

9 November 1993

The *Sagitta* arrives at Bathurst Bay late in the day.

9 November 1993

Paul Barbagallo and his party depart Innisfail for Cape Melville. They camp overnight at the Annan River, south of Cooktown.

9 November 1993

The Premier's personal secretary attends to bookings in relation to a trip to Starcke Station by David Barbagallo and Atkins.

10 November 1993

The *Sagitta* departs Bathurst Bay in the morning; not to return.

10 November 1993

Paul Barbagallo's party depart their campsite at the Annan River and drive to Cooktown to pick up supplies. They arrive at Bathurst Bay at about 5.00pm.

- 10 November 1993 Shears sees a white Toyota troop carrier and a four wheel drive on the main beach road into Bathurst Bay.
- 11 November 1993 In the morning, Paul Barbagallo and his party drive in a four wheel drive vehicle along "smugglers' track no. 3" and park it at the foot of the mountain on which a foxtail habitat is located. They leave the vehicle and proceed into the habitat.
- 11 November 1993 Shears locates the four wheel drive on "smugglers' track no. 3" and seizes it at about midday.
- 11 November 1993 Paul Barbagallo's party return to discover their vehicle is missing. They return on foot to their campsite at Bathurst Bay.
- 11 November 1993 Shears drives the seized four wheel drive vehicle to Lakefield National Park ranger base. En route he stops at Kalpowar Station and telephones Cooktown police at about 4.30pm to advise of the seizure of the vehicle.
- 11 November 1993 On arrival at Lakefield, Shears advised Teece of the seizure of the vehicle and placed it in a shed at the ranger base. Shears drove to the camping ground at Kalpowar crossing and returned to the ranger base where he advised Stanton of events.
- 11 November 1993 Shears and the two Aboriginal rangers camp at Kalpowar Crossing. Stanton slept in the barracks adjoining the ranger base. During the night, Shears flagged down a passing Army patrol and spoke to Patrol Commander, Sergeant Charles.
- 12 November 1993 David Barbagallo and Atkins departed Brisbane at 9.40am for Cairns to visit Starcke Station.
- 12 November 1993 Paul Barbagallo and Uechtritz departed the campsite at Bathurst Bay in the morning and drove to

Cooktown to meet up with David Barbagallo and Atkins and to report the vehicle stolen.

12 November 1993

Shears proceeded to the Cooktown police station and arrived at about midday. He spoke to Detective Constable Somerville and Senior constable Meadows about the seizure of the vehicle.

12 November 1993

In the late morning Sergeant Charles arrived in Cairns and advised his Operations Officer of his conversation with Shears. This officer then telephoned the Cairns Drug Squad and related the incident as described by Sergeant Charles.

12 November 1993

David Barbagallo and Atkins arrived at Cairns at about 1.00pm and hired a four wheel drive vehicle.

12 November 1993

At about 3.00pm Sergeant Charles briefed Detective Inspector Hartwell who commenced arrangements to have the Queensland Police Service Special Emergency Response Team and the helicopter of the Bureau of Emergency Services placed on stand-by. Hartwell telephoned Harris and informed him of the information received. At about 4.30pm Hartwell telephoned Wellard to advise him of events.

12 November 1993

Wellard seeks advice from Kelly and Harris and in their presence telephones Hartwell to share further details.

12 November 1993

Wellard telephones McGreevey between 5.00pm and 6.00pm and advises him of his conversations with Hartwell.

12 November 1993

McGreevey telephones Emerson between 5.00pm and 7.00pm and advises him of his conversation with Wellard.

12 November 1993

Shears telephones Harris at the office.

- 12 November 1993 Wellard is telephoned by Kelly at about 7.15pm. They discuss alternative transport for the group which had had their vehicle seized.
- 12 November 1993 Wellard telephones Hartwell at about 8.30pm to discuss what should be done in relation to the seizure of the vehicle.
- 12 November 1993 At approximately 10.00pm Shears again telephoned Harris at his home to discuss the seizure of the vehicle in more detail.
- 12 November 1993 David Barbagallo and Atkins arrived at the Sovereign Hotel at Cooktown.
- 12 November 1993 Paul Barbagallo and Uechtritz arrive at Cooktown from Bathurst Bay.
- 13 November 1993 At 8.00am or 9.00am Stanton telephones to advise Harris of the seizure of the vehicle. Harris had been already apprised.
- 13 November 1993 Harris telephones Kelly in the morning to tell him that Shears had contacted him.
- 13 November 1993 Paul Barbagallo and Uechtritz meet with David Barbagallo and Atkins.
- 13 November 1993 At 8.00am, Paul Barbagallo, David Barbagallo, Uechtritz and Atkins visit the Cooktown Police Station to report the apparent theft of the vehicle. They speak to Sergeant Murphy and depart.
- 13 November 1993 Sergeant Murphy telephones Shears at about 8.30am and asks him to go to the Cooktown Police Station.
- 13 November 1993 Atkins telephones Emerson about the powers of a ranger. David Barbagallo telephones his wife, who is a solicitor, and asks about the powers of a ranger.

- 13 November 1993 At 8.34am, Emerson telephones Wellard and advises him of the call from Atkins. Wellard later that morning telephones Kelly to discuss options available to restore the seized vehicle to the owner. Kelly advises Wellard of location of seized vehicle.
- 13 November 1993 At about 9.00am, Shears is introduced to Paul Barbagallo at the Cooktown Police Station. Others present are David Barbagallo, Uechtritz and Sergeant Murphy. There is conflict in the evidence as to the presence of Atkins. A conversation relating to the seizure of the vehicle ensues.
- 13 November 1993 In the vicinity of 9.30am and 10.30am, Harris telephones Detective Sergeant Ricketts at his Brisbane residence and advises him of events. This is the first Ricketts knows of them.
- 13 November 1993 Wellard telephones Shears at the Cooktown Police Station whilst Paul Barbagallo was there and advised him to return to Cairns so that he could report immediately.
- 13 November 1993 Shears telephones Ricketts from the Cooktown Police Station and advised him of his call from Wellard.
- 13 November 1993 Wellard again telephones Shears at the Cooktown Police Station and instructs Shears to tell Paul Barbagallo that a hire vehicle is available if required.
- 13 November 1993 After Paul Barbagallo and his party depart the Cooktown Police Station on the second occasion, Atkins again telephones Emerson to relate the events which had occurred at the police station and to ensure him that everything was in order. Atkins advises alternative transport is not required.
- 13 November 1993 At 9.36am, after Emerson had spoken to Atkins, he telephones Wellard and tells him that alternative transport is not required.

- 13 November 1993 After Wellard has been advised that alternative transport had not been required, he receives a telephone call from Kelly. He advises Kelly that a charter aircraft is not required.
- 13 November 1993 Ricketts telephones Wellard and requests that Shears be permitted to remain in Cooktown pending the arrival of the Fauna Squad. Wellard agrees.
- 13 November 1993 At about 10.00am, David and Paul Barbagallo, Atkins and Uechtritz departed Cooktown for Starcke Station. They arrive at about midday.
- 13 November 1993 Within 20 minutes of arrival at Starcke Station, Paul Barbagallo departs by himself to return to the Bathurst Bay campsite.
- 13 November 1993 After looking around Starcke Station for no longer than 45 minutes, David Barbagallo, Atkins and Uechtritz departed for Innisfail.
- 13 November 1993 Harris contacts Chep and requests that he attend at the DEH office to assist in enquiries.
- 13 November 1993 Chep arrives at the DEH office at about midday. Chep subsequently contacts the Police Service and Army personnel to obtain information of the events from them.
- 13 November 1993 Paul Barbagallo arrives at the campsite at Bathurst Bay at 4.00pm.
- 13 November 1993 David Barbagallo, Atkins and Uechtritz arrived at Cairns between 5.30pm and 6.00pm. David Barbagallo and Uechtritz travel to Innisfail and Uechtritz is left at his property. David Barbagallo then visits his parents.

- 13 November 1993 David Barbagallo returns to the Pacific International Hotel at Cairns where he telephones Atkins between 8.00pm and 9.30pm.
- 14 November 1993 David Barbagallo and Atkins catch the 6.45am flight from Cairns to Brisbane. They arrive in Brisbane at 9.00am.
- 14 November 1993 Paul Barbagallo and his party break camp and return to Innisfail.
- 14 November 1993 Ricketts and Fletcher proceed to Innisfail to locate Paul Barbagallo. They do not locate him, and in the afternoon, proceed to Cairns.
- 15 November 1993 At 8.30am Ricketts and Fletcher altered the Cairns office of DEH and speak to Harris and Chep.
- 15 November 1993 Ricketts and Fletcher drive to Cooktown and meet Shears at 5.00pm.
- 15 November 1993 In an interim report to Wellard, Harris defends Shears' action in seizing the vehicle.
- 15 November 1993 The Premier is briefed verbally by David Barbagallo on the results of the advanced trip before Cabinet meeting in the morning.
- 15 November 1993 The Premier is further briefed verbally by David Barbagallo and Atkins in the afternoon in relation to Starcke Station and the seizure of the vehicle.
- 16 November 1993 Ricketts and Fletcher attend at Cooktown Police Station. Thereafter, in company with Shears, they drive to Lakefield and inspect the seized vehicle. Located in it were three firearms, a chainsaw, two rolls of file and a handbag.
- 16 November 1993 After the inspection of the seized vehicle Ricketts, Fletcher and Shears drive to Cape Melville.

- 16 November 1993 Kelly, in a memorandum to Harris, mildly criticises the actions of Shears in seizing the vehicle.
- 17 November 1993 Shears directs Ricketts and Fletcher to the position from which the vehicle had been seized.
- 18 November 1993 At about 11.20am Shears, Fletcher and Ricketts return to Lakefield and drive the seized vehicle to Cooktown Police Station.
- 19 November 1993 Kelly "notes" Harris' interim report to Wellard which defends the actions of Shears in seizing the vehicle.
- 19 November 1993 Shears provides a detailed statement to Ricketts of the events leading up to and including the seizure of the vehicle.
- 19 November 1993 At 10.00am Constable Meadows locates some *Cannabis sativa* in the handbag which had been found in the seized vehicle.
- 19 November 1993 Shears is driven to his home at Cape Tribulation by Ricketts and Fletcher. This was Shears' last working day of work for DEH.
- 19 November 1993 At about 5.00pm Ricketts and Fletcher meet Harris, Wellard and Kelly at the office of DEH to report on the trip to Cape Melville. Ricketts hands copies of the statement he had obtained from Shears earlier that day to Wellard and Harris.
- 20 November 1993 Ricketts and Fletcher interview Paul Barbagallo and Uechtritz at the Cairns Police Station. Ricketts and Fletcher later that day interviewed Uechtritz.
- 20 November 1993 Harris telephones Shears. An entry in Shears' diary for this date records that Harris telephoned and told Shears that Paul Barbagallo had a brother in the Premier's Department. Further entries suggesting a conspiracy were recorded.

- 21 November 1993 Ricketts meets Shears at Cape Tribulation on his way to Cooktown.
- 21 November 1993 Entry in Shears' diary records that at 6.30pm he receives a call from Chep. It further recorded that Chep tells Shears that a 'Barbagallo woman (is) in business with Craig Emerson', and that Emerson is being investigated by the CJC.
- 22 November 1993 Fletcher prepares court briefs for the prosecution of Paul Barbagallo and Uechtritz and obtains summonses returnable before the Cooktown Magistrates Court on 24 January 1994.
- 22 November 1993 Ricketts prepares a report addressed to Wellard which contains a synopsis of the investigation he had conducted and certain recommendations. The report is sent by facsimile to Harris at 1.11pm.
- 23 November 1993 Kelly reports to Wellard the specific instructions which had been given to Shears prior to his assignment at Cape Melville. He is also openly critical of Shears.
- 24 November 1993 Shears visits Harris' office and discusses the option of returning to work at Cape Tribulation. Shears rejects that option and is terminated.
- 25 November 1993 Paul Barbagallo drives to Cooktown and takes possession of the seized vehicle from the Cooktown Police Station.
- 27 November 1993 Ricketts telephones Michael McKinnon, a Journalist with *The Sunday Mail* and provides him with information which forms the basis of the first media article on the seizure of the vehicle.
- 28 November 1993 An article on the seized vehicle appears in the media for the first time in *The Sunday Mail*.

- 30 November 1993 An article appears in an Innisfail newspaper containing information obtained by the journalist during an interview with Paul Barbagallo and Uechtriz.
- 3 December 1993 Shears had been paid to this date although he did not undertake any duties beyond 19 November 1993.
- January 1994 Ricketts writes a memorandum to the Director, NPWS, seeking a response to an allegation that Emerson had intervened in the investigation of the offences allegedly committed by Paul Barbagallo.
- 14 January 1994 Emerson writes a memorandum to Ricketts denying any wrongdoing.
- 24 January 1994 The complaints against Paul Barbagallo and Uechtriz are remanded from the Magistrates Court at Cooktown to Innisfail for mention on 4 February 1994.
- 4 February 1994 The complaints against Paul Barbagallo are further adjourned. Uechtriz pleads guilty to the offence of possessing a firearm in Cape Melville National Park. He is convicted and fined \$200.
- 9 February 1994 Regional Manager Symonds, after consulting Harris, tells Wellard that Shears had worked out his contract subject only to having a few days off in lieu of overtime accrued in the field.
- 10 February 1994 Harris prepares a handwritten note to Wellard advising him that on 11 November 1993 he was given a verbal instruction that Shears was not to return to his duties at Cape Melville.
- 10 February 1994 Wellard prepares a briefing note for the Minister on Shears' termination.

- 16 February 1994 Wellard sees Ricketts' report of 22 November 1993 for the first time.
- 18 February 1994 The Minister, in response to a question in Parliament, makes a statement concerning Shears' contract of employment and its termination.
- 25 February 1994 Tolhurst seeks legal advice from the Crown Solicitor as to the conduct of Shears' actions in seizing the vehicle.
- 25 February 1994 In response to a Question Without Notice the Minister advises that no further details concerning the seizure of the vehicle will be provided to Parliament as the matter was subject to court proceedings.
- 25 February 1994 During Question Time the Member for Fassifern, Mr Lingard MLA, tables a photocopy of Ricketts' report of 22 November 1993.
- 25 February 1994 During Question Time the Member for Burnett, Mr Slack MLA, tables a photocopy of an extract from a log of events prepared by Shears on 13 and 14 November 1993 detailing the events which had occurred on 11 November 1993.
- 25 February 1994 The Minister issues a press release concerning questions asked in Parliament and defending the Director-General and Regional Director.
- 7 March 1994 Pleas of 'not guilty' are entered on behalf of Paul Barbagallo in respect of six complaints against him. The matter is adjourned for hearing on 13 May 1994.
- 7 March 1994 A letter from Paul Barbagallo's solicitors to the Police Prosecutor at Innisfail submits that all six charges should be withdrawn.
- 14 March 1994 The Crown Solicitor advises that Shears had no authority to seize the vehicle.

- 24 March 1994 Wellard writes to Fletcher attaching a copy of the Crown Solicitor's advice.
- 30 March 1994 The briefs of evidence prepared by Fletcher for the six complaints against Paul Barbagallo are checked by Ricketts and submitted to Detective Inspector McKinlay of the Major Crime Investigation Squad.
- 30 March 1994 Detective Inspector McKinlay forwards the briefs of evidence to Detective Superintendent Freeman with a recommendation that they be forwarded to the Inspector-in-Charge, Police Prosecution Corps for vetting.
- 12 April 1994 The Minister makes a ministerial statement to Parliament regarding the Cape Melville incident.
- 12 April 1994 Barton Green, Media Adviser to the Minister, meets Cathy Job of the ABC's *7.30 Report* and produces to her several departmental documents.
- 22 April 1994 Barton Green provides a copy of the same documents furnished to Cathy Job to Pat Gillespie, a journalist with *The Sunday Mail*.
- 23 April 1994 Barton Green participates in a telephone interview with Pat Gillespie.
- 27 April 1994 Sergeant Richter of the Legal Services Branch of the QPS recommends that two of the charges laid against Paul Barbagallo be withdrawn. He recommends that another charge be withdrawn on the successful prosecution of another of the charges. He recommends that the remaining three charges should proceed.
- 27 April 1994 The CJC receives information from Pat Gillespie, journalist with *The Sunday Mail*, which suggests that David Barbagallo had interfered in the investigation

and prosecution of a palm nursery operator, David Cochran. The matter required investigation.

28 April 1994

Acting Superintendent Black of the Legal Services Branch adopts the recommendations made by Richter with the exception that the charge which Richter recommended be withdrawn on the successful prosecution of one of the other charges should be withdrawn regardless.

13 May 1994

Three of the charges laid against Paul Barbagallo are withdrawn. One of the remaining charges is adjourned to 6 June 1994. Paul Barbagallo is convicted and fined \$200 on each of the two remaining charges.

17 May 1994

Mr Slack MLA, Member for Burnett complains to the CJC that a statement prepared by Shears had been improperly disclosed to Paul Barbagallo's counsel. He contends that the investigation conducted by the CJC had been compromised and a fresh one independent of the CJC should be commenced.

22 May 1994

Mr Slack MLA publicly airs his concerns in relation to the improper disclosure of documents before the CJC has an opportunity to investigate the matter. An article appeared in *The Sunday Mail* referring to Mr Slack's stated concerns.

3.3 PAT SHEARS' EMPLOYMENT HISTORY WITH THE DEPARTMENT OF ENVIRONMENT AND HERITAGE⁴

Prior to becoming a park ranger Shears worked variously as a jackaroo, a station manager, a mine worker, a beach inspector and in the construction industry. He also spent three years in the Army and saw active service in Vietnam.

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Throughout this report the Department of Environment and Heritage is signified by the initials "DEH" and the National Parks and Wildlife Service "NPWS".

Shears commenced employment with the NPWS on 2 December 1985. He was initially employed in connection with specific projects under an award that did not distinguish between permanent and casual employees. However, from 20 December 1989 until 3 September 1993, he was employed continually (except for a three-week period between 30 June 1993 and 24 July 1993) as a temporary or casual ranger on various projects in North Queensland. During these various periods of employment with the NPWS, Shears was employed as a ranger grade 2.

When asked what work he did as a ranger grade 2, Shears testified:

Everything you could imagine in a park because I was by myself, and because there weren't any police up there, I more or less had to do the police work as well.

Shears described how he often confronted campers possessing drugs in the National Parks and demanded they leave. He also explained how he would ensure that people who did not have permits to camp were asked to move on. His duties included general maintenance work, mowing around signs, painting, carpentry work and repairing machinery. He stated that much of his time was taken up with patrolling the huge area from the Daintree River through to Cooktown, in which there were four small National Parks. He acknowledged that he had never been in a court and that no one had ever previously been breached as a result of his work. He stated that he had never been given any training about his enforcement powers and responsibilities under any National Parks legislation.

Greg Wellard, who was appointed as Regional Director, Far Northern Region, DEH in 1989 described in testimony the duties performed by Shears over those eight years as being essentially related to general maintenance type duties. In particular:

He's always been employed as either a special project person, building walking tracks or trapping pigs, or something like that, or in general duties as a ranger. He has had a couple of periods as relieving ranger in Cape Tribulation, which was convenient because he lived there and he knew the area. But his primary duties have not been in a - not so much as a park ranger in control level, but more at a park ranger actually doing on-ground management activities such as track work or catching pigs, cleaning toilets - that sort of work - the bottom end, if I can say it without being derogatory of the rangers scale of activities.

Wellard assessed Shears' performance in those duties as very good in the technical aspects, such as mangrove boardwalk construction at Cape Tribulation, and in relieving as ranger at Cape Tribulation. However, Wellard claimed there had been

difficulties, for example, in getting Shears to comply with Workplace Health and Safety Regulations, which required him to wear shoes and commenting:

he ... has been a little difficult to get to focus on what the real job is because he's a bit of an independent spirit.

As at September 1993, Wellard was familiar with and regarded as "a fairly good summary", the description that Shears was at times "a bit of a Rambo". Wellard explained his concerns in that regard as follows:

The general comment was that he was difficult to control and he did like running through the bush without his shoes on - I guess it's not the sort of image that I wanted a ranger to present to the public. We don't need ranger Rambos. We need rangers who can get across a professional message to the public. The ranger Rambos may do other things very well, but they may not be the right sort of person for the Department to have.

Peter Harris, District Manager Cape York (NPWS - Conservation Strategy), said it came as no surprise to him to learn that Shears had never had any training in enforcement matters.

...because a lot of our training has been, frankly, pretty inadequate. There are some substantial gaps in training. I think of late we have attempted to address that, and there has been a systematic review of who has had what training and to remedy those deficiencies...

Dr Craig Emerson, Director-General of the DEH, testified that since 1989 the Department has, within budgetary constraints, placed as much emphasis as possible on training programmes, which, as Dr Emerson readily concedes, would be more likely to focus on permanent as opposed to temporary employees. Notwithstanding, having been made aware that Shears had been employed in a permanent-temporary capacity for some eight years, Emerson was surprised to learn that Shears had never received any training in the enforcement of the various pieces of legislation administered by the Department. Emerson considers that it would have been desirable for Shears to have received such training.

At no time has Shears ever held a permanent position within the Department. Rather he has always been employed as a "wages employee" or on short term contracts. However, in 1991 he applied for a permanent position of ranger grade 4 at Cape Tribulation. Shears was the preferred applicant but upon Wellard being advised of the

outcome of the selection interviews he directed the position to be publicly advertised with a view to improving the quality of the applicants.

Wellard denies that he took this step simply to avoid having to appoint Shears. Rather, he says that having regard to the high visitation rates of the Cape Tribulation National Park and the complex management issues which the ranger in charge would need to address, it was essential to have a person suited to dealing with those matters. From his knowledge of the internal applicants who had been interviewed, Wellard believed that none had the desired attributes and advertising the position publicly was an option which avoided the alternative of upgrading the position.

The DEH officer who chaired the selection panel said that when the position was re-advertised Shears indicated he no longer wished to be considered for the position as he was not suited to the administrative duties which would form a significant part of the job. Shears also declined to apply for a lower grade position at Cape Melville for the same reason, apparently preferring project work which had little or no bureaucratic component.

Shears and Harris contend that Wellard had some unstated reason for not wanting to appoint Shears to the grade 4 position and that there would have been no point in Shears applying for the publicly advertised position.

While the outcome may well have been as Shears and Harris predict, because Shears did not apply for the advertised position, there is no basis on which the Commission could conclude Shears was unfairly disadvantaged in terms of his employment with DEH.

3.4 POSITIONS HELD BY DAVID BARBAGALLO AND DENNIS ATKINS

From January 1992 to January 1994, David Barbagallo was engaged under contract as Principal Private Secretary to the Premier of Queensland. In that position he was vested with overall responsibility for the day to day running of the Office of the Premier including, within that office, the Media Unit. He reported directly to the Premier and was responsible for liaison with Cabinet and Members of Parliament, as well as recruitment in ministerial offices.

Shortly after the 1989 State election, Dennis Atkins was engaged on contract as the Director of the Media Unit within the Office of the Premier. He still retains that position. According to Atkins, the Media Unit employs a couple of support staff and

one or two journalists. It has the responsibility of co-ordinating the Government's media efforts and provides advice to the Premier on issues pertaining to the media.

Although David Barbagallo and Atkins were both contracted employees, they were (and in the case of Atkins, remain) bound by the same administrative guidelines and controls concerning matters such as official travel and work related expenses as public servants employed under the provisions of the *Public Service Management and Employment Act 1988*.

3.5 DAVID BARBAGALLO'S RESIGNATION

At 9.40am on 12 November 1993, David Barbagallo and Atkins departed Brisbane for Cairns unaware, of the events of the preceding day involving Paul Barbagallo in Cape Melville National Park.

According to David Barbagallo, he had, some three days before, tendered his resignation to the Premier.

David Barbagallo says that he had applied for a position advertised in *The Financial Review* on either 3 or 5 September 1993, as Chief Executive Officer of Distributed Systems Technology Centre Pty Ltd. He claims that he telephoned the Company making general inquiries, and was subsequently interviewed some time in October 1993. He believes he received informal notification, on or about 29 October 1993, that his application for the advertised position had been successful, subject to ratification by the Board of Directors.

David Barbagallo says that he was interviewed by the Board of Directors on 5 November 1993. Correspondence from the Company confirms that the Board of Directors decided, on 5 November 1993, to formally offer the position to David Barbagallo.

Atkins testified that on 5 November 1993, David Barbagallo confirmed to him that he was accepting the job offer.

On 8 November 1993, David Barbagallo met with company representatives and formally accepted the offer of appointment. He testified that the following day, 9 November 1993, he formally advised the Premier, in writing, of his intention to resign. He had previously informed the Premier of his discussions with

representatives of the company and of his intention to accept the position if it were offered to him. David Barbagallo believes that he first spoke with the Premier about the possibility of his resigning, on or about 1 November 1993.

David Barbagallo says that the formal letter furnished to the Premier, bearing the date 9 November 1993, was originally created on his (Barbagallo's) computer, but because of the sensitivity of the matter he deleted the file from the computer's memory. In the course of cleaning his desk, in late December 1993, David Barbagallo came across that letter and asked his secretary to re-type it on her computer so as to commit it to official record. According to David Barbagallo, when the document was re-created there was a small change made to it, but for all intents and purposes, the letter as re-created is in identical terms to that which he had created on 9 November 1993. A copy of the letter produced in late December 1993 was furnished to the Commission. David Barbagallo believes that the original letter may have been destroyed by his secretary at the time she re-created it on her computer.

Nothing turns on the manner in which this document was created, or re-created, as it is clear on the evidence that David Barbagallo accepted the position offered to him by his current employer on 8 November 1993; before the events of 11 November 1993 unfolded. Whether or not the Premier had been informed, in writing, by 9 November 1993 is, in those circumstances, of little significance. In any event, there is no evidence to contradict David Barbagallo's assertion that the Premier was so notified.

David Barbagallo says that although he had informed the Premier of his intention to resign prior to departing for Cairns, they had not agreed on the date upon which his resignation would take effect, and did not do so until some time after he returned from Far North Queensland. He testified that prior to his departure for Cairns, he had informed the Premier that he wished to cease working on 6 December 1993, but the Premier had requested that he stay on a bit longer, and he had agreed to that request.

Atkins testified that during their flights to Sydney and Canberra on 10 and 11 November 1993, he and the Premier had discussed who would replace David Barbagallo.

David Barbagallo confirmed in his evidence before the Commission, that he had intended to accompany the Premier on the Premier's visit to Starcke Holding which had been contemplated for some time prior to Barbagallo's resignation. In the event that the trip proceeded after he had left the employ of the Premier, Barbagallo

envisaged that Atkins and another staffer would have accompanied the Premier to Starcke.

The Commission found no evidence to suggest the seizure of Paul Barbagallo's vehicle by Pat Shears played any part in the termination of David Barbagallo's employment in the Premier's Office.

3.6 PAUL BARBAGALLO'S PREVIOUS DEALINGS WITH FOXTAIL PALMS

In assessing the weight to be given to the evidence of Paul Barbagallo and the members of his party concerning the purpose of their visit to Cape Melville in November 1993, the Commission considers it is relevant to pay some regard to the conduct of those people on previous occasions insofar as it relates to Cape Melville and foxtail palms in general.

Paul Barbagallo says that he had, prior to November 1993, visited Cape Melville on two occasions, in November 1989 and November 1992. Additionally, he says that he visited Bathurst Bay by sea in 1990 or 1991, whilst a passenger on a fishing charter.

When initially asked the purpose of his earlier visits to Cape Melville, Paul Barbagallo responded:

Every time I've been to Cape Melville, actually to Bathurst Bay, its basically a fishing - fishing, spear-fishing, crabbing, pig shooting, oystering, if you like.

He admits that, apart from the occasion of the fishing charter, on each of his previous visits to Cape Melville, he travelled to the stands of foxtail palms growing on Cape Melville. He claims that when he first visited the area, in November 1989, he was unaware that foxtail palms grew in that location, and he came across them whilst pig shooting.

Paul Barbagallo was questioned by counsel assisting as to whether, during his previous visits to Cape Melville, he had removed foxtail palm seeds or plants. Upon legal advice, Paul Barbagallo objected to answering the question on the ground that to do so might incriminate him. He was thereupon directed by the officer presiding to answer the question, thereby invoking the provisions of section 96 of the Criminal Justice Act which prevent his answer being used against him in subsequent proceedings.

Upon being so directed, the following exchange took place between counsel assisting and Paul Barbagallo:

PEARCE: . . . On the occasions other than your trip to Cape Melville in November of 1993, did you remove any foxtail palm seeds from the Cape Melville area? --- In 1989.

You removed seeds? --- I was with two other persons and possibly five and six hundred seeds I removed.

And - - -? --- I personally didn't take them out, but I was part of the group that was there.

Well, did you assist in the removal of the seeds? --- Not out of National Park, but back to town, yes, in the vehicle.

Who were you with on that occasion? ---- There was Glen Budd and a person only known to me as Kiwi Sam, who I met in Kununurra who came and worked on my banana farm. He just came for the ride. He was just a bit of a drifter. He worked for four or five weeks for me. I don't know his last name.

And I take it you do not know where he is now? --- Oh, this is 1989 he was last here. I have no idea whatsoever, never heard from him again.

What was the primary purpose of that trip in November 1989? --- It was fishing. I had heard how good the fishing was up there and went up there fishing, crabbing.

Paul Barbagallo says, that so far as he is aware, Glen Budd had never been to that location previously. The Commission was unable to locate Budd to obtain his version of the incident.

Paul Barbagallo was then questioned about what had happened to the seeds that were taken out of the National Park and he indicated that he had kept approximately 150 of them, which he endeavoured to propagate. So far as Paul Barbagallo is aware, the balance were taken by Glen Budd and later sold.

Paul Barbagallo explained that of the approximately 150 seeds he had taken, only "45 or 50" survived - and are planted as "a grove of trees approximately 10 or 12 foot tall" along the driveway of his farm at Upper Daradgee.

Paul Barbagallo testified that on his property there are "a couple hundred" foxtail palms. When questioned about their origin he said:

The majority of the palms I bought from a nursery, some from Saturday morning markets, the majority of them over 4 foot tall, numbers I am not sure; a couple of hundred.

Are they planted in the ground? --- More than half, yes.

And what are you doing with the remaining half? --- I intend planting them in the ground as well, on the properties.

What condition are they in now? --- What do you mean, what condition?

Well, how are they stored, are they - - - ? --- They're in planter bags.

Are they irrigated? --- Yes, and they are irrigated, yes.

Have you ever sold any of your plants, the palm - palm plants? --- Oh, possibly a dozen.

To whom? --- To various people who have come and asked me. I don't generally sell them, but some friends I sold them to. But not as a commercial interest, no.

Could you identify for the Commission where you have purchased the plants from; from whom? --- I don't really want to answer that.

I am afraid you are obliged to answer that question. --- From which nursery?

Yes? --- Well, it's Budd's Nursery, but it's Deeral - Deeral Nursery, yes, as struck seeds they were.

You also mentioned you bought palms from markets; do you know from whom you bought those palms? --- No, I don't. I bought some in Brisbane at Eumundi Nursery, at the markets on Saturdays - no idea of the people who were selling them to me, no.

Paul Barbagallo was asked to identify the people to whom he had sold the foxtail palms. He responded:

I think Gordon Uechtritz ordered some off me. Sheridan Morris bought some off me. There weren't many, I can't think of any of the others, off hand.

Benjamin Hands is employed by Paul Barbagallo, and was in the Barbagallo party at Cape Melville when Barbagallo's vehicle was seized, on 11 November 1993. When giving evidence before the Commission, Hands estimated that Paul Barbagallo had

about 100 to 200 foxtail palms on his property at Upper Daradgee. Hands further testified that he had no idea whether Paul Barbagallo had sold any foxtail palms, although he concedes that it was unlikely that so many palms would be kept purely for ornamentation. When asked by counsel assisting whether he had seen foxtail palms coming in and others going out, Hands replied:

No, only the same plants getting bigger.

Hands testified that Paul Barbagallo had transplanted foxtail palms into larger planter bags as the plants grew. Hands also stated that he was not sure when he had first seen the foxtail palms in the bags.

Would have been a while ago.

Hands asserts that he does not know the source of the seeds from which these plants had been propagated.

Hands also acknowledged that he had previously been employed at Budds Nursery in 1987/1988 for 3 months. When asked whether he had seen Glen Budd with any foxtail palm seeds, he responded:

I read it in the paper, that's all; big news.

Paul Barbagallo gave evidence before the Commission on two occasions. On the second occasion, he furnished to the Commission a facsimile copy of a cheque dated 5 July 1991, drawn on the National Bank of Australia in the sum of \$4,800.00, and a handwritten note which he claims itemises purchases from Earl Budd's nursery. The cheque was payable to "cash or bearer".

Paul Barbagallo testified that the cheque had been paid to Earl Budd (Glen Budd's father). Of the \$4,800, Paul Barbagallo says \$2,300 represents the purchase of 300 foxtail palms. He described these palms as between 18 inches and 2 feet in height at time of purchase. He added, that the balance of the \$4,800 cheque was spent on the purchase of other palms. In response to questioning from his legal representative, Paul Barbagallo testified that he regarded the expenditure of \$4,800 on palms as insignificant, and compared that expenditure to his \$100,000 a month farm expenses.

Paul Barbagallo testified that he had a rough memory of the number of foxtail palms he had purchased, and their purchase price. He claimed that he had recently contacted Earl Budd and asked if he remembered the number of foxtail palms he had sold Paul

Barbagallo. As a result of this recent conversation, Paul Barbagallo prepared the handwritten note, itemising his recollection of the purchase. He explained that Earl Budd demanded cash at the time of the transaction and that accordingly, there was no receipt or any other documentation in respect of the sale.

Although in his evidence before the Commission, Earl Budd confirmed Paul Barbagallo's claim that he had obtained two to three hundred (200-300) foxtail palms from Budd, thereafter there is little consistency in the evidence of the two men. According to Budd, he had occasion to borrow \$5,000 from Paul Barbagallo. He experienced difficulty in repaying that loan, and Paul Barbagallo was supplied a number of plants in lieu of repayment of the money. Budd also denied Paul Barbagallo's claim that the two had recently spoken about the sale of foxtail palms by Budd to Barbagallo.

The following extract is taken from Budd's evidence to the Commission:

PEARCE: Have you spoken to Mr Barbagallo recently about that, have you? ---
No.

Are you sure about that? --- No, yes. I got a cheque once from down south and it was a post-dated cheque and I needed money for rates or something, I think, and I remember because I went out there to try and cash the cheque and he - I'm not sure even whether he gave me the cheque or took the cheque but I know he gave me cash and I was supposed to pay him back and I never ever had the money so he's cut it out in plants.

.....

Do you know for what sum the cheque was? --- It was around \$5,000, might have been a bit more or a bit less.

And did Paul Barbagallo exchange the cheque for cash or did he give you a cheque or what was the situation? --- He gave me - I'm not sure whether he gave - I think he gave the cheque back to me - but he gave me cash there on the farm.

He gave you whatever it was in cash? --- Yes.

.....

And what happened, you just never got around to paying him back; is that the situation? --- That's right.

And what occurred as the end result? --- I gave him - he just asked me a couple of times when are you going to get the money or pay me back and I didn't look like getting the money, so he's taken it off me in trees.

What did he take? --- He just took - he took some foxtails. I think he took some lipsticks and I forget what else he took, the value of the money.

.....

Are you quite certain you have not spoken to him again recently - - - ? --- No.

- - - about this matter? --- No.

He has not telephoned you to try and - - - ? --- No.

- - - talk to you about and remember how many plants he took on that occasion? --- No, no.

Mr Barbagallo has told us that he has recently spoken to you about it? --- No, he hasn't.

He has told us that he spoke to you on the telephone recently about trying to remember the quantities of plants that he - he purchased from you? --- No, he never spoke to me about it.

On this issue, the Commission is left with the conflicting evidence of Paul Barbagallo and Budd. It is not necessary for the purposes of its investigation for the Commission to resolve that conflict, but it is reported nonetheless.

3.7 BARBAGALLO'S PROPERTY IN WESTERN AUSTRALIA

Paul Barbagallo was questioned regarding a property managed by his brother, Charles Barbagallo, in Kununurra, Western Australia.

According to evidence given to the Commission by Paul Barbagallo, there are no foxtail palms on that property, and so far as Paul Barbagallo is aware, there never have been. Paul Barbagallo asserted that he had last visited the Kununurra property in May 1994, and prior to that, June or July 1992. In each instance, he had travelled

in his Toyota Troop Carrier and had remained on the property for approximately a week. He describes the purpose of the visits as:

Oh, just - have a look at the property and do some work, basically. It is fairly busy around then planting stuff like that.

Paul Barbagallo was asked whether the Kununurra property had ever been advertised as a foxtail palm nursery. He denied that it ever had. He was then asked whether there had ever been a sign on the property identifying the property as a foxtail palm nursery.

According to Paul Barbagallo, following the airing of the Four Corners programme in April 1994, somebody had put the sign up as a joke. He had no idea who was responsible. He indicated that his brother, Charles, had pulled the sign down.

Hands testified that he has been to the Kununurra property, and does not think there were foxtail palms on the property.

The Commission's information about the sign came from a wildlife officer of the Western Australian Department of Conservation and Land Management. The officer had visited Charles Barbagallo's Kununurra property, and describes the property as a farm where various crops are cultivated, together with mango trees, and a few palms. He reports that he saw no foxtail palms on the property, although he did observe a sign lying on the ground in the main shed, bearing the words "Foxtail Palm Nursery" and a directional arrow.

The officer faxed to the Commission a copy of his work diary for Monday 18 April 1994. Recorded in that diary was the following entry:

Inspected property at King Lock 244. Located 'sign' in machinery shed lying on floor of shed - sign - 'Foxtail Palm Nursery' with directional arrow - painted in black on sheet of tin wired to a star picket. Advised G R Qld F S.

(The "G R" refers to Gavin Ricketts, of the Queensland Fauna Squad.)

Significantly, the officer also reports having seen that particular sign adjacent to the main road to the property, "back a few years." The officer says that he has a good recollection of the sign because at the time he did not know what a foxtail palm was and was therefore curious about what was being sold.

A determination in respect of this issue is largely irrelevant to the Commission's inquiry into the events of 11 November 1993. For this reason, the Commission ultimately determined it to be unnecessary to bring the officer and Charles Barbagallo from Western Australia to give sworn testimony.

The matter is therefore reported, but does not form the basis of any conclusion reached by the Commission.

3.8 THE RELATIONSHIP BETWEEN THE REGIONAL DIRECTOR - FAR NORTHERN REGION AND THE DISTRICT MANAGER - CAPE YORK

The actions of Gregory Wellard, the Regional Director, Far Northern Region, DEH and Peter Harris, District Manager, Cape York, DEH are central to some of the events that are the subject of the Commission's investigation. In order to understand some of their actions it is necessary to have some insight into their professional and personal relationship because it is not as usually expected of people in their position and almost certainly negatively impacts upon the discharge of their respective duties.

Harris testified that he rarely communicated with Wellard, describing their relationship as remote and uncomfortable. By way of illustration he claimed:

.....I've now had the current position as District Manager of Cape York Peninsula since June '92. In that almost two-year period there hasn't been a single occasion that I can recall when Wellard has invited me to sit down with him and discuss either my opinions of direction in Cape York Peninsula, nor has he offered his opinions of where or what directions we should be proceeding in; so there has been an occasional interaction on particular issues, usually relatively minor, but it has been - I'd suggest, fairly difficult for me working in what almost appears to be a vacuum of direction and perhaps policy, in that I'm unaware, in the absence of any clear and regular direction or contact, as to what his perception is of directions that we may be proceeding in, be it those imposed in the whole of government situation or be they issues which I'm obliged to deal with on a daily basis.

Harris laid responsibility for this situation at the feet of Wellard, claiming that Wellard:

.....indicated at the stage of (Wellard's) last promotion, when the responsibilities of the Regional Director were increased across a number of programmes; his indications were to all staff at that time that we would, by virtue of that, be seeing much less of

him and that he would not - didn't have time or the inclination perhaps, to be involved in the minutiae of our operations; then he preferred they be handled by the Regional Managers. Now, that was his advice and I venture to say that the behaviour that one observes is that that's the way he prefers it, in that his time is spent entirely within his office. He's rarely seen outside of his office. Invariably when one needs to approach him there's either a queue of people or a queue of telephone calls. It's really a - I guess a very remote relationship in that he's not involved in - to any extent in what I'm doing day by day or even month by month.

During the course of his testimony, Wellard confirmed having adopted a deliberate management strategy of dealing directly with the Regional Manager - as Harris' supervisor - rather than with Harris himself. Apart from Wellard regarding this as appropriate in strict management terms, it was a mechanism which Wellard claimed was born of necessity to overcome the following difficulties;

- Harris' hostility towards Wellard. According to Wellard there had been attempts - using political means - to have Wellard removed as Regional Director ever since his appointment as Regional Director (replacing Peter Stanton) before the 1989 election of the Labor Government. Wellard's view is that it was perceived that he (Wellard) was a National Party "lackey" to do its bidding in the Far Northern Region; and
- frustration in other staff brought about by the perception that Harris believed himself to be the "fountain of knowledge" and a tendency on the part of Harris to be possessive and secretive in respect of information.

Wellard was not prepared to speculate that his strained relationship with Harris may have been the catalyst for political pressure in the present case.

According to Kelly's testimony, the hostility between Harris and Wellard had its genesis in Harris' strained relationship with Wellard's predecessor, Peter Stanton, who prior to resigning as Regional Director in 1989, wrote a memorandum critical of Harris to DEH Head Office. Upon the appointment of Wellard, Kelly claimed it was apparent, although never stated, that Wellard:

..... had instructions from Brisbane that Peter Harris had to be controlled very closely. So, when he first arrived, he told Peter he couldn't use the car he was using any more, told him he had to change his behaviour in no uncertain terms, and there was a fair bit of animosity generated. In my opinion, Greg was very hard on Peter. Peter resented it and they've never really been friends since. Greg also - Peter's wife at the time had a part-time job in the library. She was a member of the Wilderness Preservation Society or one of the local conservation groups. Greg interpreted that

to be a conflict of interests and persuaded her to resign. I don't know if he actually sacked her. I don't know the details of it. I think that rankled on Peter Harris as well. Generally, so their - for a variety of reasons, their relationship is not good at all.

In essence, Stanton's testimony concerning the relationship between Harris and Wellard was consistent with that of Kelly, but Stanton added:

.....Wellard, right at the very beginning, made no bones about the fact that he didn't really want Peter in any significant position. He didn't - I - if I remember, he did take some measures to try to keep Peter out of any responsible positions there, and he made no secret of the fact to me that if Peter Harris left the department that he'd be a lot happier.

3.9 THE FAUNA SQUAD

The Fauna Squad or the Wildlife Task Force, as it has more-recently been styled, is comprised of two police officers; a Detective Sergeant, and a Senior Constable. Its responsibilities include the investigation of offences in respect of fauna and flora throughout the State. It is responsible for the detection and prosecution of offences under the *Fauna Conservation Act 1974* and the *National Parks and Wildlife Act 1975*.

The officers are seconded to the DEH which pays all salaries and supplies all equipment. As officers working for DEH they are answerable to the Director, NPWS. As police officers they are in the line command of the Detective Inspector, Major Crime Squad, Brisbane.

The Fauna Squad has been in existence since 1978 and was created to deal with the more serious wildlife offences, the investigation of which was thought to be beyond the capabilities of NPWS rangers and wildlife officers.

Its structure and operation has not adapted to regionalisation within DEH. In the Far Northern Region this has caused considerable friction.

The Regional Director frankly conceded that some of his officers did not consider the Department's needs were being adequately serviced by the Fauna Squad. Knowledge of this dissatisfaction apparently led to animosity between the officer in charge of the Fauna Squad, Sergeant G Ricketts and the senior officers DEH Far Northern Region.

That ill feeling clearly impacted upon perceptions and behaviour of participants in the events surrounding the Cape Melville Incident.

Differences of opinion about enforcement policy led Ricketts to speculate that improper considerations were being brought to bear on his investigation of the offences committed by Paul Barbagallo and members of his party. He expressed his concerns in unseemly threatening correspondence addressed to the Regional Director and discussed his misgivings with those he knew also held ill-will towards Wellard.

It seems clear that Ricketts' speculation fed the conspiracy theories the Commission's investigation has found to be without reasonable basis.

The interaction between DEH and the Wildlife Squad is currently under review and a memorandum of understanding is being developed. The memorandum of understanding aims to put relations between the two organisations on a more business like footing and provide for more effective interface with the Department's regions. In the Commission's view the achievement of these goals is imperative to the successful implementation of the joint approach to wildlife law enforcement.

CHAPTER 4

EVENTS PRIOR TO THE VEHICLE SEIZURE

4.1 THE DEPARTMENT OF ENVIRONMENT AND HERITAGE PREPARES FOR THE 1993 FOXTAIL PALM SEEDING SEASON

By 1993, senior officers of the Far North Region, DEH, and more particularly, the Regional Director, Wellard, had become aware of the limitations on the ability of the Far Northern Region, acting alone, to effectively enforce the *National Parks and Wildlife Act 1975* (NPW Act) and the *Fauna Conservation Act 1974* (FC Act) governing the smuggling of wildlife. The location in Brisbane of the Department's main enforcement arm, the Police Fauna Squad, and its demonstrably limited ability and/or unwillingness to undertake enforcement activities in Far North Queensland, was of concern.

Therefore, in early 1993, the Far Northern Region moved to commence what the Regional Director has since, somewhat extravagantly, described as "the first co-ordinated multi-organisation intelligence gathering and enforcement capability" focussing on the smuggling of foxtail palm seeds.

To this end, Dennis Devine, District Manager, DEH Coastal Management Programme, became involved in the Regional Operations Planning Advisory Committee (ROPAC) co-ordinated by Coastwatch in Cairns. It is the aim of ROPAC to provide a mechanism for co-ordination and assistance between the State and Commonwealth law enforcement and surveillance agencies. Such agencies include Coastwatch, the Royal Australian Navy, the Australian Army, Queensland Police Service, Australian Customs Service, Queensland Boating and Fisheries Patrol (QBFP), and Australian Quarantine and Inspection Service.

In March 1993, Coastwatch introduced Regional Strategic Planning Group (RSPG) meetings to facilitate detailed operational planning for confirmation at ROPAC meetings. At the first meeting of the RSPG, in March 1993, Devine raised the problems involving the smuggling of foxtail palm seeds from Cape Melville National Park, and sought assistance from the other agencies for the next seeding season. It

was suggested that a co-ordinated programme of surveillance be organised in the latter part of the year, closer to the seeding season.

According to Devine, a short time after that meeting he informed Peter Harris of the potential assistance ROPAC might offer in respect of the problems associated with the foxtail palms.

At that time, Harris' responsibilities included the supervision and management of all National Parks in the Cape York area. Devine says that he suggested that Harris approach him in about August 1993 to allow sufficient lead time for the organisation of a co-ordinated operation including surveillance by the Army, Navy and Coastwatch, and enforcement by Marine Parks (NPWS) and QBFP.

Harris testified that although aware of ROPAC's existence at that time, he had no personal involvement with that committee.

In May 1993, Michael Chep, a former member of the Queensland Police Service with substantial investigative experience, took up an appointment as Law Enforcement Co-ordinator, Coastal Management Programme, in the Cairns office of DEH. His duties were initially confined to the Marine Park programme side of the DEH and included the taking over from Devine of the DEH role in ROPAC. Devine claims that he explained Chep's role to Harris, in the event that ROPAC's assistance was required at Cape Melville.

In July 1993, Stanton, who had previously held the position of Regional Director but who at this time was employed as a senior conservation officer, returned to Cape Melville to further his field work. Stanton was accompanied for three or four days by Shears, who was not at that time employed by the DEH. Stanton effectively extended Shears' knowledge of the unlawful removal of the seeds of the foxtail palm, introducing him to stands of foxtail palms and identifying unauthorised access tracks. Together, Stanton and Shears formulated a plan which centred upon the strategic blockading of unauthorised tracks, the erection of road closure signs, and the presence of Shears within the area for a sufficiently lengthy period at the commencement of the seeding season "to send a clear signal out that we were going to have a presence there that would deter any would-be illegal operations".

The strategies discussed by Stanton and Shears were directed at ensuring people could not traverse the tracks, rather than confronting and apprehending "smugglers" at the site of the foxtail palms habitat. The latter scenario, according to Stanton, would have been far too dangerous and the only thing to do in that situation would be to wait and

see if they were in fact taking seeds. From that point, after calling in appropriate enforcement support, the "smugglers" could be easily located, apprehended and prosecuted.

Following his field trip to Cape Melville National Park with Shears in July 1993, Stanton returned to Cairns and lobbied for Shears' engagement by the DEH, proposing that Shears close the unauthorised tracks by which access was being gained to the foxtail palms stands. Stanton asserted that such closures, if completed prior to the on-set of the wet season, would prevent the poaching of seeds because by the next seeding season the tracks would be so overgrown that re-opening them would not be feasible.

Stanton testified that he discussed his proposal in the main with Harris, and also had brief discussions with Anthony ('Buzz') Symonds, Regional Manager (NPWS - Conservation Strategy Programme).

At the end of the August 1993, Symonds departed the region on extended leave. In his absence, Geoff Kelly, then Regional Manager, (NPWS - Coastal Management Programme), performed relieving duties in Symonds' place.

In early September 1993, Stanton approached Kelly and briefed him on the proposal to engage Shears. Given Kelly's relative ignorance of the foxtail palm issue, and the fact that Kelly had had no direct dealings with Shears in a supervisory sense, Kelly relied heavily on Stanton's ecological and management expertise. Apart from proposing Shears' engagement, Stanton played no further part in the decision to actually appoint Shears.

Curiously, in testimony to the Commission, Peter Harris also laid claim to being the person responsible for suggesting the employment of Shears.

Coincidentally, in September 1993, the Far Northern Region published a document under the authorship of Stanton. This document, in the form of a report titled, "Cape Melville National Park Resource Information", was primarily concerned with identifying the issues to be addressed by a joint management plan should a claim on the land by its traditional Aboriginal owners be successful. It addressed among other issues, problems of foxtail palms seed smuggling.

While not claiming to be comprehensive, the report is thorough, well-presented and makes practical suggestions about how the foxtail palm seed smuggling problem could be addressed in the short term. It describes in some detail the damage being done to

the environment by seed smugglers but does not attempt to over emphasise the environmental significance of the issues under discussion, noting that the *Wodyetia bifurcata* is a "robust species not under threat of either significant decline in range or extinction." It also notes the dangers involved in park supervision aimed at preventing the profitable trade in seed smuggling and the suspected associated marijuana cultivation.

At the time he discussed with Stanton the suggestion of sending Shears to Cape Melville, Kelly had not read Stanton's report. Kelly claimed in testimony that he could not recall discussion about Shears remaining at Cape Melville for an extended period to provide "a supervisory presence". According to Kelly, his conversation with Stanton was not very long and there was no discussion about the associated dangers or the need for other assistance in conducting supervision in the park.

Harris testified that Shears was well aware of the possible dangers, having participated with the Fauna Squad in an enforcement exercise in the Cape Melville area in 1992, when a number of persons were apprehended unlawfully removing seeds. Shears had also returned to Cape Melville in early 1993 with Stanton, as a result of which Harris stated:

Some of the genesis, if you like, of the approach adopted did derive directly from the visit that Peter Stanton made in early '93 doing some botanical survey work. He had Pat Shears accompany him on that visit. And whilst there, they had considerable discussion and looked at the possibilities of how one would undertake surveillance in the area and a lot of the stuff that was subsequently formalised in these memos, came from those discussions and considering that as a possibility.

4.2 PAT SHEARS IS ENGAGED

During his testimony, Wellard acknowledged that he had been somewhat reluctant to agree to Shears' appointment for two reasons, namely:

- pressure to comply with PSMC guidelines on recruitment and selection in the public sector issued in July 1993, which required the discontinuance of the past practice of employing people on a 'permanent-temporary' basis by renewing short term contracts without resort to the merit selection process. In the case of Shears, departmental records reveal that following a period of employment ending on 30 June 1993, Shears had not been re-engaged for three weeks. Wellard explained that that was quite deliberate and was designed to accord with the emerging revised practice. Shears was then re-

engaged only because of mounting local community criticism of the Department in defence of Shears and the non-availability of any other suitably-experienced person in the Cape Tribulation area;

- given the isolation of Cape Melville National Park, Wellard was concerned about Shears' reputation for being difficult to manage (even though Wellard claimed he was of the clear understanding that Shears would be engaged to undertake only technical ranger type duties not involving enforcement action).

Acting on advice that the matter was urgent because the foxtail palm seeds would soon be ripening, Kelly requested Peter Harris to prepare a duty statement for the temporary employment of Shears as a ranger grade 3 for a period of "12 weeks".

According to Kelly, given the need to restrict access to the palms before the commencement of the wet season, and as there was little likelihood of finding anyone more suitable to the task than Shears, a temporary appointment for twelve weeks avoided the need to undertake a merit based selection process and was the fastest and least bureaucratic way of achieving the objectives desired. Kelly testified that funding constraints precluded consideration of any extension to Shears' engagement beyond twelve weeks.

The employment of Shears and the two Aboriginal elders was to be funded from "New Initiatives" monies which, according to Kelly, were already insufficient to cover the positions for the twelve week period.

While closure of access to the palms was the initial priority, and could be achieved within one working week, there were other aspects to the operation, such as monitoring and surveillance and introducing the traditional owners to management of the park, which, according to Kelly, justified the twelve week period. Any proposal for ongoing-monitoring beyond that period was, according to Kelly, dependent upon the availability of additional funding, or alternatively, to be achieved by a combination of Marine Park, aerial and sea surveillance, and occasional visits by rangers from Lakefield National Park.

Kelly testified that after his discussion with Stanton, he conferred with Wellard and Nigel Hedgecock, Planning Officer, Aboriginal Land Interests, NPWS. It was agreed that any management action required the involvement of the traditional owners.

Hedgecock had been employed by the DEH in various capacities since 1985. He had worked in the Cape Melville area and was familiar with the *Wodyetia bifurcata* issue

and the dangers inherent in policing the unlawful removal of seeds. Hedgecock claims that Stanton's report on Cape Melville National Park, which he read after its release in September 1993, reinforced his concerns for the welfare of officers performing surveillance within the park.

Hedgecock confirms that Shears was engaged to perform surveillance in respect of seed collectors and that he (Hedgecock) raised the possibility of traditional owners being involved in that operation. It was determined that Shears would be accompanied by Aboriginal elders and that Shears' duty statement should accordingly incorporate the training of those elders in aspects of park management.

4.2.1 Harris' Submission Re Shears' Appointment

By submission dated 10 September 1993 directed to Wellard through Kelly, Harris recommended the appointment of Shears and two traditional owners from Hopevale for a maximum period of "three calendar months". That submission contained the following passage:

"The most critical need in the period between now and the next wet season is for monitoring and surveillance of the park's stands of its endemic *Wodyetia* (foxtail) palms during their fruiting season. In order to control the illegal poaching and associated activities which have been causing increasingly significant disturbance to Park features over recent years, an increased QNPWS presence there is considered the best option to deter and control such activities, and to provide the level of protection this Park now requires.

It is particularly important that these detrimental activities be brought under control this year, prior to further developments pursuant to the Aboriginal Land Claim over this Park which is currently before the Aboriginal Land Tribunal."

Shears' duties, as proposed by Harris for Wellard's approval, were stated to include:

- Installation of park boundary signage at entry points;
- Closure by signage and vehicle barriers, of unauthorised tracks created by poachers for palm seed access;
- Preparation of small helicopter landing pads for use during wet season monitoring visits;

- Surveillance of palm stands to prevent unlawful activities as the seed crop ripens;
- Familiarisation of representatives of traditional Aboriginal owner group with the problems, and training in preventative management requirements to counteract attempted poaching and associated activities.

Kelly testified that in general terms, Harris' submission of 10 September 1993 accurately sets out the aims and objectives of the operation as originally intended, although, with hindsight, Kelly would have preferred it to have contained detail of Shears' powers and a highlighting of what Shears was and was not to do.

Kelly concedes that on the face of Harris' document, the sole purpose of Shears' appointment appears as monitoring and surveillance activity, with the involvement of traditional owners appearing almost as an afterthought. Kelly rejects the suggestion that monitoring and surveillance was the intended primary purpose of Shears' employment, explaining:

...It's really semantics, I mean (Shears) went up there to do three things.

Wellard's understanding of Shears' duties (in light of Harris' submission of 10 September 1993) was as follows:

There were a number of duties listed which were general park management duties related to making it difficult to gain access to the mountains in Cape Melville where the *Wodyetia* palms grow. The origin for it was that Peter Stanton had expressed belief that there were two - I think two spots, possibly three, where the road went through swamps where it would be relatively easy to block the road and prevent access because you couldn't go around any blockage. The memorandum given to me by Peter Harris requested the sorts of duties that would lead to that goal which was - there was nothing in it, if I recall, about enforcement and going up there and catching the baddies. There was surveillance, which is the normal routine function of a ranger, and there were preparing helicopter landing pads and blocking off and signposting tracks and roads, which are all part of a general ranger's duties in a situation like that.

Wellard concedes that Harris' proposal did not expressly limit Shears' duties to surveillance, nor did it specify that Shears was not to take action of a more direct enforcement nature. To that extent, according to Wellard's testimony, the proposal was deficient as it should have specified exactly what Shears was and was not to do,

particularly in light of Shears' "tendency to operate a little bit on the fringes of what (Wellard) thought was appropriate". Wellard accepts responsibility for failing to ensure that the proposal did not clearly indicate what was expected of Shears.

Significantly, while sharing some concern about the potential dangers highlighted by Stanton, Wellard discounted such dangers, contesting Stanton's claim that there was evidence to substantiate a link between drug-related activity and *Wodyetia bifurcata* seed smuggling which:

...are simply part of the overall environment that is there and we have sent patrols and rangers up there many times in the past and not had problems and there was no reason to expect that there would be a problem of particular magnitude in this case.

The relative priority assigned by Wellard to Shears' duties is reflected, in part, by the endorsement made by him on Harris' submission, namely:

This employment period should reflect the minimum time necessary to advise and impart knowledge to the traditional owners.

According to Wellard, the endorsement was a direction – albeit one which in hindsight Wellard concedes lacks clarity – intended as an expression of the relative priority of the task of familiarising the two Aboriginal elders (which Wellard considered paramount) over the monitoring and surveillance of the *Wodyetia bifurcata* stands. That is, whereas it is evident from the document itself, the wording of a subsequent project brief dated 13 September 1993, and a letter dated 15 September 1993 engaging the two Aboriginal elders, that the primary purpose of the exercise was monitoring and surveillance, Wellard contends that it was his intention that monitoring and surveillance be subject to an overriding proviso that the term of Shears' engagement at Cape Melville should only be as long as was necessary to train the Aboriginal elders in basic park management.

Apart from the admittedly–unclear endorsement appended to Harris' submission of 10 September 1993, Wellard cannot otherwise recall making his intention known to Harris and therefore expresses no criticism of Harris for not reflecting Wellard's state of mind when drafting subsequent documents.

Kelly recalls a degree of reluctance from Wellard to approve Shears' appointment. According to Kelly, Wellard expressed concerns about Shears' ability to liaise effectively with the traditional custodians. Kelly does not, however, recall Wellard expressing any concerns about Shears' reputation as a "Rambo". Accordingly to Kelly, after he told Wellard of Shears' assurances that he had worked previously with

Aboriginal people and was sensitive to their aspirations and empathy with the land, Wellard approved Shears' temporary appointment. This approval took the form of both Kelly and Wellard endorsing Harris' submission by appending the word "endorsed" and signing and dating the submission, "13 September 1993".

4.2.2 Shears' Duty Statement

Following endorsement of his submission of 10 September 1993, Harris prepared what was, in effect, a duty statement for Shears. Dated 13 September 1993, this document was titled, "Cape Melville National Park Surveillance Operations - Project Brief". Particulars of the project - which Shears subsequently codenamed "Operation Walkabout", included the following:

- Aims:
- (1) To deter, patrol and prevent the occurrence of unlawful activities within this National Park, particularly the poaching of seeds of the endemic foxtail palm (*Wodyetia Bifurcata*).
 - (2) To familiarise the park's traditional Aboriginal owners with problem usage areas requiring management attention, and to provide training and techniques appropriate to achieve a level of control required by legislation.

.....

Job Definition: Your tasks in this operation are:-

- (1) To familiarise representatives of the traditional Aboriginal owner group attending on site with the reasons, methods and procedures proposed to achieve the desired management outcomes.
- (2) Subject to their agreement, and with their assistance, to implement the Action Plan detailed below.
- (3) As the accountable officer in charge of this operation, to accept responsibility for all matters of conduct, safety, equipment, liaison and reporting as required.

.....

The term of your employment will be for a maximum period of 3 calendar months from the date of commencement.

.....

The project will require recurring periods of up to 3 weeks continuous attendance at Cape Melville National Park sites. No overtime payments are available for duties performed outside standard working time, but time in lieu may be claimed for such periods where duly recorded and authorised.

During remaining employment periods when your presence is not required at Cape Melville, you are to undertake infrastructure maintenance work at Cape Tribulation National Park, as directed by the District Ranger, Mossman.

Action Plan: Stage I - September (estimated 3 weeks duration on site)

1. Define the National Park boundary at predetermined vehicular access track crossing points by installing standard identification and/or regulatory signage. Where appropriate, erect vehicular barricades to prevent use of unauthorised vehicle tracks for park access.
2. Prepare light helicopter landing areas at predetermined parks sites for possible wet seasons use.
3. Monitor park palm stands for any potential preparations or movements by poachers prior to ripening of the seed crop.
4. Monitor and patrol the overall park area for unlawful or other activities requiring management attention.
5. Liaise with representatives of other agencies involved in surveillance of the area (eg. Police, Customs).
6. Report all task progress and findings to District Manager (Cape York) at Cairns.

On completion of the above Stage I, the situation will be reviewed and further instructions issued before field operations recommence.

4.2.3 Shears' Briefing Prior to Deployment

On or about 13 September 1993, Kelly convened a meeting in his Cairns office with Shears, Harris and Hedgecock. The meeting had been called to discuss aspects of the proposed surveillance operation.

Details of the meeting were recorded in a memorandum prepared by Kelly on 23 November 1993.

According to Kelly and Harris, the focus of discussion was Shears' role with the traditional owners, that is, ensuring that the Aboriginal elders would be treated with due respect and kept involved, in a meaningful way, with NPWS activities in Cape Melville National Park.

Given the developing relationship between the DEH and the claimants for Cape Melville National Park, Hedgecock in particular, as the departmental Planning Officer for Aboriginal and Torres Strait Islander land interests, was particularly concerned:

...about Pat's ability to work with Aboriginal people and to respect the process in the relationship-forming that the department had already done and respect their position as Traditional Elders and owners of that land.

Additionally, Hedgecock was concerned about the welfare and safety of the Aboriginal elders.

Kelly contends that during the briefing, he explained to Shears:

(That) he was not to 'engage' wrongdoers directly but was to report back on a regular basis any nefariousness which he may observe on the park. Mr Shears assured me that he would exercise considerable tact and discretion and he said something to the effect that if he and his team were observed by the people while on the park he will consider his surveillance mission to have failed.

Although Kelly acknowledges that he did not specifically advise Shears that he did not have the powers of a Field Officer, Kelly considers that he:

...did strongly indicate, with the concurrence of all present, that (Shears) was not to involve himself or his co-workers in any situation which could lead to confrontation with perpetrators of badness and their ilk. Mr Shears assured the meeting that he was far too sensible for that to occur.

Kelly testified that it was necessary to restrict Shears' activities because, in Kelly's understanding, Shears had no enforcement training and there was no appropriate immediate backup in any potentially dangerous situation.

Hedgecock corroborates Kelly's account of the briefing, testifying:

. . . I remember Geoff Kelly telling Pat that it was his duty to make a surveillance operation a monitoring operation only and not to engage any people. And if they did find anything that they should make radio contact, get in contact with Cairns and get back-up up there. Not to engage people.

As conceded by Harris in testimony, it was never expressly stated in any of the documentation leading to the appointment of Shears, Flinders and Monaghan that they were to refrain from taking enforcement action. Moreover, as Harris further conceded, the terminology used in the submission of 10 September 1993 and the Project Brief of 13 September 1993 left considerable scope for someone such as Shears to interpret that some active enforcement of environment protection laws might be required. However, Harris confirms that before Shears went to Cape Melville on the first occasion in October, and subsequently, he was explicitly told that he was to avoid confrontations and that he was not to engage persons he suspected as being involved in unlawful activities. Shears was instructed that he was merely to observe and report to Harris for advice on follow-up action to be taken by other agencies. According to Harris, the NPWS recognised that Shears and his companions were not trained to independently engage in law enforcement.

In evidence before the Commission, Shears gave a similar account of the briefing conducted by Kelly and Harris on or about 13 September 1993.

In his interview with Commission officers in February 1994, Shears stated that he understood he had been engaged by DEH during October and November 1993 to conduct surveillance in the Cape Melville National Park area to prevent the smuggling of foxtail palm seeds.

Subsequently, when interviewed during ABC Television's *7.30 Report* on 12 April 1994, Shears stated that he understood his duties to have been primarily concerned with stopping the smuggling of foxtail palm seeds, and incidentally to show the two traditional owners their land and methods of patrolling the park. Shears considered that he performed the latter duty in Stage I of "Operation Walkabout", which he had codenamed "Operation Probe". He indicated that the second stage of "Operation Walkabout" - which he codenamed "Operation Backtrack" - although including Flinders and Monaghan, was mainly concerned with surveillance to stop smugglers.

Subsequently, when Shears gave evidence before the Commission, he described the activities that he believed he had been required to carry out, as follows:

... First of all you sign-post tracks so the ordinary tourist, if they do come along and they know what's going on and they don't go in there because I found that they don't. Barricading, barricading any - as far as I'm concerned - any type of barricade so long as no one hurts themselves. All right. Putting up signs, like I put up skull and cross bones signs to scare them, you know. Spreading - spreading misinformation I was spinning some yarn about the - the road block down near Cooktown and how the Customs police were looking for - I think I said the Triads, you know, I just made this huge yarn because if they go back to Cooktown and say, oh, say to the other blokes, 'Don't go up to Cape Melville, you know, there's flaming cops and that running around'. That was one of my - as far as I was concerned - that was a good preventative measure because Peter said that he said, no shoot outs ..."

The following exchange during his testimony also assists in identifying Shears' belief as to his role:

PEARCE: You mentioned a few minutes ago the expression surveillance? -
-- Mm

Did you understand this to be a purely surveillance operation as opposed to an enforcement operation? --- No, well, as far as enforcement goes, I wasn't to confront armed men, put it that way.

Later, during his examination Shears explained what he believed he was expected to do if he detected smugglers:

... What action was expected of you if you came across a smugglers camp? --- Well, if it's outside the park, you know, there's nothing much you can do about it.

But you have got reason to suspect the occupants of the camp are going backwards and forwards into the park taking seeds. What did you think you were expected to do? --- Well, track them - follow their tracks in to make sure.

Yes. And you find - you get that confirmation; then what do you do? --- Well, if - if they are - weren't with their gear, I'd take it, seize it, and hopefully with the seeds in it. If not, I'd - I'd try and get through on the radio whenever I could - this is the drawback, on the radio.

Did you have a radio schedule set up? --- Yes.

Right, go on?—Trouble is everybody went home after 5 o'clock, so I had a mate of mine, ex-Vietnam mate of mine that - we spoke in code over the Flying Doctor radio, which is much more reliable. So in the event of anything serious happening I could get on to him, and he'd just ring Peter Harris straightaway, and that's how it worked.

Did you discuss this with Harris or anyone else before you went up there?—Oh, yes, yes.

In detail, what you were to do if you found smugglers actively taking seed?—I'd - I'd just say - I'd radio through and to get the cops to come up straight away in their helicopter.

So that was your arrangement with Harris, that if you found smugglers operating, you would pass that information over the radio to Harris, and he would arrange for police to attend in a helicopter?—Mm.

4.2.4 Back-Up for Shears in the Field

Communications

To assist Shears in the performance of his duties in Cape Melville National Park, Kelly ensured:

Shears was provided with a vehicle equipped with an 'HF' radio so that he could be in 24 hour contact with Lakefield (Ranger) Base and also the Royal Flying Doctor Emergency system. Pat was instructed to use this radio in the event of any detected illegal activity and not to take any interventionist action . . .

According to Kelly, it was left to Shears himself to structure a radio schedule with Lakefield Ranger Base.

Lakefield Ranger Base is equipped with a Digital Radio Telephone system and radios with three frequencies for radio communication with Cairns and other NPWS bases. The radio is located in the house occupied by the ranger in charge, and the telephone is located in both the house and the office, situated a short distance from the house. Thus, communication through Lakefield Ranger Base is essentially available on a 24 hours basis by either telephone or radio, subject only to the radio being turned on. If the ranger, Ron Teece, is away from the base, his wife, Patricia, usually remains

at the base and monitors the radio throughout the day. Otherwise, in the absence of a pre-arranged schedule, the radio may be switched off.

Shears testified that he had a radio schedule with the ranger at Lakefield but explained that he was never able to make contact with him. This claim is contradicted to some degree by Teece, who states that he received no instructions from either Cairns Regional Office of DEH, nor from Shears himself, concerning any radio schedule with Shears. According to Teece, Shears would have been aware of the communications network at Lakefield Ranger Base and provided a schedule was arranged, there would have been no technical or other reason why that line of communication was not available. Additionally, if Shears had wished to establish radio communication with Cairns from Cape Melville, there was no necessity to proceed via Lakefield Ranger Base. Shears could have arranged communication directly with Cairns Regional Office of DEH using the radio facilities located in Cairns.

Independently of the DEH however, and before departing for Cape Melville, Shears arranged to maintain radio contact with a friend, Cliff Truelove, at Cape Tribulation. Truelove understood from Shears that he (Shears) was supposed to make radio contact with the DEH in Cairns through the Lake Eacham radio communications facility, but that he frequently experienced difficulties in establishing radio contact through that facility either because of poor reception due to atmospheric conditions, or because the radio receiver at Lake Eacham was not switched on.

The arrangement between Truelove and Shears was that Truelove would listen in to the radio around 5.00pm to 5.30pm each afternoon for contact from Shears. Shears did not call everyday and at times Truelove forgot to switch the radio on, or may have been away. In the latter instances, if Shears needed to contact someone, the only way, according to Truelove, would be for Shears to call the Royal Flying Doctor Base in Cairns, which is constantly monitored.

According to Truelove, whenever Shears did make contact he used a pseudonym, never his real name, and would speak in a coded fashion, fearful that others may be listening to the transmission. When Shears contacted Truelove, it was usually simply to say that he was "okay" but, if requested by Shears, Truelove in turn relayed messages to Harris, who was aware of the radio communication arrangement between Truelove and Shears. Truelove claimed that he did not call Harris very often, estimating only three or four times in the period September to November 1993.

Police Back Up

Harris' submission to Wellard recommending the engagement of Shears provides:

Police support for the Q.NPWS party will be available during much of the operational period, with visits to the area scheduled for both Cairns and Cooktown based units. Liaison between these parties has been established through Michael Chep and will be continued throughout the period.

Kelly and Harris contend that Shears was told that in the event that the party came across offenders they were to make immediate contact with the Police Service to enable officers to be flown to the area to confront the offenders.

Harris testified that arrangements had been made with the Police Service to enable this to happen. This claim is consistent with what was written to the Aboriginal elders who accompanied Shears. Their letter of appointment said in part;

There should not be any meeting up with dangerous people, at least on the first trip before the palm seeds are ripe. Mr Shears is a good bushman and knows how to look after himself from his time in the Army. It will also be possible to radio for the Police to come in. They know about the job and will provide help if needed.

Harris testified that although he did not directly make arrangements with Cairns or Cooktown Police to provide support for Shears, he was aware that Chep and Shears had attended a number of meetings with the Cairns Drug Squad to discuss the operation. According to Harris, Shears had also subsequently informed him that on at least two occasions whilst enroute to Cape Melville National Park, he had visited Cooktown Police to advise them of the operation. Accordingly, Harris testified that he was satisfied that support was available for Shears if needed.

Whilst visiting Cairns prior to his deployment to Cape Melville National Park, Shears, acting on his own initiative and not any directive from Harris or anyone else in the DEH, visited the Cairns Drug Squad office intending to speak to Brett Schafferius, whom Shears understood to be the officer in charge. Schafferius was unavailable, so on the following day, Shears returned. Shears claims he spoke with another unidentified police officer and alerted that officer to the fact that he was going to Cape Melville and to the possibility that he might stumble across drug growers in the area. In that sense, Shears believed that if he could encourage the Drug Squad to visit Cape Melville to target the illegal drug activities, it would effectively provide him with some backup for his own operation.

Shears testified that no one at the DEH indicated to him that arrangements for a formal briefing of the police had been made, although Shears assumed that this would be the case.

Shears denies that he was accompanied by Chep when he visited the Cairns Drug Squad.

For his part, Chep too, denies that he, either alone or in company with Shears, met with any police officer in Cairns for the purposes of briefing the Police Service on Shears' intended activities.

Chep says he relied on Harris to attend to these arrangements because he had little knowledge about the foxtail palm issue and was only acting in the position with administrative responsibility.

Senior Sergeant John Hartwell, officer in charge of the Cairns Drug Squad, denies receiving any briefing from the DEH in respect of "Operation Walkabout", or any request for the provision of support for Shears, if needed. Inspector Tim Roache who was Regional Crime Co-ordinator at the time also denies any such approach.

On 25 October 1993, the day before Shears went back to Cape Melville, he called in to the Cooktown Police Station to advise of his trip and to see whether any police were available to accompany him. That was the first advice police at Cooktown had of Shears' operation and not surprisingly no officers were able to go with him.

Army Surveillance

According to Chep, in October 1993, Devine made arrangements with Harris to request that the Army conduct surveillance at Cape Melville. As the DEH representative in meetings with Coastwatch and Customs, on 14 October 1993, Chep initiated a tasking to the Australian Army involving surveillance during the period 1 to 15 November 1993. On or about 28 September 1993, Harris forwarded to Chep a log of Shears' activities between 17 and 27 September 1993. Apart from that document, however, and verbal advice from Harris that Shears would be returning to Cape Melville to conduct surveillance, Chep claims he was not briefed in detail on the purpose of the operation involving Shears.

Chep took up with Army Sergeant Alan Lavaring and discussed a strategy to involve Army Reservist personnel in the conduct of general surveillance in areas of Cape

Melville - well away from Shears' area of operations. This surveillance was to occur during Stage II ("Operation Backtrack"). According to Chep, Sergeant Lavaring indicated that Army personnel would not need to communicate with Shears whilst in the Cape Melville area. Again, according to Chep, Shears was in turn briefed on the role of the Army, particularly the fact that Army personnel would be used for surveillance only, and not for enforcement action. Shears was instructed to avoid contact with the Army patrols and was informed that should anyone discover Army personnel in the area, the Army would withdraw.

Shears has testified that he has no recollection of receiving any such briefing from Chep, although he believes Harris advised him of these matters. Harris also told Shears that he would try and involve Coastwatch in conducting surveillance flights over Cape Melville National Park.

Shears, acting on what he believes Harris told him, contacted Sergeant Lavaring following Stage I ("Operation Probe") and briefed him on the "lay of the land". Shears says that he told Lavaring it would be "great if you guys can come in and just put a presence in whenever". According to Shears, Lavaring agreed with that sentiment.

According to Sergeant Lavaring, information was obtained from Shears as to the access routes into Cape Melville National Park, in particular, the gazetted roads through Starcke and Kalpowar Stations to Wakooka Outstation. Lavaring's recollection is that Shears was particularly concerned to learn if the Army patrols would be armed, and if it would be possible to communicate with the Army using radio. Lavaring informed Shears both that the patrols would be armed for self-protection against wildlife and that Shears was not to make any contact with the patrols - with any communication having to be passed via Chep, in Cairns.

At one point in his conversation with Shears, Lavaring recalls Shears remarking that he carried explosives for protection, rather than a firearm.

Shears' diary records that he was informed via the radio on 1 November 1993, that the Army had been granted permission to operate in the Cape Melville area.

Army Sergeant Barry Alan Charles testified that he was the commanding officer of one of two patrols, comprising four and six men respectively, which undertook an exercise in the Cape Melville region between 7 and 13 November 1993.

Sergeant Charles says that the exercise was an operational patrol conducted on behalf of the NPWS, the mission being twofold:

To maintain surveillance on a track system up there in the Cape Melville area and secondly, to assist another patrol which was operating to my north.

Charles explains how he interpreted his instructions which bear significant similarity to those given to Shears;

... the surveillance operation (was) designed to see and hear without being seen or heard by the enemy or the suspects. My rules of engagement (were) that I cannot fire on these people unless I'm being fired at, and that is only to extract myself and my patrol. But apart from that, all we're supposed to do is look and take photos, report suspicious activity, maintain a log and a diary of what we see, times, the type and condition of the car, the occupants, if we can get them that quick. And that's about it basically, as far as the surveillance operation goes.

Upon return from the patrol, it was Sergeant Charles' duty to report to his superiors by means of an operational diary.

Although briefed prior to the exercise, Sergeant Charles says he was not informed that a National Parks ranger was conducting an operation at Cape Melville.

Clearly there was no basis on which Shears or any DEH officers could consider that the Army would provide Shears with logistical support in the event he came across seed smugglers.

4.3 OPERATION PROBE

Thus, having been engaged and briefed on "Operation Walkabout", Shears, Flinders and Monaghan embarked upon Stage I: "Operation Probe", which commenced 17 September 1993.

"Probe" comprised four main patrols of Cape Melville National Park over a period of ten days, during which the party performed the required tasks of strategically erecting regulatory signs, and construction of barricades across unauthorised access tracks into the park.

Upon completion of Stage I, on 27 September 1993, Shears returned to Cairns and debriefed his supervisor, Harris. In turn, Harris instructed Shears on requirements for the next stage of the operation, codenamed by Shears, "Operation Backtrack".

Kelly, according to his testimony, was not privy to, nor made aware of such instructions.

In reporting to Harris on the success of Stage I, Shears recommended that he return to the area for a "quick reconnoitre" by vehicle for four days around 11 October 1993, "to show a presence and check on any activity." Shears also noted in his memorandum to Harris on 28 September 1993, that:

... the first (foxtail palm) seeds will be ready to harvest about the last week in October, which by then we should have commenced the second stage of the operation: 'Backtrack'.

Shears, next returned to Cape Melville National Park between 10 and 13 October 1993 to patrol in accordance with his earlier recommendation, in particular, "to ascertain the status of the palms with regard to seeding and to monitor visitation to the park". Shears later reported that the main smugglers' route to the primary palm habitat remained undisturbed, but that there was evidence that a second track had been recently used. He barricaded and signposted that track. Shears also reported that he had learned from "police sources" of the apprehension of a person north of Cooktown, possessing three boxes of foxtail palm seeds, which indicated, according to Shears, that seed harvesting had begun.

4.4 OPERATION BACKTRACK

Stage II, codenamed "Operation Backtrack", commenced on 25 October 1993. On that day - according to Shears' diary and his evidence before the Commission - he drove to Cooktown, arriving at about 1.00pm. At Cooktown he "liaised with police regarding illegal camps and probable drug sites in the Cape Melville Area".

This is confirmed by Detective Senior Constable Darren Somerville of Cooktown Police who, although unsure of the date, recalled that some weeks before the vehicle seizure, Shears called into the station one afternoon and advised that he was, either that day or the following day, travelling to Cape Melville National Park to commence a three week patrol. Shears also advised Somerville that he would be accompanied by two Aboriginal rangers. A search of Somerville's diary and the Cooktown Police

Station occurrence sheets, reveals no corresponding record of Shears' attendance at the Police Station on this occasion.

According to Somerville, Shears asked if he or any other police officer wished to accompany Shears on the patrol of Cape Melville National Park. Shears was advised that due to the short notice, this would be out of the question. Somerville says that Shears was not definite as to the purpose of the patrol but recalls Shears mentioning he was going up to the park "to see what was happening", to visit some of the old tracks and campsites, and to erect some signs. Shears indicated to Somerville on a map where he would be patrolling and stated that if he needed assistance, he had a radio and would try to "call in".

Somerville does not recall whether any other police officer was present during his conversation with Shears, however according to Somerville, he had not received, nor to his knowledge, had Cooktown Police Station received, any advance briefing or request for support from DEH in relation to the Shears' operation.

The following day, 26 October 1993, Shears proceeded to Hopevale where he collected Flinders and Monaghan, before continuing on to Cape Melville National Park.

Over the course of the next 16 days, the three conducted patrols by vehicle and by foot, monitoring activity within the park and checking signs erected during Stage I - "Operation Probe". (Annexure 5 is a map of the area prepared by Shears.)

Leading off the gazetted road which proceeds through Starcke Station and thence in a northerly direction to the beach at Bathurst Bay, Shears says he located two unauthorised tracks, which lead directly to the foxtail palm stands. Thereafter, Shears referred to these tracks as "smugglers' track no. 1" and "smugglers' track no. 2". Together with the Aboriginal rangers, Shears constructed barricades across these two tracks.

By this time, according to Flinders, the colour of seeds of the foxtail palms had turned from green to yellow, indicating that they had not quite reached full maturity.

Vehicles were observed to enter and leave the park without incident, except that on Sunday 31 October 1993, a group of three visitors to the park complained to Shears that during the previous day, whilst walking within the park, they heard semi-automatic rifle fire in the near vicinity.

Harris claims that during this stage of the operation, Shears established a radio schedule, reporting to DEH at Cairns on a daily basis. Harris is contradicted on this point by Shears, who states that he informally arranged to maintain radio contact with his friend, Cliff Truelove, at Cape Tribulation. Shears is corroborated in that regard by Truelove and, also, to a lesser extent, by Flinders, who recalls that Shears only used the radio from time to time.

On 3 November 1993, suspecting that there may be a third unauthorised track near the location where the shots had been heard, Shears and his companions drove towards the beach at Bathurst Bay. Shears' suspicions proved correct, for a track was discovered veering from the main track in the direction of a foxtail palm habitat. A patrol was conducted of this track and the immediate area. A tourist was located during this patrol, and Shears advised the tourist that it was dangerous to be in that area alone. According to Shears, the tourist then departed the area.

On the following day, Flinders and Monaghan returned to the track, which Shears had called "smugglers' track no. 3" and the trio installed a signpost on which were displayed three signs - indicating the National Park boundary, and (by use of diagrammatic symbols) that camping and the entry of vehicles were prohibited. The signs were posted upon a large block of timber which, in turn, was erected in the centre of the track atop a rise or ridge, where the track crossed the boundary of Cape Melville National Park. They also barricaded the track by placing logs, branches and other debris beyond the sign (within the park boundary). Shears estimates that it is 2.4 kilometres from the main beach road to the boundary of the National Park. He states that there was no alternate track around the point where the signpost was erected.

The trio returned to the junction of the track with the main beach road, where they constructed a barricade across the entrance to "smugglers' track no. 3". They also camouflaged the track with ant hills, logs, branches and leaves for a distance of approximately 100 metres.

For the next six days the party continued to conduct patrols and monitor the tracks to the foxtail palm stands.

At about 4.30pm on 10 November 1993 Shears, Flinders and Monaghan were monitoring the main beach road into Bathurst Bay. As they conducted a controlled burn off, two vehicles were observed travelling on the road at 50 or 60 kph, in a northerly direction. At the time, Shears described the vehicles as a white Toyota Troop Carrier and a four wheel drive with metal boxes on top.

4.5 BOOBY TRAPS, EXPLOSIVES AND FIREARMS

Shears acknowledges that he set booby traps on each of the three "smugglers' tracks". He describes the traps as pieces of board about twelve inches long and an inch thick through which he hammered three or four, three-inch nails, leaving the point of the nail protruding. Each of the points was then filed down so that, according to Shears, if anybody stepped on them, they would not harm themselves.

On Shears' account, although some of the booby traps were left visible so that intruders would wonder how many more were around, others were covered with soil and grass so that they would not be easily visible. Shears believes that he laid about four traps on each of three tracks.

Shears says that he set the booby traps to assist in the escape of himself and his two companions in the event that they were chased by smugglers. The drivers of the other vehicles would not be aware of the whereabouts of the booby traps and would puncture tyres, thus giving him and his companions time to escape.

Shears testified that after Flinders and Monaghan expressed concerns about the setting of the traps, he decided to remove them. He added that he too, was concerned that innocent persons driving along the track might puncture tyres if they ran over the traps. Shears says that as a result of these concerns, he removed the boards from "smugglers' tracks no. 1 and 2" about a week after they had been set. Shears testified that he attempted to remove the booby traps from "smugglers' track no. 3" on Wednesday 10 November 1993 but that he could not find them.

While his instructions were to prevent vehicle use of those unauthorised tracks, Shears concedes that he had no authority to set the booby traps.

According to both Flinders and Monaghan, during Stage II, "Operation Backtrack" Shears equipped himself with a rifle and "a few" sticks of gelignite. Both say they saw Shears transferring the explosives between bags.

Flinders testified that because he had previously worked with gelignite and was familiar with the explosive, he was certain that what he saw in Shears' possession was gelignite.

According to Monaghan, Shears stated that he carried the gelignite just to frighten people. Both say that it was never used by Shears while they were in his company.

Shears testified that because the Aboriginal rangers were fearful of being shot, he constructed "fake" gelignite to reassure them. Shears says he used peperoni sausage wrapped in bandage with a piece of car aerial stuck in the end with wire attached to look like a detonator. He explained that he made "a few sticks" and carried them with him.

Shears denies having any explosives with him.

Harris testified that upon learning that Shears may have carried explosives, he confronted him about it. He says Shears explained that "it was an old trick he'd learned in Vietnam, that if you had nothing else you made a dummy stick of gelignite and use it as some sort of deterrent".

Shears concedes that he also told members of the Army troop he came across on 13 November 1993, that he had possession of explosives. According to Shears, this was a lie, planned to create "a bit of a reputation of not being messed with". Shears claims that he needed such a reputation as he had to live at Cape Tribulation by himself, and he wanted "the crooks to know that - to leave me alone, otherwise, you know, you never sleep the night". Shears also acknowledged in evidence that he had asked the soldiers whether they had any spare grenades, and that this was part of the same ruse. Shears says that he had been establishing this false image of himself for years.

Shears admits that he has probably told officers of the DEH that explosives was what was needed at Cape Melville. He also admits suggesting that he should surveil the suspects, wait until they went off into the foxtail palm stands, and blow up their vehicles, although he describes those comments as having been "a joke".

Shears acknowledges having a firearm with him whilst conducting his duties in the Cape Melville area. He describes the weapon as a semi-automatic rifle - an SKS. Shears also concedes that he had previously received a document from Wellard directing that he and his companions were not to carry firearms.

According to Shears, it was when his companions "jumped up and down" over being sent to Cape Melville without firearms, that he decided to keep a firearm with him notwithstanding the direction from Wellard.

Harris testified that while rangers in the normal course of duties are from time to time authorised to carry firearms in National Parks, Shears was not so authorised on this occasion.

Harris also says that he was not aware that Shears was carrying a firearm and claims that Shears could have sought permission to do so if, for example, he wanted protection against wildlife or to remove feral cattle or pigs. Were it considered necessary to carry a firearm for purposes of self-defence against potentially dangerous persons, Harris would not have sent Shears and two inexperienced Aboriginal rangers into the region. In short, Harris considers that it would have been ill-advised to carry weapons during the operation in question.

Shears says that he did not take the firearm onto the National Park, describing instead, how he would leave his rifle hidden behind a tree outside the park boundary, before proceeding inside the park. Shears claims that in this way, his companions were merely led into believing that he was armed and were thus re-assured when, in fact, he was not.

According to Sergeant Ricketts of the Fauna Squad, it is not a sensible thing to live in the Cape Melville area without a firearm. Ricketts says that it is a dangerous place where many armed people involved in drugs could be running around. He, "certainly wouldn't go there without (a firearm)", although if he were a ranger, he "wouldn't be walking around with it."

4.6 FLINDERS AND MONAGHAN RESIGN

Operation Backtrack was cut short by the decision of Flinders and Monaghan to resign.

The seizure of Paul Barbagallo's vehicle occurred during the last check of the "smugglers' tracks" Shears undertook prior to the party departing the area after Flinders and Monaghan expressed a desire to leave the park.

Flinders and Monaghan gave evidence that their decision to insist on leaving the park was motivated by concerns for their personal safety and offence they took from an instruction that they were not to have possession of firearms, chainsaws or boats in the National Park. They had been told by departmental letter that they had to have express consent to carry any of these items.

Flinders in particular, was aggrieved by this and felt unsafe. Both Flinders and Monaghan deny claims that they had insisted on leaving early because of mistreatment of them by Shears.

On Wednesday 10 November 1993 Flinders and Monaghan told Shears that they wanted to go home by the following Sunday but by the next morning their concerns had intensified and they told Shears they wanted to leave immediately.

Shears indicated he wanted to make a final check of "smugglers' track no. 3" before leaving. It was on that last visit that Shears took the vehicle and precipitated the events which led to the Commission's investigation.

4.7 ARRANGEMENTS FOR ADVANCE TRIP TO STARCKE STATION BY DAVID BARBAGALLO AND DENNIS ATKINS

According to David Barbagallo, in mid-1993, following the publication of an advertisement offering the sale of Starcke Station (also referred to as the Starcke Pastoral Holding), the Queensland Government began considering a proposal for the compulsory acquisition of the property. According to David Barbagallo and Atkins, soon after the proposal received approval in principle they discussed between themselves and with the Premier the possibility of a "media visit" by the Premier to Starcke.

While the Premier is unable to recall each discussion he had with David Barbagallo and/or Atkins concerning this issue, he does confirm being party to a number of such discussions prior to 12 November 1993.

According to the Premier, the purpose of his proposed visit to Starcke Holding was his "desire to see at least part of Starcke itself and also (the) opportunity to have the Brisbane media visit Starcke." It was planned the proposed visit should take place between the rising of Parliament on 9 December 1993 and Christmas.

According to Atkins, in October 1993, he and David Barbagallo discussed the possibility of their undertaking a discreet advance trip to Starcke Pastoral Holding, preparatory to the Premier's then-mooted visit. Atkins says - and his assertions in this regard are confirmed by the Premier - that similar informal discussions were had between him, David Barbagallo and the Premier, whereupon it was decided that Atkins and David Barbagallo would complete an advance trip within the ensuing few weeks.

Neither David Barbagallo, Atkins nor the Premier can recall specific times or dates when the subject of an advance trip was discussed. However, David Barbagallo and Atkins claim that these discussions took place during daily briefing sessions with the

Premier. According to the Premier, the discussions occurred in the context of planning forward travel in the last two months of the year.

The last occasion on which the Premier discussed the advance trip was when he travelled in the company of Atkins to Sydney and Canberra on 10 and 11 November 1993. Atkins claims that during the return flight to Brisbane early on the morning of 12 November 1993, he discussed with the Premier the fact that he (Atkins) would be departing on the advance trip with David Barbagallo on that same day.

According to David Barbagallo, although the week favoured for his advance visit was settled about a month prior to the trip, it was probably only during the week prior to departure that the specific dates of travel were determined. After accommodating Atkins' travel obligations with the Premier, the final dates were fixed and he telephoned his brother Paul Barbagallo, confirming arrangements to rendezvous with him in Cooktown on Friday evening, 12 November 1993.

David Barbagallo says that he informed Paul that he and Atkins would fly to Cairns on the morning of 12 November 1993, hire a four wheel drive vehicle, and drive to Cooktown that afternoon.

Atkins says that preparations for the advance trip were left to David Barbagallo. He testified that the final date for departure was finalised in the first few days of November.

Arrangements for travel, accommodation and four wheel drive vehicle hire for the advance trip were undertaken by David Barbagallo through the Premier's personal secretary, Hazel Hubbard, who, according to David Barbagallo, attended to all the necessary bookings and accompanying documentation on 9 November 1993. According to David Barbagallo, details of his requirements were furnished to Hazel Hubbard some days before 9 November, however there was then some delay as she negotiated the availability of a suitable four wheel drive vehicle. David Barbagallo explains that arrangements were initially made for the hire of a Toyota 4-Runner, but he considered it to be inadequate in terms of comfort, safety and speed. He therefore requested the hire of a Toyota Land Cruiser.

According to a memorandum dated 9 November 1993, from Hubbard to American Express Travel Services, bookings in the names of David Barbagallo and Dennis Atkins were requested as follows:

Friday 12 November

2 x Business Class seats

AN62 departing Brisbane 9.40am; arriving Cairns 11.50am

Hire vehicle:

1 4WD Pickup - Cairns Airport - Driver David Barbagallo (to travel north of the Daintree River)

2 x single rooms Cooktown Sovereign Hotel

Saturday 13 November

2 x single rooms Pacific International (Cairns)

Sunday 14 November

AN125 departing Cairns 6.45am; arriving Brisbane 8.45am

Return Hire car Cairns airport

These arrangements were subsequently confirmed by "Ministerial Services Branch - American Express Travel Account Order Number A000165", completed by Hubbard on 11 November 1993. Although there is specific provision at the foot of that document for approval of the expenditure by way of signature, it was never signed.

In evidence, David Barbagallo explained that there was no need for that particular document to be signed as the expenses were to be approved retrospectively by the Premier, pursuant to procedures which were then in place. He further explained that the Ministerial Services Branch check a summary of all such documents at the end of each month. The document would then be checked by someone in the Premier's Officer prior to approval and signing by the Premier.

David Barbagallo does not believe that the Premier gave any written authority for the travel and associated arrangements prior to the expenses being incurred. Nor does he believe any such approval was necessary.

The Premier confirms that whereas he approved the advance visit by David Barbagallo and Atkins during discussions with them prior to 12 November 1993, he provided written approval "on an acquittal basis after the travel is undertaken", in accordance with prevailing procedures.

Atkins claims that he left to David Barbagallo all the logistical arrangements, including the obtaining of any necessary authorisation and compliance with procedural

requirements. Atkins says that he is unaware of the specific requirements in any event. According to Atkins, "it just happens", although he is generally aware:

We have to inform the Ministerial Expenditure Unit of travel . . . and also inform them what the official business was that we were doing.

Atkins has no doubt that the advance trip was official business.

4.8 THE PURPOSE OF THE TRIP

In Summary, the Premier, Barbagallo and Atkins say the purpose of the trip was two fold:

- To determine the logistical support, including transportation and security requirements for the Premier and a media contingent;
- and
- To assess the visual media value of the Premier's proposed visit to Starcke Holding, principally from the point of view of "people watching the 6.00 o'clock news".

David Barbagallo testified that the Premier had given instructions that he wanted to go into and out of Starcke in the one day.

The Premier has described the purpose of the advance trip as:

. . . Establishing the time table necessary for a visit, including travel to Cairns and Cooktown and from there to Starcke. It was also necessary to ensure that Mr Barbagallo was fully cognisant of the most direct route from Cooktown to Starcke Homestead which we understood was the most accessible part of the property by ground transport. He also decided that Mr Atkins should assess any special needs the media might have and give an assessment of what places it might be appropriate to accompany the media to during such a visit.

When first interviewed by Commission officers on 18 March 1994, David Barbagallo explained the reasoning for the advance trip in the following terms:

. . . As is the case of the Premier's Office, from time to time we make trips to areas where there's a political issue running, or a flood or bush fires, whatever. We do all

our own advance work in the Premier's Office, particularly in those areas where you know no one's been before and the like. So we discussed with the Premier on a number of occasions about the possibility of travelling to Starcke to have a look at the place for the purposes of a media visit, you know, to, I mean it's a game of politics to sort of go and have a look at the media and say this is what the Government's proposing to do and so on. So we do what's called an 'advance trip'.

.....

... basically we were there ... to see what the pictures were like. I mean, that, that's the game we're in, to see what the, what the pictures would convey on the 6 o'clock news. I mean that's, well that's one of the aspects of it anyway.

So ... it wasn't really going to be necessary for you to speak to anyone at the property personally? --- No.

It was a case of just literally seeing what the visual surroundings were going to be? -- That's right.

For a proposed media release or something? --- For a proposed media activity, not just a media release. But you know, flying people in, having a look around cause you see what happens in, you know, they're down in Parliament when this issue is being debated in the Parliament and its going to be a resumption, and you know there's accusations of how, what the previous mob did, and all the rest of it. Well the media likes to get pictures first, of it, so they've got it on file. They like to, they like to know, have a look at that in terms of the business there and, you know.

Atkins was initially interviewed by the Commission on 23 March 1994. Explaining the advance trip, Atkins said the Government had proposed making a definitive statement in respect of the Starcke Holding issue, adding:

... and we proposed to take the Brisbane media with us up there which would have meant a number of TV crews and also other journalists as well. So, as no one in the Premier's Office had ever been to Starcke, we thought that someone should go up on an advance trip. It's quite common within a political office when you're going somewhere to send somebody up in advance to check out the physical characteristics of a place. Now that can be done for transportation reasons, it can also be done -- and you know, quite often is done, certainly in the Prime Minister's Office I'm aware -- for security reasons, and it is also done from a media point of view to look at the visuals, you know, sort of find out where it might be a good spot to do a press conference, where it might be a bad spot to do a press conference. So we decided we would advance a trip.

Subsequently, Atkins made the following statements in evidence before the Commission:

... An advance is a trip whereby members of a politician's staff, a Minister's staff, go to an area where there is planned to be an official visit and check out a number of things. Quite often they will look at the logistics, the physical requirements of a trip. They will also examine what special needs there might be for the media. If the advance trip was at a more detailed planning stage then they would also look at, you know, who people went and saw, and where they went within the locality.

.....

PEARCE: Well, what was planned for the Premier's trip to Starcke? What did you hope to ascertain by conducting this advance trip? --- We hoped to - well, what we wanted to find out was: how to get from Cooktown up to the most accessible part of the property by road, which we understood was the homestead; we wanted to know what the shortest route was; we wanted to know how long it would take to get there; what was there when you got there; what was there to look at; what was there to see in terms of an inspection or drive around the property, and then how long it would take to get back. I mean, that was basically it. It was a logistical exercise between Cooktown and the Starcke property.

.....

PEARCE: Leaving aside your travel reservations for a moment, can you tell me what preparatory steps were taken or inquiries made before you travelled to Starcke? --- Well, all - all of that, as far as I was concerned, was left up to David Barbagallo. I did - I - I didn't recall this until a few months ago when I was reminded by the Press Secretary to the Lands Minister Mr Smith, Mr Stephen Guest, but he reminded me and I - after he reminded me I did recall that I called him and asked if he had a detailed map of Starcke. I don't think I told him why - why I wanted it. He told me he presumed because the Premier was going up there. But as far as any other preparatory work was concerned that was done by David Barbagallo.

So, the only outside inquiry, if you like, that you were responsible for was the requesting of a map from the Lands Department? --- Yes.

Which you did through Mr Stephen Guest? --- Yes.

And were you provided with a copy of a map? --- Oh, yes. Yes, I was provided with one of George Quaid's maps, I was told.

What did you do with the map? --- I gave it back to him.

Did you copy it? --- No.

Did you make any use of the map? --- Oh, yes. I - I had - I had a - I had a look at it and studied it and that's where I saw this thing that I thought was a - airstrip on it near the homestead. I mean, it was fairly obvious from the map and from what I'd been told previously about the terrain up there that by road - if you drive north from Cooktown by road, the first thing you get to is the homestead and the area around the homestead.

And your look at the map confirmed that, did it? --- I - well, it confirmed that. I - I just wanted to get a sort of physical sense of where Cooktown was, where Starcke was, how big the property was and also to see if there were - were any airstrips on there. I couldn't see any except for this think that looked like an airstrip, but I don't think it was.

Atkins has also explained that this was not the first advance trip undertaken by either David Barbagallo or himself, either together or individually. Advance trips were commonly conducted by other staff members of the Premier's Office. Such trips, while not performed on any regular basis, were conducted when considered necessary, particularly to areas where there was an issue of political significance, natural disasters or regional cabinet meetings.

As an example of an advance trip undertaken by both David Barbagallo and himself, Atkins referred to an occasion when he and David Barbagallo had previously visited Kuranda.

For his part, David Barbagallo could not recall any advance trip where both he and Atkins attended, except for visits immediately prior to regional cabinet meetings.

So far as the Premier is concerned, it was necessary for both David Barbagallo and Atkins to undertake this particular advance journey:

Mr Barbagallo, during his time as my Principal Private Secretary was predominantly the person responsible for the logistics of an official visit by myself. Mr Atkins, as my Senior Media Adviser, has been the person with ultimate responsibility for supervising events which have a media focus. He also been the person in my private office most connected with the Starcke issue.

When first interviewed by Commission officers, David Barbagallo and Atkins advanced a number of reasons justifying why they considered it necessary for two of the Premier's most senior staff to attend to the advance trip to Starcke Holding:

- Barbagallo's portfolio as the Premier's Principal Private Secretary included responsibility for logistical requirements generally;
- Barbagallo had a background as a surveyor. Coming from North Queensland, Barbagallo was familiar with the area around Cooktown and, unlike Atkins, he had previously driven a four wheel drive vehicle;
- given the ongoing political significance of Starcke Holding, Atkins, as Director of the Media Unit, had personally handled the media work relative to the issue from the outset, and was therefore best placed to assess the media aspects of a visit to the area by the Premier;
- engaging another person risked jeopardising the discreet nature of the plans for the Premier's visit.

David Barbagallo testified that he and Atkins possessed different skills. His skills, for example, lay in the area of logistic support, whilst Atkins' related to media analysis.

Counsel assisting suggested to David Barbagallo that any person could have obtained the information that he sought from his advanced trip. The following exchange between counsel assisting and David Barbagallo ensued:

PEARCE: I appreciate what you are saying, but anyone could have done that. There was - - - ? --- What do you mean anyone could have done it?

Well, any person could have obtained that information could they not? --- Well, that is your view, it is not my view. I mean, it takes quite a few years of experience to ensure things don't go wrong, and as I said, I was acknowledged as the best person in that field. So - - -

Notwithstanding that you may not have been around at the time of (the Premier's visit) ---?---Notwithstanding that. Because what I am saying is, that initial investigation is the critical information. You don't get two or three attempts to go up and refine it, you go up, you come back, and you feed it into an itinerary. So you are making, you know - the jet takes off, you put 10 minutes or 5 minutes slack in there because you know that the winds going up tend to, you know, be headwinds when you are travelling north and tailwinds when you are coming back. When you land you just know that when you have got a media contingent that there is 15 minutes of stuffing around. I mean, all those things build up from years of experience. Now, you just cannot put half an hour fat in every time there is a juncture, because then you have a situation where you have got, you know - - -

You would never get anything done?---You never get - well, and not only that you have a Premier who doesn't particularly like waiting around for things to happen. So, you know, years of experience in dealing with him, in dealing with those situations, particularly going into a remote area, I mean, it is like being on the end, you know, of a very long pendulum that small increment changes at the top cause big impacts down the bottom.

During Atkins' testimony he was asked, whether in hindsight, the objectives of an advance visit might have been met by other means. Atkins responded by saying that he did not think so.

Atkins was also asked whether David Barbagallo could have conducted the advance trip without him. Atkins responded in the following terms:

Yes, sure, he could have, and he could have taken a camera up there, as I did, and taken photographs and we could have had a look at the photographs. So, yes, he could have done it by himself. For our own satisfaction I wanted to go up there and have a look myself. I mean, I - I think my knowledge of what the media is interested in and what special requirements would be needed for a media trip to a place like Starcke are probably a bit better than David Barbagallo's. I hope they are.

Atkins' examination continued:

What were you hoping to find during you advance trip? --- Spectacular rainforest. To be quite blunt, I was hoping to find spectacular rainforest that was easily accessible by land vehicle from Cooktown.

Were you able to ascertain the presence, or absence, of that spectacular rainforest? --
- I saw the absence of it.

Were you able to ascertain that by any other means before your advance trip? ---
I don't know. I'd never been there before.

Well, you looked at a map? --- I mean I - I could have - I suppose I could have said to people: 'Is there rainforest accessible?' Someone told me that there was a piece of National Park just near the entry to Starcke, which is part of Starcke, they said was quite spectacular. I had a look at that on the way in; I didn't think it was very spectacular.

You could have made inquiries of the Department of Environment and Heritage, could you not, to - - - ? --- Yes, I could have, yes.

You determined not to do that, or was it just not considered? --- It wasn't really considered.

Atkins was then asked whether it was possible for Mr Bredhauer (the local member) or his staff to have advised on the logistics of driving in the region. Atkins entered into the following exchange with counsel assisting:

Isn't it possible that Mr Bredhauer or his staff could certainly have advised you on the logistics of driving into their region? --- We - yes, for sure. We could have had a discussion with them.

They would be - they would be aware of news values and things like that which you were hoping to gather?---Well, I mean, my number one rule in the - in the job that I do is back your judgment first. Yes, I - we could have talked to them and we could have discussed it with them. I wouldn't have been satisfied that - you know, that wouldn't have satisfied me, from my point of view. I mean, I've - I've been doing this for a long time and I think I've - I have got expert and specialist knowledge in terms of what is required for these sort of events. When I delegate I delegate to someone who I think has got that - a degree of that knowledge that is pretty well equal to mine; I don't like to use people who I don't think have got that degree of expert knowledge and I try not to. Sometimes it's necessary; if it's at all possible to do that and do it yourself or get your best trusted number two to do it, then go that way.

What part of the purpose that you were hoping to achieve do you suggest that Mr Bredhauer or his staff could not have achieved? They certainly, I would suggest, could have told you how long it would take you to drive there and what the driving conditions were - - - ?---Yes.

- - - whether you needed any expertise in four wheel driving?---Yes, they - they could have done that, but it still wouldn't have given myself and David Barbagallo the on-the-ground knowledge of just what we would be up against on the day. I mean, politicians are very demanding people and if you get there on the day and something goes wrong, they turn around to you and say: 'Why has this happened?' And you say: 'Well, because we didn't come up and check it out.' They don't accept that as an answer.

It was my understanding, though, that Mr Goss was not going to actually do anything there, if he went - - - ? --- He was going to go there and - well - well, at the stage of planning as it was at the time, he was going to - we were planning to go to Cooktown and go up to Starcke, have a look around, come back to Cooktown and then get back to Cairns. I mean, that was sort of the vague plan. Now, that - if he

had've decided to go, that might've broadened out into other things. I couldn't say that, in retrospect, because it didn't happen.

But at the stage of your planning, it was never considered that Mr Goss would do anything other than have his picture taken there: is that right? --- He would've - he would've had a look at the bottom end of the property.

Yes, but the decision to purchase (Starcke) had already been made. It was not with a view to assessing whether or not the Government should proceed with the purchase, was it? --- A decision in principle had been made to purchase part or all of Starcke. The decision was no more than that.

So are you suggesting that his visit there may have - - - ? --- No, no, I'm not. I'm just saying that's - that's what the decision was. His visit there was for him to have a look at it. Now, we could've driven in there, had a look at the southern end of the property from the ground; it would've also been possible to fly over parts of Starcke along the coast with the higher conservation values. I mean, if we had've made the decision to go, we would've made those, you know, consequent decisions, but we hadn't got to the stage where we were going to make those as well. I'm fairly confident to say that, if we had've gone up there, we would've also flown over the property.

With a view to what: reviewing the decision about whether it should be purchased? - -- No, no, no, not - for the Premier to familiarise himself with the property.

Why would it be necessary for him to be accompanied by a press contingent when he did that? --- Because - well, it's not necessary. It was thought desirable that we take media up there because this was an important decision in terms of the Government's programme in the environmental and Aboriginal affairs area. It was already being portrayed and starting to be portrayed by others as not being as worthy as we thought it was. It is sometimes necessary to - through the media, to try and convince people that things aren't what they seem or that things are worth doing. It's about communicating a message.

BARNES: And what was the message that the Premier would have been happy to communicate on this occasion? --- That for the State of Queensland and for the Federal Government to join together and buy the Starcke Holdings, bring them back into public ownership, prevent them from being sold possibly overseas, was something that was good for the State of Queensland and good for the nation and, in the end, that's something that we did.

PEARCE: And what particularly were you looking for as a backdrop, if you like, for the filming of the Premier? --- Well, I wasn't just looking for a backdrop for the Premier. I was looking at what there was to see. Now, whatever there was to see,

if you've got media with you, then that's things that they are - they are capable of and quite likely will film. So I wanted to see what the overall scene was, but also, yes, I was looking to see if there was a good spot to have a news conference to talk about the issues. As I said to you before, I mean, you know, ideally, it would be nice to get some sort of spectacular demonstration of the high conservation values that are contained in Starcke.

How long did you envisage you would be on the property doing those things? --- Well, I thought about up to an hour.

You did not intend travelling any distance from the homestead? --- Well, I don't know. I mean, I'd never been there so, I mean, it was very much a case of going there and seeing what there was to see. I mean - and seeing what - where there was to go. I mean, once you get there, unless you sort of go off the track further north, which is, I am told, not very accessible at all, there's not much further around you can go other than come back out the way you went in.

So you were really, if you like, banking on the possibility that there would be something spectacular in the very near vicinity of the homestead? --- Oh, well, I mean, spectacular, I mean, that was my ambit bit. I mean, what I was banking on was some demonstration of the conservation values that we knew to be inherent in Starcke from our expert advice from the environment people.

David Barbagallo testified that the scene he was seeking to locate had to be:

An appropriate environmentally-sensitive setting ... to try and put the best face on it.

Counsel assisting asked David Barbagallo whether he understood that the area he was planning to visit was probably one of the least environmentally sensitive areas. David Barbagallo responded in the following manner:

Well, that's not entirely correct, because there's a pocket of National Park within a very short distance of the Starcke homestead, and so in that we pinned some of our aspirations. And, never having been up there, we had no - I mean, as to what looks good on the 6 o'clock news really requires people of substantial experience and knowledge of how news people operate. I mean, you've got to - you've also got to understand that we were also examining the logistics of going in by helicopter and - you know, and getting aerial shots, and, I mean, all these things were in the melting pot, you know.

4.8.1 Maintaining Confidentiality about the Trip

David Barbagallo and Atkins both claim that it was of paramount importance that the advance trip be conducted as discreetly as possible. They were anxious not to forewarn those with vested interests – such as, the Wilderness Society, the traditional Aboriginal owners, and George Quaid (the owner) of the likelihood of the Premier's visit because David Barbagallo and Atkins feared they may seize upon the event as a media opportunity to advance or publicise their own interests.

To that end, George Quaid was not advised of the foreshadowed visit to the property nor was any permission sought from him. However, according to Quaid, no such permission was required as he did not have concerns about any members of the public going onto the property.

David Barbagallo and Atkins initially asserted that the only persons who knew of the proposed advance trip were the Premier, his personal secretary, Hazel Hubbard, possibly other staff within the Premier's Office and Paul Barbagallo. When David Barbagallo gave evidence before the Commission, he stated that he had recently spoken to Mr Bredhauer MLA, Member for Cook, who had reminded him of general conversations they had concerning the proposed advance trip. Atkins too, subsequently clarified his statements in respect of whom he and David Barbagallo had informed of the advance trip. Atkins now says he had informed the woman he lives with, and Stephen Guest, Ministerial Media Adviser to the Minister for Lands, of his intention to conduct the advance trip to Starcke Holdings. Atkins asserts that he sought a map of Starcke Holdings from Stephen Guest.

While certain that Emerson was never formally notified of either the advance visit or the proposed visit by the Premier, David Barbagallo suggests that because of the significance, in a policy sense, of the proposed Starcke acquisition, it is possible that he informally discussed these matters with Emerson. Emerson testified that he had no prior knowledge of Atkins and David Barbagallo travelling to North Queensland nor of the proposed visits to Starcke Holdings by the Premier. Given the purpose of the advance trip and the fact that the acquisition of the property had been more an initiative of the Premier's Office, rather than his department, Emerson does not regard it as unusual that he was not informed. Similarly, Emerson has no knowledge of there being any request of the DEH for assistance in the forward planning of the Premier's visit, although he considers that his department would have been in a position to provide such assistance.

Damien McGreevy, Senior Ministerial Policy Adviser to the Minister for Environment and Heritage, also claims not to have been made aware of either the advance trip by David Barbagallo and Atkins, or the proposed visits by the Premier. Like Emerson, McGreevy does not consider it unusual that he was not so informed, notwithstanding that the acquisition of Starcke Holdings was an issue affecting the Environment and Heritage portfolio.

During Parliamentary debate on 13 April 1994, Mr Bredhauer MLA confirmed that David Barbagallo had contacted him in his Electoral Office in late October or early November 1993:

... as a matter of courtesy as the local member to advise that (the Premier's) office was tentatively arranging for the Premier to visit Starcke in company with representatives of the media and that they may need to undertake a reconnoitre of the property to work out logistics such as transport.

When interviewed subsequently about his contact with David Barbagallo, Mr Bredhauer expanded on the extent of the discussion as follows:

We discussed the appropriate place that you might take the Premier and representatives of the media so that we could get a reasonable environment in which to conduct a media conference and there were a number of factors associated with that. He inquired whether you could do something at the Starcke Homestead itself, which is only a matter of a few hours, probably two hours, depending on the condition of the road, drive from Cooktown. I suggested to him that from my knowledge of the area I didn't think that was the best place to conduct a media conference and to make the announcement because I thought the Premier would prefer to go somewhere where the environmental values of Starcke were more obvious. We discussed driving to an appropriate part of the coast on the Starcke Pastoral Holding and I advised him that from my knowledge that could take a considerable period of time, anything up to fifteen hours, depending on the condition of the road. We discussed briefly the availability of airstrips on Starcke Pastoral Holding and I told him that I was not familiar with either the number or condition of airstrips. . . . We discussed whether we would need to get a couple of four wheel drive vehicles and possibly drive up there. The time constraint was certainly a consideration and we also discussed the possibility of chartering helicopters to get the Premier and his party to an appropriate place on Starcke Pastoral Holdings. Towards the end of the conversation there was some discussion between us about the desirability of having some on-site inspection in order to gain current practical knowledge about the logistical considerations of getting the Premier and party to Starcke Pastoral Holding.

... He indicated that no firm decision had been taken (on a visit by the Premier), just that they were seriously considering it and he stressed upon me the need for confidentiality in terms of the Premier's forward itinerary and advised me that I was basically the only person in the local area with whom he had discussed the matter and that he would appreciate my maintaining that confidentiality about the possible visit of the Premier. There was no decision taken in the context of the telephone conversation about whether they, he or other members of the Premier's staff would reconnoitre, but that certainly was an issue that we discussed as a possibility ... that it might be desirable to have on-site information about where is the best place to go with the Premier and what the conditions of the roads and airstrips and that sort of thing were before he made a final decision about the Premier going ...

Stephen Guest confirms that in the second-half of October or early-November 1993, he received a telephone call from Dennis Atkins about a proposed visit by him to Starcke. According to Guest, Atkins inquired if the Office of the Minister for Lands, or the Department of Lands, possessed any detailed maps showing the geography of the land, the lease and freehold titles within Starcke Holdings, and any airstrips which would assist Atkins' visit to the area. Guest informed Atkins that he had access to three very good maps and agreed to produce them to Atkins, which he subsequently did. Although he was present while Atkins read the maps, Guest says that Atkins did not discuss any proposed trip but simply focussed on the geography or the lay of the land, and the location of the homestead and airstrips. Guest did not leave the maps with Atkins.

4.9 PAUL BARBAGALLO'S CONTRIBUTION TO THE TRIP

David Barbagallo's brother, Paul Barbagallo, lives on a farming property at Daradgee near Innisfail. Paul Barbagallo had often driven through Starcke Station and into the Cape Melville area, where he went pig shooting and camping. He was familiar with the road to Starcke as he had previously worked on Lakeland Downs which is immediately west of Cooktown.

About six to eight weeks prior to the advance trip, David Barbagallo telephoned his brother, Paul, advising him of the proposed visits to Starcke. David Barbagallo claims that he did this with a view to having his brother identify the best route from Cooktown to Starcke homestead.

David Barbagallo claims that although he knew the way to Starcke Holdings in a general sense, he believed his brother was familiar with a much shorter route, which appealed to David Barbagallo because of time constraints; he and Atkins planned to

drive from Cooktown to Starcke and back to Cairns all on Saturday 13 November 1993.

Thus, having planned to depart Cooktown for Starcke Holdings at about 7.00am on 13 November 1993, and allowing for travelling time of approximately two hours, David Barbagallo and Atkins envisaged having some two or three hours to look around Starcke Holdings with a view to finding what David Barbagallo has described as a "unique symbol" with which to visually-project the property.

According to David Barbagallo, when he was informed by Paul that he knew a short-cut, he asked Paul whether he might lend a hand. David Barbagallo testified that Paul thereupon agreed to act as a guide for him and Atkins. Paul told David Barbagallo of his plans for a pig shooting and fishing trip to the Cape Melville area, about 10 or 11 November, when another brother, Mario, a pharmacist from Mooloolaba, would be in the Bathurst Bay area as a passenger on a chartered fishing boat.

Paul Barbagallo said in evidence that when David told him of his intention to make an advance trip to Starcke Holding, he was also told not to say anything about it.

According to Paul Barbagallo, during the course of approximately four subsequent telephone discussions with his brother, David, the dates for the advance trip by David Barbagallo and Atkins were settled and confirmed.

Although involving a driving time of about ten hours in each direction, Paul Barbagallo says that he agreed to travel from Bathurst Bay to Cooktown on Friday 12 November 1993, to meet up with his brother and Atkins and guide them, on 13 November 1993, from Cooktown to Starcke Holdings.

Paul Barbagallo says that he attempted to entice David Barbagallo to visit Cape Melville but that David declined, saying that his wife was close to the birth of their child.

The Premier has also acknowledged that he was informed by David Barbagallo, prior to the advance trip, that Paul Barbagallo planned to be in the region of Starcke Holdings at the same time as David Barbagallo and Atkins.

Atkins believes that he learned that Paul Barbagallo would be available to guide David Barbagallo and himself to Starcke sometime during the week prior to their departure. Atkins also testified that there had been no mention of any meeting with Mario Barbagallo.

4.10 THE MEMBERS OF PAUL BARBAGALLO'S PARTY PREPARE TO GO TO CAPE MELVILLE

During the course of his testimony, Paul Barbagallo claimed that some weeks prior to his November 1993 visit to Cape Melville, he made enquiries as to whether he required a permit to go into Cape Melville National Park. He says that those enquiries were made over the telephone, with a person whose name he does not know, at the Permits Office at Lakefield National Park. Paul Barbagallo says that he advised this person of his intended visit to Cape Melville, but did not mention that he might wish to visit the foxtail palm habitat. He says that he received advice that no permit was necessary for a day trip to the National Park and that a permit was required only to camp within the park. As the party did not intend to camp within the park no permit was sought.

The party was comprised of Paul Barbagallo and five others namely, Dallas Adams, Benjamin Hands, Craig Wone, Noel ("Bill") Henderson and Gordon Uechtritz.

With the exception of Henderson, whose whereabouts has not been ascertained, the Commission interviewed and/or summoned all members of Barbagallo's party.

Craig Wone was employed by Paul Barbagallo on his Innisfail property. He asserts that prior to November 1993 he had never been to Cape Melville National Park. He was aware that Paul Barbagallo had been to Bathurst Bay once or twice previously. Paul Barbagallo had invited Wone to join the party about three weeks prior to departure.

Wone claims that it was planned to spend five or six days at Bathurst Bay fishing and shooting pigs. He says that he was aware of the foxtail palms within Cape Melville National Park and that it was planned to visit the foxtail palms during the trip.

Wone asserts that he was not aware that Paul Barbagallo had previously removed foxtail palm seeds from Cape Melville National Park, although he believes that Paul Barbagallo had purchased foxtail palm seeds some years previously.

According to Wone, when plans for the visit to Cape Melville were being discussed, either Paul Barbagallo or Paul Barbagallo's father made mention that Mario Barbagallo and David Barbagallo would also be in the Cape Melville area. Wone says that the plan was to meet up with Mario, who was to be on a fishing charter to the area.

Wone rejects the suggestion that the proposed rendezvous with Mario was part of a plan to remove foxtail palm seeds from the National Park.

Wone claims he was aware that Paul Barbagallo intended returning to Cooktown from Bathurst Bay to meet with David and take him on a guided tour of Starcke Station on Government business.

Dallas Adams was employed by Paul Barbagallo on a casual basis for approximately 12 months until November 1993. At the time of the Commission inquiries, she was a full-time employee. Adams explained that the visit to Cape Melville was intended as a holiday prior to Christmas, when fruit picking on the Barbagallo property would become more demanding. When asked what had been planned for the vacation, she replied:

Fishing, camping. We'd have a look at the station, pig hunting or whatever. Just - it was just to get away from everything for a little while before everything

The invitation for Adams to join the travel party came from Benjamin Hands, her boyfriend, about a week before departure. Adams has little knowledge of the processes by which the trip had been planned. This was her first visit to Cape Melville.

Adams has some recollection of discussions concerning the party meeting with Mario Barbagallo, but she confirms that no such rendezvous eventuated.

Benjamin Hands testified that Paul Barbagallo had asked him whether he wanted to go on a holiday to Bathurst Bay about two weeks before departure. Hands testified that he, in turn, invited his girlfriend, Dallas Adams, to join the party.

According to Hands, there "was not much of a plan" but it was intended to be away for 7 to 10 days.

Hands testified that prior to the party departing Innisfail for Cape Melville - probably late Sunday 7 November 1993, or early Monday 8 November 1993 - Paul Barbagallo told him of the possibility of a rendezvous with Mario Barbagallo, who would be on a fishing charter in the Bathurst Bay area. Hands indicated that the party never did meet with Mario, although he recalls going to the beach on one occasion to look for Mario and the fishing boat.

Counsel assisting questioned Hands as to whether Paul Barbagallo had explained why he had chosen Bathurst Bay, in particular, as the holiday destination. Hands responded:

A lot of pigs on the way, a lot of fish, oysters, just to relax - a good place to relax away from everyone.

The following exchange followed:

PEARCE: Well, did he indicate to you that he had ever been there before, or he was familiar with the area, or any other reason why he might choose Bathurst Bay? --- No, I'm not too sure. I think he said he'd been there before. He said it was really nice and remote, a good place for a holiday.

Hands subsequently gave further evidence on a later occasion, and was reminded of the uncertainty he had expressed about whether Paul Barbagallo had previously visited Bathurst Bay.

Hands was asked by counsel assisting:

Do you know whether or not he'd ever been there before? --- Oh, I'm not too sure. Before the holiday I think he might have said he'd been there before, it was a good drive in.

Had you ever been there before? --- No. Not to my knowledge.

BARNES: What do you mean, not to your knowledge? How could you be there and not know? --- The area I was there, I went for a holiday some time.

Thank you. Can I remind you that if you do not give accurate and truthful answers you can be prosecuted for perjury. Do you understand that? --- Sure.

People regularly are imprisoned for perjury.

PEARCE: Were you trying to mislead me the other day, were you? --- About what?

As in give me the impression that you had never been there before? --- You didn't ask me. I would have told you.

BARNES: Well, he just asked you five minutes ago and you did not tell him. You said 'Not to (your) knowledge.' That is a complete lie, isn't it? --- I've been there.

PEARCE: Well, why did you tell me this morning, that you had not been there 'to (your) knowledge.'? --- Just forgotten it.

You had just forgotten it? --- It was just a holiday; nothing important.

You do not think it is important, the fact that you may have been to Cape Melville prior to the trip you made with Paul Barbagallo last year? --- Not really.

Had you been to the foxtail palm area before? --- The foxtail palm area?

Yes? --- Yes.

You had. On your previous trip to the Cape Melville National Park? --- Paul went there with his father; I think he showed them the palms, same thing.

Showed you the palms, too, didn't he? --- Beg your pardon?

He showed you the palms, too, didn't he? --- Yes. Well I was there with him.

Yes. When was that trip? --- End of October, November, twelve months beforehand, or something. I'm not too sure; something like that.

Gordon Uechtritz is a cattle grazier and the owner of the property neighbouring that of Paul Barbagallo at Upper Daradgee. Uechtritz describes himself as having been a good friend of the Barbagallo family over some years.

Uechtritz explained that he was raised in New Guinea, and since settling in Australia in 1988, he has been eager to explore North Queensland. He says that in about October 1993, he was invited to accompany Paul Barbagallo on a camping trip for 5 to 7 days to Bathurst Bay. It was proposed to do some fishing and hunting.

A few days after the initial invitation, Paul Barbagallo advised Uechtritz that the departure date would be delayed for a couple of weeks to coincide with a trip by Paul's brother, David, whom Paul intended showing around Starcke Holdings "on Government business to do with the Quaid Real Estate thing". Uechtritz says he had previously met David Barbagallo briefly on one occasion and knew that he was the Premier's Principal Private Secretary.

According to Uechtritz, Paul Barbagallo also stated that another of his brothers, Mario Barbagallo, a pharmacist, would be in the Cape Melville area on a fishing charter boat and, although no particular date had been set, Paul anticipated that he might meet up with Mario at Bathurst Bay. It is Uechtritz's understanding that the party planned to

arrive at Bathurst Bay on Wednesday 10 November 1993, to provide the best opportunity for a rendezvous with Mario Barbagallo.

According to Uechtritz, it had always been Paul Barbagallo's intention to return from Bathurst Bay to meet and guide his brother, David, around Starcke Holdings. Uechtritz says he was initially uncertain whether the plan had been for Paul Barbagallo to meet with David at Starcke, or at Cooktown.

Uechtritz's evidence concerning his knowledge of the foxtail palm is confusing. Uechtritz gave evidence before the Commission on two occasions. On the first such occasion, he initially asserted that he had known something of the foxtail palm prior to visiting their habitat at Cape Melville:

...we all sort of decided we'd like to go in and have a look at the stand of foxtail palms. I knew they were there. I'd read a fair bit about them, and I have already expressed my interest in having a look at them while I was there.

In contrast, at a later stage of his examination, the following exchange occurred:

...I think I leaned over the side of the car and said, 'Paul,' I said, 'how about' - I said something to the effect that I would like to - I expressed my interest in having a look at the foxtail palms while we're here. So he said all right. I think he said, 'All right, we'll call in on the way back.' He said he knew the way, so.

PEARCE: You said that you had done some reading on the foxtail palms? --- Some reading?

Yes; you knew something about them, I suggest? --- No. I have never done any reading but I - I - I'm fairly keen on palms. I have - I brought palm seeds from New Guinea with me when I came down. I have a lot of palms growing in my - around my garden. I just - it's just a bit of a hobby for me, yes.

The apparent inconsistency highlighted by these passages was the subject of further examination by counsel assisting when Uechtritz gave evidence before the Commission on the later occasion. The question of Uechtritz's knowledge of the foxtail palm was again addressed.

The witness conceded that his evidence on the point was inconsistent. On the second occasion he gave evidence he said that he had read a newspaper report dealing with foxtail palm seed smuggling.

During the course of his evidence, Uechtritz said he had a few foxtail palms growing in his garden. Uechtritz said that he had been given "three or four" foxtail palms by Paul Barbagallo well before the trip to Bathurst Bay in November 1993. He subsequently said he had received "five or six" foxtail palms from Paul Barbagallo. Uechtritz did not inquire as to where Paul Barbagallo had obtained those palms. A further single foxtail palm had been presented to Uechtritz as a gift, from his children.

Uechtritz claimed in evidence that he did not know if Paul Barbagallo conducted a trade in foxtail palms, but conceded that he had heard from sources other than Paul Barbagallo that he (Paul Barbagallo) had sold or given away "a dozen or so" foxtail palms in the past. Uechtritz testified to having seen no more than 20 or 30 foxtail palms, of varying height between half-a-metre and more than one metre, in pots around Paul Barbagallo's house and along his driveway. He denied ever seeing anything like 200 foxtail palms under propagation in plastic bags or otherwise on Paul Barbagallo's property.

The follow extract is taken from Uechtritz's testimony:

PEARCE: Did Paul indicate that he had been (at Cape Melville) before? --- Yes, he did indicate to me that he'd been in that area before, yes, Bathurst Bay which - I'm not sure whether it - yes, it's not inside Cape Melville National Park.

BARNES: Did you know that from some other source? --- I've heard it bandied about, sir, yes. I've heard that from other sources that at some stage there were seeds taken from the park, yes, by Paul.

PEARCE: By Paul and his associates? --- By Paul, yes.

Yes? --- Yes. No, not associates but by Paul, yes.

BARNES: When did you hear that? --- Oh, it's - I've heard that on and off since I've been here, yes.

PEARCE: So you knew about those rumours prior to November of last year? --- Yes, certainly.

Did you say anything to him on 11 November about those rumours? --- No. No I didn't, no. I mean what's happened in the past in his business and I, you know - - -

Well, were you not concerned - being conscious as you are about the rules in National Parks and World Heritage - were you not concerned that he might, on this occasion, harvest some seeds? --- The thought did cross my mind, but yes, I mean,

it did cross my mind but it didn't occur and I mean, what he does is his business and what I do is my business.

BARNES: Well, it would not have been his business if he started harvesting seeds when you were with him in his truck, would it? --- Well, yes, I guess that's so, but it - yes, didn't occur, sir.

Well, did you raise that issue with him? --- Did I raise the issue with him?

Yes. When you were planning the trip on the way up. Are we going to take any seeds, Paul? --- No, I didn't raise that issue with him, no.

It was not discussed at all? --- By me, no.

Did any of the other party discuss the taking of seeds? --- Not that I recall.

Well - - - ? --- Well, I wasn't with - we were in two different vehicles, so I can't speak - well. I never heard any other members of the party discussing taking seeds, no, sir.

Uechtritz said he also refrained from making any comment about the taking of seeds even when numbers of the party were among the palms and someone pointed out a bunch of ripe seeds. He said he did not think any of the party would be foolish enough to take seeds in his presence.

4.10.1 Paul Barbagallo's Party Travels North

The Barbagallo party travelled from Innisfail to Bathurst Bay in two four wheel drive vehicles, both of which were owned by Paul Barbagallo: a green-coloured Toyota Landcruiser tray-back utility, and a white-coloured Toyota Troop Carrier. Paul Barbagallo drove the white Troop Carrier and Benjamin Hands drove the green tray-back utility. In the tray of the green tray-back vehicle were situated plastic eskies and a fuel drum.

Three members of the party each had in his possession a firearm: Uechtritz - a Winchester shotgun, Hands - a Winchester 30/30 rifle and Wone - a Ruger .223 SL rifle. Paul Barbagallo had a chain saw, which was situated in the rear tray of the utility.

On Tuesday 9 November 1993, the party travelled from Innisfail to the Annan River, just south of Cooktown, where they camped overnight. The following day,

Wednesday 10 November 1993, the party drove into Cooktown to purchase last minute supplies, before continuing the journey to Bathurst Bay, where they arrived at about 5.00pm and set about making camp.

Paul Barbagallo estimates the journey from Cooktown to Bathurst Bay took between 8 and 12 hours. He described this particular trip as "relatively slow because the vehicles were loaded".

A photograph said to have been taken on 10 November 1993, and depicting both vehicles laden with camping equipment upon a sandy track in the vicinity of Bathurst Bay was tendered to the Commission during the course of its hearings. It is evident from the photograph that the green tray-back vehicle was equipped with a metal-framed canopy, on top of which camping equipment was secured. The canopy was bolted at the rear of the cabin to a bar rising from the adjacent corners of the tray and extending slightly above and across the width of the cabin. The bar is depicted in the photograph in an upright and undamaged condition. At the tail-end of the tray, the canopy was bolted to posts rising from the rear corners of the tray.

4.11 THE *SAGITTA* AND MARIO BARBAGALLO VISIT CAPE MELVILLE

Between 6 and 18 November 1993 a brother of David and Paul Barbagallo, Mario was aboard a charter launch the *Sagitta* which steamed north from Cairns to the Flinders Group and then returned to Cairns.

Mario Barbagallo says the charter was arranged by acquaintances of his on the Sunshine Coast and that he did not originally intend to go along but agreed to accompany the group when one of the original party dropped out.

The charter of the *Sagitta* had been organised about twelve months previously by William Irvine, a pharmacist from Caloundra. The skipper John Durso, Irvine and another member of the fishing party, Bruce Moore, a builder from Caloundra, confirm that Mario Barbagallo was not among the original party, but filled a late vacancy. The party comprised of three pharmacists, a doctor and two builders.

Mario Barbagallo claims to have been unaware of David Barbagallo's plans until a couple of days prior to 6 November 1993, when he departed Cairns on the boat. According to Mario Barbagallo, his understanding was that David Barbagallo was planning to travel with another public servant to Starcke Station sometime during the

following week. Mario Barbagallo says he believed that David was travelling as far as Starcke, and accordingly, there was no plan for the two to rendezvous.

According to Paul and Mario Barbagallo, although foreshadowed as a possibility - and entirely dependent upon weather and other unknown factors - there was no firm plan for them to rendezvous at Bathurst Bay. This assertion is confirmed by John Durso, distant relative of the Barbagallo brothers, and the owner/skipper of the vessel *Sagitta*.

In evidence, Durso was asked whether it had been intended, prior to departing Cairns, for the charter to visit Cape Melville. He gave the following response:

No. It was - as I recall, it was after we left the jetty and we got under-way and these guys indicated that they were - because obviously when they came from the aeroplane they had lots of spear-guns and I realised then this was going to be more of a spearing trip than a sight-seeing trip. It was only after we got going and everyone was sort of talking and Mario said, 'By the way', he said, 'Paul might be coming up over-land to do some fishing around Bathurst Bay.' He said, 'If we're in the area will it be possible to see him?' and I said, 'Sure. We can go there and see him if you like'. Mario said to me or indicated to me, not in exactly in these words, but Mario indicated to me, 'It's not my trip; it's the other guys' trip. If it happens that we're in that area, we'll see him; if we don't, I'll see him when we get back to Innisfail.'

The following exchange then took place between counsel assisting and Durso:

MR PEARCE: . . . So there was no definite plan at any stage? --- Definitely, no. Definitely no arrangement to go there. Definitely not.

Okay. --- And not - not to meet Paul or to even go there at all, but as it turned out, we decided to go to the Flinders group and our progress was such that we got there on that evening at Melville, and then the next day we went over - oh, I'm sorry, that same day we went over to the islands.

Durso testified that his vessel arrived at Cape Melville sometime on the evening of Tuesday 9 November, 1993. He says that the following morning, all passengers went ashore to take photographs of a monument which is situated nearby. When the passengers returned, after about three quarters of an hour, he moved the vessel a couple of miles along the coast, where some spear fishing occurred for a short time. As the water was murky, it was decided to move on. The time at this stage was 10.00am or 11.00am. The group then travelled to Stanley Island, which Durso estimates to be 15 miles away. According to Durso, they did not return to Cape

Melville. As far as he is aware, his passengers did not meet up with Paul Barbagallo or Paul Barbagallo's companions. This confirms Mario Barbagallo's account that there was no rendezvous with his brother.

Durso produced logs to the Commission to support his account of the Charter.

Durso was asked whether there had been any collection of foxtail palm seeds by any person on his charter. He responded:

Definitely not.

He was then asked whether there was ever any intention to smuggle foxtail palm seeds and again he responded:

Definitely not.

He then made the following statement:

Look, my boat is - in the media, my boat was reported. The mystery boat was reported as a fishing trawler, but my boat is a registered, licensed charter vessel. I've been in the game a long time. One of the provisions of our game is that we, amongst other things - there's quite a few permits and licences to cover our operation, and about the most important - well, one of the most important is a Marine Parks Permit issued by the Department of Environment and Heritage. This licence comes up for renewal periodically. We have to issue - we have to keep log books of - in spite - not this log book, we have to send in logs every three months of everywhere we've been and everything we've done. Our licence comes up for renewal periodically. If we don't have a clean bill of health, we don't get a permit. If we don't get a permit, we're out of business. It's as simple as that. We're right out of business. I'd like it known that I would not jeopardise my operation and lose - and jeopardise my - sorry. I would not jeopardise my permit in any way at all, for foxtail seeds or for anything. I just would not. It's just not on

Mario Barbagallo and other members of his party confirm that they did not arrive at Bathurst Bay until late on Tuesday 9 November 1993 and that after spending a couple of hours sightseeing and spear fishing on Wednesday morning they left Bathurst Bay and did not return.

According to Irvine and Moore, shortly after departing Cairns on 6 November 1993, Mario informed them for the first time that his brother, Paul Barbagallo, would be camping in the Bathurst Bay area and that it may be possible to meet up with him if the fishing party were in that area at the same time. Irvine and Moore corroborate the

movements of the fishing party, and that there was no meeting or communication with Paul Barbagallo or his companions. They also confirm that although the foxtail palms were pointed out to them from a distance, the party did not go anywhere near them.

CHAPTER 5

THE EVENTS SURROUNDING THE VEHICLE SEIZURE

5.1 THE PARTY GOES SIGHTSEEING

Early on the morning of Thursday 11 November 1993, some members of the Barbagallo party went fishing off the beach at Bathurst Bay. Photographs tendered at the hearing evidence their success. There is also evidence that the members of the party discharged firearms into the ocean.

At about 9.00am to 10.00am, the party set out in the green tray-back vehicle allegedly to do some pig shooting. The vehicle was driven by Paul Barbagallo. The rear canopy of that vehicle had previously been unbolted, and removed from the vehicle, allowing those in the rear tray to stand. Prior to setting out, both vehicles had been refuelled from a drum of fuel which had been carried in the tray of the utility, and the fuel drum had then been removed from that vehicle and left at the campsite.

Significantly, in terms of the events which were to occur later that day, the vehicle also carried three firearms, a chainsaw, and Dallas Adams' handbag containing, among personal items, a small quantity of the prohibited plant *Cannabis sativa*.

According to Uechtritz, in addition to the pig shooting, it had also been decided to gather some firewood and, it was for that purpose that Paul Barbagallo placed the chainsaw in the tray of the vehicle.

The party visited a monument to persons who perished in a cyclone last century at Cape Melville and also stopped at a couple of lagoons. There is conflicting evidence as to whether water was collected at the lagoons and/or whether members of the party washed in the water.

Adams expresses the view that the group set out that morning to do some pig shooting and to look for fresh water. She is uncertain whether the water was to be used for drinking or bathing. She states that the vehicle stopped at a small creek where a small drinking bottle carried by Henderson was filled, but the water was putrid.

Hands is also of the view that the group was looking for fresh water. He recalls that after a 5 to 10 minute drive, the vehicle stopped at a creek, where members of the party drank fresh water and filled a large water bottle.

Both Adams and Hands testified that the vehicle stopped at a number of lagoons in the search for water, although it should be recognised that such action is not inconsistent with a hunt for wild pigs.

Uechtritz, who was travelling on the rear tray of the vehicle, claims that after driving for some time and not sighting any pigs, he leaned over the side of the vehicle to the driver's compartment, and suggested to Paul Barbagallo that he take the party for a look at the foxtail palms. According to Uechtritz, Paul Barbagallo said that he knew the way to the palms and agreed to drive to the area on the way back to camp.

Adams does not recall any discussion concerning a visit to the foxtail palms. Hands confirms such discussion, but is unclear whether the suggestion came from Paul Barbagallo or Gordon Uechtritz. For his part, Paul Barbagallo confirms that Uechtritz asked whether the party could be shown the palms.

According to Paul Barbagallo, when the party failed to locate any pigs he proceeded to a track on which he had previously travelled during his visit to the area in 1992. This was the path Shears had named "smugglers' track no. 3". The track runs off the main track to the beach at a point where the road takes two separate paths around some boggy ground before rejoining.

Wone recalls that from the main track accessing Bathurst Bay, he observed a track branching off and heading in the direction of Cape Melville Range. Wone says that logs had been placed across the track, and he concedes that the logs had probably been placed across the track to prevent people from accessing the area.

Wone says that Paul Barbagallo drove around the logs and continued driving along the track until the vehicle reached the base of Cape Melville Range.

Uechtritz also says that where the track branches off the main road into Bathurst Bay, there were logs and branches on the track for a distance which he considered less than 100 metres. Uechtritz asserts however, that he considered that the debris had been caused by recent bush fires, and rejects the suggestion that the logs and branches had the appearance of having being recently dragged into place.

According to Uechtritz, Paul Barbagallo simply drove around the logs for a short distance before returning to the two well-defined wheel tracks. Uechtritz claims that while driving along the track he did not notice any other obstacle. He also recalls observing broken-down cattle yards off to one side of the track, and two horses galloping nearby. The horses did not appear to Uechtritz to be brumbies, and he says that one appeared to have something like a piece of halter around its head. He rejects a suggestion proffered by Paul Barbagallo, that one of the horses was hobbled.

Although he denies seeing any signposts whilst travelling in the vehicle, Wone admits that it was common knowledge within the group that the vehicle was in the National Park. Similarly, Uechtritz denies seeing any National Park signpost and says he was unaware of the location of the National Park boundary, but nonetheless realised that the party must have been on the National Park because of their proximity to the foxtail palm stands.

Uechtritz testified that Paul Barbagallo drove the vehicle along the track to a location where the track "just sort of petered out." Everyone alighted from the vehicle at that point.

On the occasion that he first gave evidence before the Commission, Paul Barbagallo was questioned about the alleged presence of obstructions along the track from its juncture with the main access road from Bathurst Bay. The following passage refers:

PEARCE: What did you see when you saw the area where that track breaks off from the main beach road, if I can refer to it as that? --- It's just a track. There's nothing to see.

It is not signposted? --- No signposts whatsoever.

Is there just one set of wheel tracks that go off to the east?---That's correct, yes.

So it is not a situation where there are a number of entrances, if you like, to the track, a number of areas where vehicles have gone off the former track? --- Not the initial start of the track, no, not off the main road.

... There is just the one area where you would see the start of the track? --- That's correct.

Was that particular area barricaded in any way? --- None whatsoever. You've got to remember this is approximately eight kilometres from the National Park.

I appreciate what we are saying, yes. We are still outside (the National Park)? --- No, no barricade, that's right, no barricades whatsoever.

Was there any debris, or logs, anything of that nature on the road? --- Not at the start of the road, no.

At any stage of the road up to the park boundary? --- Just before the park boundary, yes. There was all logs laid in front, that's correct, yes.

When Paul Barbagallo returned to give evidence on a second occasion, his answers on this issue were at odds with previous testimony, as the following passage indicates:

You do not recall there being any logs at the entrance of that track, though, do you, where it came off the main beach track? --- Yes, yes.

You do? --- Yes.

And you drove around those logs? --- Yes, I remember them, yes.

Did you follow any other tracks to - - - ? --- There's only one track; once you get on that there's only one track.

BARNES: Did you get around the logs that were barricading the point where what Mr Shears calls the 'smugglers' track' departed from the authorised track? --- Well, it's not an authorised track in there either. The main road - it's three or four kilometres in where he put the barricades - off some lagoons.

Mr Pearce is suggesting that there is a further set of barricades - - - ? --- Yes, that's right.

- - - where that track departs from what is referred to as the main track? --- All I'm saying is the main track goes in and then there's barricades, then you go further to these barricades.

Yes? --- That's all I'm saying.

PEARCE: There are two lots of barricades?---That's correct.

.....

Well, at the point of the junction where the smugglers' track joins the eastern side of the loop, do you recall seeing the barricade across the road there? --- There were

some logs across the road, but there's always logs across the road, and there seemed to be a bit more than normal, so yes, I saw it.

And how did you get around those logs? --- Somebody had already gone around them before us, but - - -

Somebody preceded you? --- Yes, there was just - once there's logs across a track, it is - as the photo predicts, it's easy enough to drive around.

There is no obvious explanation for this inconsistency in the evidence of Paul Barbagallo. His initial evidence on the point was clear - there was no obstruction at the juncture of the smugglers' track with the road to Bathurst Bay. His subsequent evidence is equally clear and is patently inconsistent with his earlier assertion.

During Paul Barbagallo's initial testimony, he explained that he drove along the "smugglers' track" until he was confronted with a number of logs laid across the track. He asserted that he did not know until later that these logs were in fact on the boundary of the National Park. He drove around those logs on a fairly "well-formed" track, further describing this alternate track as "almost as worn as the track into the place". He also said that this was not the only point along the track where he had seen more than the one set of wheel tracks. There were other tracks, he asserted, which branched off to lagoons.

Paul Barbagallo testified that after going around these logs, he continued along the track until he came to a dead-end at the base of the mountain. He said that at this point there were some fairly fresh but disused campsites. There were no other vehicles.

When asked whether, at the time, he had any idea where the boundary of the National Park may have been, Paul Barbagallo indicated that he did not know where the boundary was in relation to the track, although he knew that the foxtail palms were within the National Park.

Paul Barbagallo claimed that at no stage did he see any signpost on the way into the foxtail palm stands.

Adams' account of the journey into the National Park is similar to that of Paul Barbagallo. Adams was seated in the front passenger seat of the vehicle but "didn't take a lot of notice of the road". She says that she had been looking around and had not noticed the National Parks sign until the party walked past it on their way out

after the vehicle had disappeared. She does not know whether Paul Barbagallo had gone past the sign when driving into the park.

Hands asserts that after the party had obtained fresh water, he climbed into the rear tray of the vehicle. The vehicle was then driven to the area where Paul Barbagallo said the foxtail palms were located. Hands was asked to describe the route taken:

.....Well, it sort of looks like, when you drive on the way in there's tracks that go off on your left and they seem to be tracks that they could join up, because he seemed to go in and come out again, sort of, just like a track, like short cuts here and there.

PEARCE: Did he appear at times to go off the beaten track? --- He could - I'm not too sure. The track that just went - it was just a track, occasionally there was a track that went off around a few billabongs and things like that, so - - -

Well, did he appear to always follow a beaten track? --- Yes. There was a track all the way there and he just pulled up and stopped when the track stopped.

Did he ever have to go round any obstacles over the track? Fallen timber or the like? --- Oh, not that I saw. He was weaving out of a lot of trees and things like that, but
- - -

Always seemed to be on a track? --- Yes. There was a two-wheel track.

Hands claims not to have seen the National Park sign until he walked back from where the vehicle had been seized. When he first testified, Hands said that when the party came across the sign, Paul Barbagallo had stated:

I didn't see that on the way in.

When he next testified, Hands asserted that this comment could have been made by Henderson or Wone, but added that it could have been any "one of us".

Hands testified to his belief that Paul Barbagallo had taken a track to the right of the National Park sign when originally driving into the foxtail palms stands.

Upon the party arriving at the point where the track petered out at the foot of the Cape Melville Range, the vehicle was parked and the firearms and Adams' handbag were left in the vehicle. Uechtritz testified that because his property adjoins land which has World Heritage listing, he is fairly conversant with the rules and regulations concerning World Heritage Land and National Parks. Accordingly, he was aware that firearms were not permitted within National Parks and that is why he left his shotgun

in the rear of the utility. The remaining two firearms and Adams' handbag were placed in the cabin of the vehicle, while the chainsaw remained in the rear tray. Given the remote location, Barbagallo says that he decided not to bother locking the vehicle, and nor did he remove the ignition key.

All six persons then proceeded on foot and commenced climbing the mountain range to the foxtail palm stands, for the purpose, they declare, of looking and taking photographs. According to both Wone and Adams, there had been no discussion at any time about collecting foxtail palm seeds, and they reject the suggestion that any of the party had intended harvesting seeds.

As reported previously, Uechtritz concedes that he was aware of rumours to the effect that Paul Barbagallo had previously poached foxtail palm seeds from the park, and claims that the thought did cross his mind that Paul Barbagallo might harvest seeds on this occasion. Notwithstanding, the subject was never discussed and, according to Uechtritz, no seeds were taken. Uechtritz rejects as "absolutely laughable and ludicrous", the allegation that Paul Barbagallo and the other members of the group intended to remove foxtail palm seeds.

Furthermore, Uechtritz denies knowledge of an intention on the part of any person within the party to check upon the maturity of the foxtail palm seeds, with a view to later harvesting.

According to Uechtritz, Paul Barbagallo and his party remained amongst the foxtail palms for between one and two hours, during which time they generally enjoyed the scenery. Paul Barbagallo and Adams took some photographs. The photographs taken were tendered during the investigative hearing.

Paul Barbagallo believes that the party remained amongst the foxtail palms for 40 to 45 minutes. He says that he had realised halfway up the mountain that he had left his camera in the vehicle, however, when he learned that both Henderson and Adams had cameras, he decided not to return to the vehicle to collect his own. Hands gave evidence that Adams had a camera and was taking photographs and that Paul Barbagallo's camera had been accidentally left behind in the vehicle.

5.2 SHEARS SEIZES THE VEHICLE

In the meantime, unbeknown to Paul Barbagallo and the other members of his party, Shears, Flinders and Monaghan were conducting a patrol of nearby "smugglers' track no. 1". At about this time, Shears says his companions indicated that they were frightened and wanted to leave Cape Melville and return home. Shears says that he told his companions he intended one further patrol to check upon the two vehicles which he had observed the day before.

Shears, Flinders and Monaghan consequently proceeded to "smugglers' track no. 3", where fresh wheel tracks were observed and it was noted that the barricades previously erected had been breached. Furthermore, the fresh set of vehicle tracks were seen to go around the National Park sign and barricaded area before rejoining the original track. Shears states that the track which he observed to pass around the barricading was new to the location and had not been seen by him previously when he had been there a couple of days before.

Shears says that two sets of tyre tracks were visible: one set matched tyre tracks left by one of the vehicles he had seen the previous day (ie. by inference, one of Paul Barbagallo's vehicles) and the other had been made by "balding tyres" which he had not seen previously.

Shears instructed Flinders and Monaghan to remain with the departmental vehicle at the National Park boundary where the signpost had been erected while he set off alone, on foot, along the "smugglers' track". According to Flinders and Monaghan, Shears carried his rifle with him. Shears says that he carried the rifle until he was out of sight of the Aboriginal rangers and then placed it behind a tree. He says he did that in an effort to reassure Flinders and Monaghan whilst at the same time complying with the department's instruction that he not carry a gun in the National Park. He concedes that at the time he thought he was on the trail of possibly two vehicles almost certainly involved in seed smuggling and that he expected the smugglers to be armed. He insisted, however, that he did not carry the rifle with him to where he seized Paul Barbagallo's vehicle.

At approximately midday, after traversing approximately two and a half kilometres on foot, Shears came upon Barbagallo's Toyota Landcruiser utility. Shears says that he observed a shotgun and chainsaw in the rear tray of the vehicle, and two rifles with what appeared to be a female's bag in the cabin of the vehicle. The keys to the vehicle were observed to be in the ignition. He did not see a second vehicle, although he was still able to make out the fresh "balding" tyre tracks of a second

vehicle. Shears describes these tracks as fresh, because they had not crumbled and they were not covered with insect tracks, as he would expect to find if the tracks had been there overnight.

Shears heard voices and deduced there to be more than one person in the vicinity.

Shears contends that he decided to avoid the potential risk to his personal safety in confronting the occupants of the vehicle, whom he believed to have committed a number of offences against the provisions of the *National Parks and Wildlife Act 1975*. Instead, he took possession of the vehicle, in the belief that he had authority so to do under the provisions of the Act. He drove Paul Barbagallo's vehicle, without stopping, to where he had left Flinders and Monaghan.

In his examination of Shears, counsel assisting enquired as to Shears' reasons for seizing the vehicle. The following exchange took place:

... I was considering, you know, what my action had to be, because the boys wanted - you know, they were very upset and they wanted to get going, and I weighed everything up. They had breached the barricades and interfered with forest products coming in - you know, hit trees and that - so - and there was plenty of water there in that water hole, so I had plenty of water, and there's a vehicle in there, plus there was that white one down the beach. So I felt no compunction about - you know, they didn't have to walk anywhere as far as I was concerned, and - - -

PEARCE: Did you check the vehicle for keys or fuel? --- I beg your pardon. Well, the thing is: the keys were in the ignition. The first thing I did was turn it on, and both fuel tanks were full. That was another indication, because they had long-range fuel tanks which, when they are full, will give you about 900 kilometres travelling, so why fill them up again. See, you'd use, to go from - if they - take it that had they refuelled at Cooktown, their tank - one of the tanks would have probably used a third.

But it was clear to you that the vehicle had been refuelled? --- Yes.

At Cape Melville? --- Yes. See, that's, you know, I have to add all this up and that's where I formed the opinion of, oh yeah, it's smuggling, see, and - - -

But for the fact that you had Mr Flinders and Mr Monaghan with you, what would you have done otherwise? --- I would still have taken the vehicle.

Why? --- Because, as far as I'm concerned, they had committed quite a few offences. I would have probably taken it - I still would have seized the vehicle,

taken it out, hidden it, and waited for them to - just to see who was in there. I would have to disguise the vehicle because once, you know - - -

Why would you not consider perhaps lying in wait and seeing what the people were actually up to? --- A bit too dangerous. You've got too many guys against you. Just a little bit - - -

You would not have confidence in your abilities to - - -? --- Oh, I - I could.

- - - conceal yourself close enough to see what was going on? --- No. The whole thing is I want to get that - I had to seize that vehicle because of the offences committed, right? So I had to drive it out somewhere and hide it.

But you did not know at that time, did you, that the people were in collecting seeds? It was a suspicion and that was all? --- I reasonably assumed, yeah.

Did it not cross your mind that you should perhaps wait for a while to see whether or not they were actually harvesting seeds? --- No, I was told that it was - well, it is a little bit dangerous - too dangerous, you know. I don't like to say I was packing death, but I was starting to get that way. See, the thing is, also I had had, from the experience of 1992 when one bloke actually pulled a gun on me in one of the camps, you know, I thought what's going to happen now? He'll just blow you away and just leave you - pigs would eat you in a couple of days or feed you to the crows, and that would be it.

.....

What about the brief that you'd been given, about not putting yourself in any position where you might come across or encounter wrongdoers? --- Yeah, but you have to, you know - with the situation you have to - you got to do something. You just don't drive away and - - -

Well, did you think that - did you think at the time that what you were going to do was in breach of the directions or the instructions that you had been given by Mr Kelly and Mr Harris? --- No. I considered that what I was doing was correct.

BARNES: Well, but you also considered their instruction to be incorrect, didn't you? I mean, was it the case - I think you told us yesterday that you listened to those directions they gave you- - -? --- Mm.

- - - but thought, these are bureaucrats sitting in an office, they do not even know what it is like out there? --- Yeah, well I have to weigh up the situation.

That's right, so- - -? --- You - you just - - -

- - - Mr Pearce is now saying to you, when you did that - - -? --- Mm.

- - - did you consider, and if you did, whether you were acting contrary to that instruction, irrespective that you may have thought the instruction was a foolish one? --- No, I didn't - no, I didn't really consider - I didn't want to consider that at all. I was mostly concerned about was safety; and trying to stop what I considered more offences being committed.

PEARCE: Sitting here today with the benefit of hindsight, do you consider your actions in driving away the vehicle to be contrary to the instructions that had been given to you by Mr Kelly and Mr Harris - to - that is to avoid confrontation with any person in the park? --- No, no, because I - I didn't have a confrontation. The confrontation would have been had I walked round that - that bend in the track.

BARNES: What about their suggestion that it was purely a surveillance operation and you were to avoid engaging people? You were going much further than surveillance, were not you? --- Yes, yes. That's - that's a funny thing, you cannot - in the brief it says to prevent the smuggling of the seeds and even though it was surveillance and hiding out, I still had to prevent the smuggling of seeds, so that's how I had to work round it.

So is it the case that you had always considered that you did have an active enforcement role to play in this operation, even though, at that briefing you went to, public servants in Cairns there sought to direct you to take no direct enforcement action? --- Yes, well - yes, I couldn't come to terms with not taking any direct enforcement action, because as I said, you're up there and you're on your own, so you have to do something, otherwise what's the point of going up there.

PEARCE: So you thought their direction that you were to take no direct action was just something foolish made by people who did not properly understand the situation? --- They - they didn't understand the situation. I can't - you know, as far as I am concerned, I have to weigh up - when anything happens I have to weigh up what - the best thing to do, and in this case I had to do it pretty quick.

And in those circumstances you felt entitled to overrule or disregard any direction they had given you back then? --- That's right, yes.

Both Flinders and Monaghan claim that whilst they waited for Shears to return, they heard two gun shots emanating from the direction in which Shears had gone. They

estimated the shots came about two kilometres away from the area where the track ends. Flinders provided the following account:

... we heard a vehicle coming down the road, so George and I took off, left the vehicle. We went and hid behind an antbed. I said, 'George, don't get up until you see who's in the vehicle', after we heard those two shots. I said, 'We've got nothing.' Anyway, when we see Pat Shears jumped out, we walked over to the vehicle. 'All right,' Pat said, 'see what I got here?' When I looked in there, I tell you I was whiter than you - the guns that I see in there - ammunition in there.

PEARCE: It frightened you a bit, did it?---I tell you honestly, I was frightened.

Flinders estimates the period from when he heard the shots to when he next saw Shears was between 10 and 15 minutes.

Later, when Flinders and Monaghan questioned Shears about the gun shots, they say Shears admitted firing the shots. Both Flinders and Monaghan say that Shears told them that he fired the shots into the air.

Upon his return to the park boundary, Shears instructed Flinders to drive the departmental vehicle back to their camp. He says he then walked back down the track towards where he had seized the vehicle and recovered his rifle which he had left hidden behind a tree, before returning to Paul Barbagallo's vehicle and driving it back to his camp.

No one in the Barbagallo party heard any gun shots while the party was on the mountain. Uechtritz says that in the prevailing weather conditions, which he describes as reasonably hot and still, he would have expected to hear a firearm discharged anywhere within a kilometre. Others have described the weather conditions on the mountain as including strong winds. Paul Barbagallo asserts that members of the party might not have heard a single gunshot, but might have heard several shots, as he for one would have paid attention after the initial noise.

Shears denies that he discharged any shots, or that he heard any shots.

The following is an extract of a report prepared by Shears on 13 and 14 November 1993. He stated in testimony that it was prepared after Wellard had given him instructions to make a statement of events that had occurred. The extract relates to the events leading to the seizure of the motor vehicle. The extract is consistent with the contents of Shears' diary:

Here is an account of a three week surveillance operation in the Cape Melville National Park leading up to and including the seizure of a Toyota Land Cruiser, registration 564-AUI along with three rifles & a chainsaw in the said park.

.....

9-11-93

1630 hrs.

A white toyota troop carrier and another 4WD with metal boxes on top went north driving very fast. The three of us agreed that the drivers knew the road.

11-11-93

0650 hrs.

Patrol to No 1. No activity.

0930 hrs.

Upon my return Tony and George tell me that they have had enough. Tony says, 'Listen mate we are frightened for our lives up here. Can't sleep a night and there's a good chance of us being shot. There's no law and order and we are withdrawing our land claim until National Parks cleans out these crooks. I'll get Nolie Pearson to ask the minister about all this.'

'Right boys,' I replied, 'We'll do a final patrol to the beach and see what those 4WDs are up to, then head home.'

1020 hrs.

Patrol to beach. On passing No 3 find that entry had been forced. Two different treads are evident. Drive in to boundary sign & park vehicle. Noted trees had been knocked down to gain entry past barrier. I left the boys with the truck & walked in the remaining 3 kms. More trees had been knocked down along the way. At the end of the track I discovered a dark green toyota land cruiser tray back, registration 564-AUI parked and no visible persons in the vicinity. I had never seen this vehicle before. In the rear of the vehicle I sighted a chainsaw, a 12 gauge shotgun and a small eski. Bark and leaves littered the tray floor. On the front seat I noted a 3030 winchester rifle, a semi automatic (SKS or SKK) rifle, a small carry bag and a quantity of ammunition. I walked past the vehicle towards the base of the hill. I thought I heard voices coming from up the hill amongst the palms, but not sight anyone. I returned to the vehicle & seized it & its contents for the following reasons

1. The vehicle had been used to destroy forest products to gain illegal entry.

2. The carrying of firearms, or possession thereon in a National Park is a chargeable offence.

1200 hrs. Drove out to parks vehicle & directed Tony to drive it back to camp. We did not go to the beach as the boys just wanted to go home immediately. I had no compunction about leaving the occupants stranded as I reasonably assumed that they had driven in the previous night in the two vehicles described earlier, & had only a 7 km walk to the beach where most people camp.

5.3 BARBAGALLO'S PARTY WALKS BACK TO CAMP

Upon completing their sojourn amongst the foxtail palms, the Barbagallo party returned to where Paul Barbagallo's vehicle had been parked, only to find, of course, that it was missing.

Paul Barbagallo believes that the party returned to this location at about 11.30am. According to both Paul Barbagallo and Wone the group discussed who might have taken the vehicle and what they should then do. Wone testified that it was at first suggested that seed poachers may have removed the vehicle, and this caused some fear amongst the party, particular because firearms had been left in the vehicle.

Uechtritz says that at this point he recalled having sighted horses whilst Paul Barbagallo was driving along the track. In particular, he recalled that one horse was wearing what he thought to be a piece of a halter. Uechtritz says that he then suggested that the horses may have been station horses which a ringer had lost, and that person may have needed assistance and taken the vehicle.

Paul Barbagallo's recollection is that the discussions covered "everything from a ringer breaking his leg to possibly a ranger taking it."

Uechtritz asserts that after discussing the party's options for about half an hour, he suggested that the best thing to do would be to walk back to the camp at Bathurst Bay and wait to see if anyone returned the vehicle. Adams, on the other hand, believes that these discussions took about ten minutes.

Ultimately, the party commenced the walk to Bathurst Bay, the distance involved being variously described as between seven and twenty kilometres, and the time for the walk at between one and four hours.

According to both Paul Barbagallo and Uechtritz, while walking back along the track, they observed that a log had been dragged across the track that they had previously driven along. The log was placed across the track adjacent to a creek crossing at a point where it would be impossible for anyone driving on the track to avoid. Uechtritz says it was obvious that the log had been deliberately placed in position and had not simply fallen from an overhanging tree. Paul Barbagallo reasoned that the log had been put there by the person who removed his vehicle.

For his part, Shears denies that he placed a log near the creek crossing. If the log was in that position described by Uechtritz and Paul Barbagallo, Shears would have had to have driven Barbagallo's vehicle through the crossing, and then stopped and alighted from the vehicle before continuing his journey. All this, shortly after he has seized the motor vehicle in circumstances wherein he was in fear for his life.

Paul Barbagallo also testified that as the party walked along the track, he saw some blocks of pineboard with nails protruding. He describes the pieces of board as about 12 inches long, with two-inch nails protruding. He says that he found three or four boards along the track - all within 50 metres of an abandoned stockyard. As far as he can recall, a couple of the blocks were positioned upon the track proper, and one was off to the side of the track. Paul Barbagallo recalls one block in particular, for he almost stood on it. He says that the points of the nails were facing up. He did not see any sign of damage to the blocks or to the nails which might have indicated that they had been run over by a vehicle.

Paul Barbagallo says that he did not see the blocks of pineboard whilst driving into the foxtail palm habitat, adding that one would not necessarily expect to see something lying upon the track, and commenting: "when you're driving through (the area) you've always got to watch the trees because of the top of your Toyota. Basically you're not always looking down on the ground. It's more dangerous hitting trees."

When Hands appeared before the Commission for the first time, he testified that he thought Paul Barbagallo had found a board with "nails stuck out the side of it". He said that he thought the board had been found in the area between where the car was seized and the creek crossing. When he testified on a later occasion, he was more definite, saying that Paul Barbagallo found it:

... In the sand, like, half sticking out of the sand. He nearly kicked it, I'm sure of it.

On this occasion he also testified that he thought the board was found "in the creek." Describing the board, Hands stated that a couple of nails "were bent like they might have been run over, but we didn't get no flat tyres." He also asserted that Paul Barbagallo had said at the time:

Look at this, someone's put a piece of board in here to stop people from driving in here.

Curiously, neither Uechtritz nor Adams recall anyone finding any pineboard with protruding nails during the walk back to camp. Adams says, however, that after Paul Barbagallo recovered his seized vehicle two weeks later, he made mention to her that he had seen the boards.

The following passage is taken from the examination of Uechtritz:

PEARCE:There has been, throughout this matter an ... allegation that Mr Shears had set vehicle traps. Do you know anything about that allegation? --- I've heard that - I've heard that talk, yes.

Nails embedded in the ground? --- Nails in pieces of wood, yes. Yes.

Did you see any signs of that sort of activity? --- No. No, I didn't, no, and we didn't run over any and we never got a flat tyre. So, sir, no, I - I didn't see anything like that.

And during the course of you walk out from the point of the vehicle seizure back to your camp you never came across any of these supposed vehicle traps? --- I myself didn't see anything, no.

BARNES: Well, did any of the others? They would have surely brought it to your attention if they - -? --- Yes. If they did - I would have to agree with you - they would have probably brought it to my attention.

It would have been quite something to find? --- Yes, yes. I - it certainly wasn't brought to my attention.

Shears readily concedes setting blocks of timber with exposed nails along "smugglers' track no. 3". Further, Shears says that when he attempted to remove the blocks of timber prior to 11 November 1993, he was unable to locate those he had placed on "smugglers' track no. 3". On the other hand, the inconsistencies apparent in the evidence of Paul Barbagallo, Hands, Adams and Uechtritz are of concern. There has been a marked "improvement" in the evidence of Hands - although his testimony is

still not entirely consistent with that of Paul Barbagallo who claims he did not see the damaged nails which Hands asserts were shown to him by Paul Barbagallo.

If the evidence of Uechtritz and Adams is correct, it is curious that no mention was made of the boards. It is difficult to imagine, given the prevailing circumstances of the party, that no mention was made of the discovery of booby traps obviously designed and placed to inflict damage and/or injury. Equally, it is difficult to imagine that both Adams and Uechtritz could simply forget such a discovery and conversation.

This aspect of the evidence from members the Barbagallo party remains puzzling.

It is noted that allegations that Shears had set vehicle traps received some public airing prior to the investigative hearings. It is possible therefore that witnesses had learned of the allegations through the media, although the Commission makes no conclusion on this point.

Further along the track, the party came across the National Park signpost which had been erected by Shears, Flinders and Monaghan which prohibited vehicle entry into that part of the National Park.

The directions displayed upon the sign were diagrammatical only - that is, diagrams or symbols bearing a line drawn diagonally through the diagram, indicating that the actions depicted are not permitted. The diagrams are not comprehensive and are somewhat confusing. One diagram is of a motor cycle with a line drawn through the motor cycle, and a separate diagram is of a motor vehicle adjacent to a tent, again with a single line drawn through both the motor vehicle and tent. The signpost does not obviously prohibit the entry of motor vehicles (other than motor cycles), nor the entry of persons on foot.

The confusing nature of the signs was demonstrated to the Commission when its officers visited the park. As they were walking with Shears and Symonds towards the foxtail palm stands a vehicle approached along "smugglers' track no. 3". It had been driven past the sign taking the same route as Paul Barbagallo had.

Symonds approached the vehicle, took particulars of the occupants and with their consent conducted a sufficient search of the vehicle to satisfy himself that they were merely sightseers.

There was no reason for him to disbelieve their claim that they had seen the sign but misunderstood it to mean that camping with vehicles was prohibited. Indeed, Symonds' concedes that the diagram was used to convey the message in other parks.

It was explained to the tourists that this part of the park was closed and they withdrew.

In any event, despite the somewhat confusing message conveyed by the signpost, the question of its effectiveness has not arisen as an issue in this investigation, for it is contended by Paul Barbagallo and his party that the sign was never seen by them until they were walking out of the park.

The positioning of the signpost and the route circumventing it are material to a consideration of the reasonableness of Shears conduct in seizing the vehicle and the credibility of Paul Barbagallo and his companions.

The evidence on these points is therefore reproduced here in some detail.

According to Uechtritz, although the sign was positioned in the middle of the track, it would have been difficult to see while driving in because it was small. Uechtritz describes it as being about three feet in height and four inches in width, brown in colour, with the grass growing around it and causing it to blend with the landscape. When subsequently shown a photograph of the sign, Uechtritz conceded that the sign was actually much larger than he had described it in evidence. When counsel assisting put to Uechtritz that the sign had been erected only a matter of days prior to the vehicle seizure, Uechtritz accepted that there could not have been grass growing around the sign as he had described, but that was his recollection nonetheless.

When Paul Barbagallo initially gave evidence before the Commission, he was questioned about his recollection of the area in which the signpost was erected. The following passage refers:

PEARCE: Was there any debris or logs, anything of that nature on the road? ---
Not at the start of the road, no.

At any stage of the road up to the park boundary? --- Just before the park boundary, yes. There was all logs laid in front, that's correct yes.

Across the road? --- Across - oh, well, what used to be a road, someone had gone previously and made a new road from it.

Were you able to tell how long it appeared those logs had been on that road? ---
No, no idea.

How well-formed was the alternative? --- Fairly well-formed.

And it went around the logs, did it? --- That's correct, yes.

BARNES: It was sufficiently clear for you to conclude that there had not been a single journey that made it? --- Oh, definitely, definitely not a single journey. There - several - it was almost as worn as the track into the place.

PEARCE: And there was just the roadway that had been - had logs upon it - - - ? --- Mm.

- - - and the alternative, there was no more than two sets of tracks? --- No, that's right.

.....

Well, what happened when you got to the area where you saw the logs on the road...?
--- We approached the logs, I saw the logs and I just followed the track that went around them and just kept following the track.

Later in his examination, Paul Barbagallo was asked to explain what had happened when his party had retraced the track to the area of the logs. Paul Barbagallo testified that it had been at that point that someone in the party had pointed out the National Park signpost.

Paul Barbagallo was then shown a photograph which had been produced to the Commission by Shears depicting the signpost in the foreground and the National Park in the background. It is evident from the photograph that logs and broken timber are strewn upon the track immediately behind the signpost. According to Shears, Flinders and Monaghan, the scene depicted in the photograph accurately represented the area of the signpost on "smugglers' track no. 3" on 11 November 1993.

Paul Barbagallo identified the signpost within the photograph, but asserted that on 11 November 1993, logs had been placed in front of the signpost rather than behind it as shown in the photograph.

In response questioning from his own counsel, Paul Barbagallo asserted that the logs which he recalled to be lying on the track obscured the sign and caused vehicles to divert from the immediate vicinity of the signpost. The following passage refers:

DURWARD: ...Did you see the sign when you drove in? --- No, definitely not, definitely not. We saw it - we only - first - the first sign we had of seeing the sign was as we walked out and to my knowledge it wasn't there in 1992.

And, I mean, was it obscured in some way or did you just not see it? --- Well, it was obscured because there's all vegetation. Because the road goes - veers off away from it, there's all vegetation in front of it. The trees that you see in the background, it's all through that area and the track goes around to the side of it, so there's a good chance you won't see it.

All right. So the track that had to go around the logs diverted you away from the immediately vicinity of the signs? --- That's right, that's right. That's correct.

During the course of his evidence before the Innisfail Magistrates Court on 13 May 1994, Paul Barbagallo was again questioned regarding the National Park signpost. He again asserted, that he had observed logs to have been placed in front of, rather than behind the signpost. The following passages refer:

DURWARD: ... You've heard evidence about a sign being placed at about where the boundary of the National Park is. Did you see any such sign when you drove in? ---
- The morning that we drove in we didn't see the sign, but there's a track that veers off before the sign, that goes around the sign. We only noticed the sign as we walked out.

.....

And were there any fallen trees or branches or logs in the vicinity of where you now know the sign to be? --- Yes, there were. They actually looked - they were placed in front of it ... not behind it.

Paul Barbagallo further testified in evidence in chief before the Magistrates Court that the "track that veers off before the sign" was situated approximately 30 to 40 metres before the signpost.

During the course of cross-examination of Paul Barbagallo, the following exchange occurred:

POLICE PROSECUTOR: ...I think you said there was scrub on the road? --- That's correct.

And there was a bit of a track that went around? --- Near the sign, are you talking about?

Well, presumably, yeah. --- When we walked out we had a good look, and there were logs before, and someone had already made a different track away from the sign, and around the sign.

This track around the sign, how well worn was it, in comparison? --- Not as well, but it was noticeable coming up to it, because there were logs in front of that, I saw the road to the left, so I - when you travel that area, quite often you come across logs and you automatically deviate around them.

Okay. You wouldn't describe the track around the logs as well worn, by any means, would you? --- Not as well worn as the track, no.

Maybe just one or two cars had gone around there before? --- Yeah, possibly."

When Paul Barbagallo gave evidence on a second occasion before the Commission, he was again shown a photograph of the National Park signpost on "smugglers' track no. 3". He confirmed his prior claims that an alternative track ran off to the left of the better-defined track, in an area which he described as approximately 20 to 30 metres prior to the signpost and that he believed the logs placed over the track were in front of the sign rather than behind it as alleged by Shears, Monaghan and Flinders.

Wone and Uechtritz admit to having seen logs strewn across the track in the vicinity of the sign, but they claim that when driving in along the track Paul Barbagallo had deviated to the left at a location which Uechtritz described as approximately 5 to 6 metres from the sign, and thereafter followed the wheel tracks of previous vehicles around the area of the sign and the logs. Uechtritz testified that at the time, while he did not take a great deal of notice, he thought that those logs had burned during bush fires and had fallen across the track. Uechtritz subsequently conceded it to be unlikely that trees had burned and fallen across the track in the vicinity of the sign and nowhere else.

Both Wone and Uechtritz recall that when the National Park sign was "discovered", there was some discussion amongst the group that they may have done the wrong

thing in driving into the National Park and the possibility that the vehicle may have been confiscated by a park ranger was discussed. Uechtritz testified that he rejected that suggestion at the time, explaining:

.....a ranger in this country wouldn't leave people - I would find it very hard to believe that anyone would leave people abandoned in this type of country. Secondly, if it was a ranger, why would he take a vehicle without talking to the - or trying to contact the owners first of all, and seeing that they did have a permit. Yes. I mean, rangers are supposed to be responsible, and I made that point. I couldn't in my wildest dreams even dream that a ranger would take a vehicle under those circumstances.

Paul Barbagallo and Adams also recalled a discussion in similar terms.

Shears has consistently claimed that he erected the National Park signpost in the centre of "smugglers' track no. 3". He claims that he placed the signpost atop a rise on a straight section of the track, so that it would be easily seen by anyone approaching. Immediately behind and to the sides of the signpost, he placed a mound of fallen branches and timber across the track to act as a barricade. He is adamant that there was no alternative track circumventing the signpost. He also asserts that immediately prior to seizing the vehicle on 11 November 1993, he had observed that at least two vehicles had driven around the signpost and barricading.

Shears' assertions in this regard are corroborated by Flinders and Monaghan.

Indeed, logic dictates it to be strange behaviour, having taken trouble to erect the signpost in a position whereby it was easily-visible to approaching vehicles, for Shears, Flinders and Monaghan to then disguise the presence of that signpost by placing logs and debris in front of it.

The question of the visibility of the signpost was considered by the Stipendiary Magistrate when determining charges against Paul Barbagallo on 13 May 1993. In this regard, the Stipendiary Magistrate found:

In respect of the charge of traversing, (Paul Barbagallo) does state that he had, as I have described - followed track number three down to an area where he parked the vehicle and on the way he did deviate around some debris and trees on the road and these deviations - in traversing these deviations, he did not notice any signs being erected or that had been erected on that road, prohibiting from entering that area.

He did say in his evidence that on walking out from the area after his vehicle had gone missing, that he did come across the sign. Patrick Shears in his evidence, states

that he followed the track number three and on that track he followed other tyre tracks which he described, that took him up to where the sign was, and those tracks deviated round near the sign to the left of it. He did not see any deviations prior to this.

Therefore it is a matter of credibility between these two witnesses and on consideration of the whole of the evidence I am satisfied on the evidence that number three track was the track that was described or used by both (Paul Barbagallo) and Shears in their evidence. And I accept the evidence of Shears, that no deviation of the road took him around away from the sign and he went directly up to the sign following that track.

The sign is in the middle of the road and it is clear to see. And therefore I find that the deviation that has been described by (Paul Barbagallo) must have been near or around the sign itself and not well before it, as he has described. And also on the evidence, I find that it would have been clear for him to see....

On Sunday 15 May 1994, officers of the Commission, in company with Shears and officers of the Department of Environment and Heritage, visited Cape Melville National Park and observed the signpost erected by Shears. Significantly, the Commission's officers report that the signpost is so situated as to be clearly visible from at least 50 to 60 metres. Further, apart from an area immediately adjacent and to the left of the signpost, there is no other area in which an approaching vehicle could easily manoeuvre to the left or right of the signpost to avoid the barricading erected by Shears behind the signpost.

The rest of the walk back to camp was uneventful insofar as the Commission's investigation is concerned.

CHAPTER 6

EVENTS FOLLOWING THE VEHICLE SEIZURE

6.1 PAUL BARBAGALLO'S PARTY RETURNS TO CAMP

The members of the party variously recall arriving back at camp sometime between 2.00pm and 3.00pm.

Uechtritz says that he was still of the view that someone may have taken the vehicle for a legitimate purpose, and therefore suggested that the party wait for at least twelve hours to see if the vehicle was returned by whoever had taken it. According to Uechtritz, Paul Barbagallo did not express any particular concern over the loss of the vehicle and appeared to be "very laid back". However, Uechtritz rejects the notion that Paul Barbagallo had concluded that a ranger had confiscated the vehicle.

According to Uechtritz, after a couple of hours had passed, he suggested a drive back to the location from which the vehicle had been removed, to see if it had been returned. He said Paul Barbagallo agreed, and at about 4.00pm or 5.00pm, after informing the other members of the party, Uechtritz, Paul Barbagallo, and possibly Benjamin Hands, set off in the Troop Carrier.

According to Uechtritz, they re-traced their earlier journey to the point from which the vehicle disappeared. Enroute, they encountered the log which had been placed across the track near the creek crossing. Uechtritz says that he alighted from the vehicle, moved the log to one side, then returned to the vehicle and proceeded to the end of the track. Upon failing to find the missing vehicle, they drove back along the track. Uechtritz claims that upon reaching the location where he had previously removed the log, he again alighted from the vehicle and on this occasion, lifted the log back into position across the track.

Uechtritz could not offer an explanation for his behaviour in shifting and then returning the log.

Wone also claims to have made the suggestion that someone should drive around in the Troop Carrier in an endeavour to find the missing vehicle. Wone says that his suggestion was dismissed because of fears that whoever had removed the vehicle might also be armed.

suggestion was dismissed because of fears that whoever had removed the vehicle might also be armed.

Wone denies that he returned to the location from which the vehicle had been removed, and is unaware if, at any time, any other member of the party returned to that area.

Paul Barbagallo also denies Uechtritz's claim that they returned to the place from where the vehicle had disappeared, although he concedes that he did drive a couple of kilometres to the loop near the entrance to the "smugglers' tracks". Paul Barbagallo says that because he could not see the other vehicle, he headed back to Bathurst Bay. He denies that he returned to the creek crossing where the log had been earlier observed.

Adams has no recollection of anyone leaving the campsite to look for the missing vehicle.

For his part, Hands says that upon returning to Bathurst Bay he went to sleep and therefore does not know what the others did.

6.2 PAUL BARBAGALLO AND GORDON UECHTRITZ RETURN TO COOKTOWN

The party remained at Bathurst Bay during the evening of 11 November 1993. The following afternoon, Friday 12 November 1993, Paul Barbagallo and Uechtritz departed the campsite and drove to Cooktown in order to meet up with David Barbagallo and Atkins, and to endeavour to ascertain what had happened to the missing vehicle.

By way of explanation for the return of Uechtritz to Cooktown, Paul Barbagallo says:

There were six people and only one vehicle. We were going to always be in trouble bringing back the gear we had taken up there. So Gordon suggested coming back with me and we took one of the eskies and some of the gear so he could possibly get a bus, just in case David wasn't there, or get a lift with David back to Innisfail.

Uechtritz testified that it was never part of the original travel plan that he accompany Paul Barbagallo back to Cooktown, but because of the loss of the vehicle, he thought

that he should keep Paul Barbagallo company, act as a driver during the journey, or provide any other assistance needed.

Adams says that she knew nothing of the planned meeting with David Barbagallo. She says she believed that Paul Barbagallo and Uechtritz went to Cooktown to report the theft of the other vehicle and to obtain some ice. She surmised that Uechtritz went along with Paul Barbagallo for company. Adams says that she was not otherwise aware of any plans to travel to Cooktown during the stay at Bathurst Bay.

Hands initially testified that he had learned that Paul Barbagallo was to meet his brother at Cooktown just prior to the departure of Paul Barbagallo and Uechtritz; that is, on 12 November 1993. However, later in his evidence, Hands testified:

I think Paul might've mentioned to me on the way up there - told me what was going on, but I think he said it wasn't supposed to be mentioned or something; it was supposed to be a secret ...

Hands says that he was not surprised by those arrangements, notwithstanding that they involved a 14 to 15 hour round-trip for Paul Barbagallo. He added:

He drives to Kununurra and things like that.

Hands believed Uechtritz went with Paul Barbagallo because his (Uechtritz's) shotgun had been in the missing vehicle, and he wanted to report it stolen. He further explained that with one vehicle having disappeared, the remaining members of the party would not all fit in the remaining vehicle.

According to Paul Barbagallo, they did not reach Cooktown until almost midnight and, due to the lateness of the hour, they decided to stay overnight at the River of Gold Motel, and meet with David Barbagallo and Atkins the following morning. Paul Barbagallo asserts that he was not to meet with his brother until Saturday morning and accordingly, he did not leave Bathurst Bay until late on the Friday afternoon. He describes the drive from Bathurst Bay to Cooktown as having been "reasonably fast", and estimates it took eight hours to complete. He also says that upon arrival at Cooktown, he and Uechtritz drove around looking for a rent-a-car or some other clue which would indicate where his brother was staying.

6.3 SHEARS LEAVES CAPE MELVILLE IN PAUL BARBAGALLO'S VEHICLE

Immediately after the seizure of Paul Barbagallo's motor vehicle, Shears, Flinders and Monaghan returned to their base camp a short distance away. They then packed their belongings and set off to drive to Lakefield National Park, which is the nearest ranger base to Cape Melville National Park. Shears drove the confiscated vehicle, while Flinders and Monaghan travelled in the departmental vehicle.

Consistent with Shears' account, Flinders says that he could not recall seeing the confiscated vehicle before its seizure, whereas Monaghan is sure that it was the second of the two vehicles sighted on 10 November 1993. At no time prior to arriving at Lakefield Ranger Base did either Flinders or Monaghan notice any damage to the seized vehicle, in particular, to the 'tie bar' immediately behind and above the cabin.

According to Flinders and Monaghan, to their knowledge Shears did not use the radio in the departmental vehicle to contact anyone to report the confiscation of the vehicle.

Enroute to Lakefield, Shears stopped at Kalpowar Station, where the nearest telephone to Cape Melville National Park is located. Upon arrival, at about 4.30pm, Shears telephoned Cooktown Police and reported the vehicle seizure. Shears states that he did not make any other telephone call from Kalpowar Station. An entry in Shears' diary records the following exchange with the police officer to whom he spoke:

Shears: I have seized a vehicle and three rifles and chainsaw from within the Cape Melville National Park and have driven it out to Kalpowar Station. Do you want me to bring it into you at Cooktown?

Police Officer: No, we don't want it. You have to be careful about seizing vehicles.

Shears: How about I hide it in the shed at Lakefield N.P. and I'll tell you all about it tomorrow when I come in.?

Police Officer: Ok, see you then.

The police officer to whom Shears spoke was *Senior Constable Malcolm Meadows* who, at that time, was Acting Officer in Charge of Cooktown Police Station.

According to Meadows, Shears initially asked for a motor vehicle registration check to be conducted in respect of the seized vehicle. Queensland Police Service computer records reveal that such an enquiry was performed by Senior Constable G M Smith at 4.34pm on 11 November 1993. Meadows testified that while the computer enquiry was underway, Shears informed him of the seizure of the vehicle. Although he did not make any notes at the time and he could not recall the total conversation; Meadows testified that his exchange with Shears was to the following effect:

.....he'd seized a vehicle in the park and I - I went on to say, 'Why did you seize it?' Or I may have even asked him, 'What, did you get him for seeds or something?' I can't remember exactly how the conversation transpired but he indicated to me that he didn't have any seeds. There was firearms in the car. I can't recall if he mentioned the chainsaw in the car at that time or a later time but, he did mention firearms in the car. He said that he'd - he was ringing from Kalpowar Station and he had the vehicle with him. I said, 'Where are the people?' And he said, 'Up there.' I said, 'How many were there?' He said, 'I don't know.' Well, I said, 'What's in the vehicle, anything to indicate how many people there would be?' He said, 'A ladies' handbag.' Somehow we came to the - he came to the surmise that there was a female and possibly two males. So, we were looking at possibly three people with the vehicle. I said, 'Where are these people now?' He says, 'Still up there.' I said, 'Did you have any conversation with them', or words to that effect. He said, 'No, didn't go near them. I could hear them but didn't go near them.' And I said, 'Where did you get the -', I went on then, 'where did you get the power to seize the vehicle?' I started - I was just shocked at what he'd done. And he said, 'I don't know. I don't know where I get the power from. I don't care. I'm going to teach these, you know, bastards -', I can't remember exactly what he used but it was - definitely said, 'I'm going to teach these -' whatever - 'a lesson. I've had enough of it.'

According to Meadows, the only explanation offered by Shears for seizing the vehicle was "to teach the bastards a lesson". Meadows is sure that during the telephone conversation, he asked Shears if there was another vehicle either with the people or nearby. Shears replied that there was not.

The following passage is extracted from Meadows' testimony:

.....All I was thinking then was, you know, we've got three people stuck 14 hours from Cooktown. How the hell are we going to get them out, you know, and I'm thinking, regardless of what - or who they are or what they've done, I just didn't think it was the right way about doing it. It was just - in my book, was not the way you would have done it and that's what's concerned me is that we've got three people that don't know what's happened to their vehicle. They're going to come back, the vehicle's gone. They could be stuck there for ages. My immediate concern was how

the hell - you know, I felt that, you know, we should get something to them or back to them before they start wandering and getting lost further.

Meadows testified that he advised Shears to the following effect:

.....(I said) 'Look, okay. They've done something wrong. There's no evidence there about foxtails at the moment. You never know. You might get back down - they've got a bag of foxtails sitting with them or something like that.' I said, 'Okay, there's guns in the National Park.' I said, 'That's nothing too serious. Names, addresses - we've got the rego. We know all that so we can - to be chased up later. Summons action.' I said, 'Taking the vehicle is just going overboard.'

And Pat waffled on a bit about something but I can't remember what he was going on about then. He went on about something but I more or less said - told him, 'Take the vehicle back. Tell these people why you took the vehicle.' Stuff like that. Explain - seize the firearms, sure. And we'll follow it up that way, you know.

Meadows says he believed that Shears would act in accordance with that advice and return the vehicle. On that basis, Meadows considered that the matter did not, at that stage, warrant a report to his superiors.

Meadows says that at some point during his telephone conversation with Shears, he informed Shears of the result of the motor vehicle registration check. That is, Shears would have been informed that the vehicle was registered to "a Paul Barbagallo from Innisfail".

Meadows also testified that Senior Constable Smith, who coincidentally had formerly been stationed at Innisfail, informed him that Paul Barbagallo was known as a "druggie". Subsequently, when preparing a report to his superior, Inspector Hartwell, Meadows confirmed by way of further computer enquiry that Paul Barbagallo had a prior conviction for a serious drug offence.

When Shears gave evidence before the Commission, he initially proffered a similar account of the conversation as that which appears in his diary, but he added his belief that he had also advised the police officer that there was no reason to worry about the occupants of the vehicle, as there were "two other vehicles up there." Shears accepted that Meadows had told him to return the vehicle to the National Park, but that the police officer had ultimately agreed that the vehicle should be put in the shed at Lakefield. Shears is adamant that he had told the police he was going to place the vehicle in the shed.

Shears also concedes that he may have made comments to the effect, "I put a spanner in their works", but denies saying that he seized the vehicle to "teach the bastards a lesson".

On Thursday 11 November 1993, the officer in charge of Cooktown Police Station, Sergeant Robert Murphy was attending a police conference at Cairns. During the afternoon of that day, and prior to departing Cairns for Cooktown, Murphy made a routine telephone call to Cooktown Police Station to ascertain whether everything was running smoothly. According to Murphy, Meadows informed him that he had spoken with Shears and learned that Shears had seized a motor vehicle in Cape Melville National Park and had taken it to Lakefield National Park. Meadows briefed Murphy in terms of the conversation he had earlier had with Shears. Murphy says that, at that time, he concurred with the advice Meadows had reportedly provided to Shears, which was - as Murphy recalls - that Shears should return the vehicle "because it was stupidity to possibly leave someone stranded up there." Murphy claims that he was not, at that time, told who owned the vehicle, and he thereafter had nothing more to do with the matter until Saturday 13 November 1993.

After reporting to Cooktown Police, Shears continued driving Paul Barbagallo's vehicle to Lakefield Ranger Base, a distance of approximately seven kilometres from Kalpowar Station.

On arrival at Lakefield, Shears met with Patricia Teece, a NPWS ranger grade 2 and wife of the ranger in charge, Ronald Teece who, at that time, was out in the field with Peter Stanton. According to Patricia Teece, Shears advised her that he had confiscated a vehicle and that the occupants of the vehicle could come looking for it. Shears explained that he had taken the vehicle because it had been used to break down barriers and had been driven into Cape Melville National Park to the foxtail palms, where it should not have been.

Patricia Teece suggested that Shears put the vehicle into one of the sheds at the Ranger Base, which Shears promptly did. Apart from seeing the vehicle as she opened the shed doors to allow Shears to drive it inside, Patricia Teece did not notice anything in particular about the vehicle or its contents, except a number of firearms which Shears took from the rear tray and placed in the cabin, and a chainsaw.

After securing the vehicle in the shed, Shears told Patricia Teece that he would come back later and see Stanton. Shears then went off with Flinders and Monaghan to the camping ground at Kalpowar Crossing, about three kilometres from Lakefield Ranger Base.

A short time later, Ron Teece, Stanton and other NPWS officers returned to the Ranger Base and met with Shears, Flinders and Monaghan. Flinders and Monaghan, were not included in subsequent discussions.

Stanton testified that Shears explained the circumstances in which he had seized the vehicle as follows:

He told me that there had been a lot of drama there. He had been out for a brief period and he'd returned and when he got there he ran into - he met a tourist who had complained about being fired at and when he investigated that he found a vehicle parked near some Wodyetia palms. He could hear people in the bush. He looked in the vehicle, he saw there were firearms in it. There was a chainsaw in the back and the keys were in it and he decided the best thing that he could do at the time was to take the vehicle and take it back to Lakefield, leaving the Aboriginal companions to drive his other vehicle.

....He was concerned that these people were dangerous - were very dangerous, that they were possibly threatening the lives of visitors to the park. He thought that if one visitor was being fired at others could be. He was concerned for the lives and safety of park visitors. He was also concerned about his own safety in the sense that he didn't want to be fronting in the bush people who were armed and, what he considered to be, dangerous. At the same time he didn't want to walk away from it and leave him there because of this problem with safety of visitors to the park. His basic attitude to me was, 'What could you do? I can't leave them there, I can't not deal with them. I didn't feel like walking into the bush and talking to them. I took the vehicle.'

Stanton claims that Shears informed him there had been no camping equipment in the rear of the vehicle and that he had seen signs of a second vehicle in the vicinity. On the basis of that information, Stanton and Shears concluded that the occupants of the vehicle must have had a camp nearby with sufficient provisions. With adequate permanent water in the area they would not be in any danger in the short term.

According to Stanton, he learned from speaking with Patricia Teece, that Shears had telephoned Cooktown Police from Kalpowar Station.

Ronald Teece claims that he listened only briefly while Shears reported the seizure of the motor vehicle to Stanton, although he recalls that Shears stated he had seized the vehicle because he believed it was in some way involved in smuggling foxtail palm seeds, and because it had contained firearms. He agreed to Shears' request to keep the vehicle secured in the shed at the Ranger Base while Shears camped overnight.

According to Stanton, Shears expressed an intention to contact his superior, Harris, and report the incident. Shears also wished to return to the area of the seizure to confront the "suspects". Stanton says Shears was calm and rational and that there was nothing to indicate that Shears was exaggerating his actions.

Stanton says he advised Shears that the best thing to do was for Shears to take the vehicle to the police at Cooktown and, since Stanton himself was enroute to Cairns, to leave it to Stanton to advise the Department of the seizure.

Shears acknowledges that he agreed to leave it to Stanton to advise his superiors of the seizure. Additionally, Shears recalls a conversation in which Stanton suggested that it would be a good idea not to report the matter to Regional head office in Cairns straight away.

Stanton testified that he said to Shears, something to the following effect:

It's Thursday night. If you report it now you've got the whole of Friday for a panic to build up. I'd rather this not be reported until tomorrow night.

Stanton claims to have held a "naive" belief that the operation, including Shears' action in seizing the vehicle, had proven just how serious the situation was at Cape Melville, reinforcing the need for further patrols.

Stanton also admits that he had no intention of reporting the matter to Harris until he returned to Cairns; his justification being:

I didn't trust the people that might be concerned in the matter. In relation to what I said before in my experience in the Department, ... it was safer to leave the matter in the hands of the police, let them prosecute under their powers than to place it in the hands of the Department and run the risk of interference, and political interference at that - - -

PEARCE: What do you mean by political interference? --- Well, I should point out that in my years as Regional Director, (1981-1989) I very strongly recommended prosecution of people for a whole range of offences and many a time the prosecution action was dropped purely for political reasons, because somebody had complained to the local member, because somebody had been to see the Director and the Director would make a decision not to proceed which, to my mind, was based not on the rights and wrongs of the case but the politics of the people involved and their connections and what have you. I have become used to that sort of thing happening and I was of the opinion there was a chance that that could happen in this case and I thought, 'It's Thursday. If he rings now they've got the whole of Friday for the thing to blow

up into a major issue. If I report it Friday night, the week-end would intervene. By Monday they might have a different view of the whole thing and it will be taken out of their hands anyhow by police action.' That was the thinking in the back of my mind and I really think the subsequent events would justify that approach.

Stanton says he applauded Shears' action in seizing the vehicle, testifying that in all the circumstances, he would have done exactly the same thing. He views Shears' action as a positive step against, what he believes, to be widespread illegal activity. At the same time however, Stanton says he was certain that his view of Shears' action would not be shared by senior DEH/NPWS officers, who would regard Shears' actions as too controversial. With that in mind, Stanton deliberately delayed advising Harris because he believed that efforts would be made to direct Shears to return the vehicle.

Stanton testified that because he did not return to Cairns until about 10.00pm on Friday 12 November 1993, he did not telephone Harris until the following morning. By the time Stanton eventually contacted Harris, at about 8.00am or 9.00am on Saturday 13 November 1993, Harris was already aware of the situation.

6.4 SHEARS MEETS THE ARMY

Overnight, Shears, Flinders and Monaghan camped at Kalpowar Crossing, while Stanton slept in the barracks adjoining the Ranger Base.

During the night Shears flagged down a passing Army patrol. According to a report prepared by Shears in respect of this incident, after inquiring if the patrol had seen anything, Shears expressed the view that an increase in Army presence would be beneficial in deterring the apparent increase in illegal activity within the area at that time of year.

The version of Patrol Commander, Sergeant Barry Charles, with whom Shears spoke, differs markedly.

Sergeant Charles says that after identifying himself as a National Parks ranger, Shears:

... requested armed assistance as he had a confrontation with some drug smugglers earlier in the day.....

He informed me he had confiscated a vehicle and automatic weapons and had it hidden in the bush. He then told me he was going to return to where the

confrontation took place to sort them out. He also indicated his reluctance to inform the police as they had made him return weapons and vehicles on an earlier occasion.

It was this version of events which was reported to police at Cairns the following day, upon the return of Sergeant Charles' patrol. Charles testified that this version is recorded in contemporaneous notes compiled in his field notebook. Charles records the time of his confrontation with Shears as 10.30pm. Shears records the same meeting as 8.45pm.

In an exchange with counsel assisting, Charles referred to his field notes, and gave the following account of his meeting with Shears;

...He said - his words were to me, 'Where have you just come from?' And I explained that we were on a routine patrol, and that my exact whereabouts I wasn't about to divulge. He said, 'Well, I know where you've been because I'm part of the operation.' And I said, 'Oh,' I said, 'Well, I'm still not going to' - you know, I said, 'Are you in trouble? If you're in trouble,' I said, 'because I'm leaving.' He said, 'No, but I need your assistance.' I said, 'Well, tell me about it.' He said, 'Well, I just bumped into a bunch of drug-runners,' and he - he then outlined where, on a map, which I have here. I circled the areas where he indicated on his map where supposedly large plantations of marijuana was growing. He pointed out areas where they were - the track system they were using and a coastal area where they were using - getting the stuff out by boat. He said - also said that he had confiscated a vehicle, and he went, 'It's over there in the bush.' And he pointed to an area generally over his shoulder - it was dark, of course, at that time of night. And he said, 'It's got weapons in it.' And he said, 'I confiscated this - this vehicle and weapons, and I fear they're coming back to get them tomorrow, and I need your help.' He says, 'I want to confront these - these people and sort them out,' were his words. I explained to him that my rules of engagement are quite clear in that regard, and that I couldn't offer any armed assistance to him. The only way that I could, if he was under direct threat, which he was not at that stage. He was by a campfire. He had two aides with him, and he was under no direct threat, to my knowledge. So I assessed the situation very carefully and thought, 'Well, he's not - he's not in any danger where he is, but he said he was going back the next day to confront these people.'

I then asked him if he was armed - I have that written down here.

.....And he said, 'Yes, I am.' So I said, 'Well, the best I can do for you now is to report what you've said to me to my superiors, and then try to get some assistance to you by way of the civilian police.'

PEARCE: You indicated at one stage he said that 'they would be coming to get the vehicle the next day?' --- He - yes, sir. He indicated to me that there was a large

group of people up there, not only one or two persons. He was talking about large groups of people. He said, 'They're everywhere up there.' And he was - he kept on about drugs, marijuana plantations.

Did he say anything about foxtail palms seeds? --- No, he didn't.

Did he identify himself to you? --- Yes, he did. He said - - -

When did he do that, first of all? --- About one minute into the conversation.

All right. Yes and how did he identify himself? --- Well, I asked him who he was when he was questioning me on my activities. I said, 'Well, I'm not - who are you for a start?' and then he said, 'I'm Pat Shears, the ranger.' I must admit I'd heard of Pat Shears from Cape Tribulation because that is my area of operations and I'm aware of his presence but I'd never met him, so I didn't know. I didn't know if that was Pat Shears or not. So I wasn't about to say too much to somebody that couldn't identify himself. He did mention my Intelligence Sergeant's name by name, Al Lavaring. So I assumed that he was tied up in my operations somewhere, but I wasn't - I didn't know where and I just reported all that to my Operations Officer, Major Mitchell, when I got back.

....He indicated to you that he was armed, did he tell - - -? --- I asked him if he was armed, he said, 'Yes,' he was.

Did he tell you what he was carrying? --- He said he was carrying a - I didn't ask what brand of rifle. He said he was armed and he was also armed with explosives.

Did he tell you what sort of explosives? --- No, he didn't.

Did you ask him? --- No.

Sergeant Charles produced the map upon which he had noted the four areas indicated to him by Shears as being the areas of drug activity. All four areas are located a considerable distance to the south of Cape Melville, outside the Cape Melville National Park.

Counsel assisting went on to ask Charles:

PEARCE:.....did he make any mention of any shots having been fired? --- He did indicate that shots had been fired. Whether on that occasion or not, I'm not too sure what he meant by that or whether it may have been an earlier occasion, but he did indicate that he had engaged these people before with rifle fire.

He had engaged them before - - - ? --- Yes.

- - - with rifle fire? --- He indicated that he does - he retaliates.

Do you recall what it was he said in that regard? --- Just that quite often - no, I don't recall the exact words, no.

BARNES: But paraphrase as best you can. You were about to say that quite often? --- He indicated that he comes into contact with these people quite often and that in the past shots had been fired and he'd fire shots over their heads. He - one strange - I just recalled one strange comment that he made. When I said that, 'Oh well, the first I'd do is go to the police with this information.' This is when he first broached me. He said, 'No, don't do that. I don't want you to go to the police because I've done this before and they have returned the vehicles and weapons to the people that I've taken them off.' He indicated that I was - he was reluctant for me to go ahead and tell the police that he was there and that he needed help.....

.....What do you say to the suggestion that his recounting to you about armed contact with people, and production of drugs and the like, were really - him really re-telling you what he had done some time previously, even last year, November '92 rather than November '93? --- No, sir. I believe what he was telling me was what he had seen up there on that particular - - -

That that present trip was the time he was telling you about? --- Yes because he came out with the map and he was a little bit - not upset, but a little bit nervous or excited, so to speak, about the whole situation. The way he explained it to me there was a lot of people up there and he was a little bit worried about his existence. That's how it come across to me.

Shears denies that his conversation with Sergeant Charles occurred in the terms described by Charles. Shears says that Charles has confused the information he was given concerning the incident in question with comments made by Shears about events which had occurred in 1992.

Shears denies telling Charles there had been a confrontation with drug smugglers. He also denies that he told Charles that the seized vehicle was hidden in the bush. He further denies telling Charles that he had confiscated automatic weapons on this occasion, but admits that he told Charles that an automatic weapon had been confiscated 12 months previously.

Shears concedes that he could have told Charles, "I'd like to sort them out." He further concedes telling Charles that he had previously been told by police to return weapons and vehicles.

Significantly, Shears concedes that he asked the Army patrol for assistance, even though there is no reference to this request in his report. He also concedes telling Charles that he was armed with explosives, even though he denies that he was so armed.

6.5 SHEARS RETURNS TO COOKTOWN

On the morning of Friday 12 November 1993, Shears, Flinders, Monaghan, Stanton and Mr and Mrs Teece, all inspected the seized vehicle.

Ronald Teece noticed a chainsaw amongst what he describes as "gear scattered in the back." Both he and his wife, Patricia, noticed that the "tie bar" behind the cabin was bent backwards on the passenger side of the vehicle. In the opinion of Patricia and Ron Teece, it looked as though the bar had collided with something such as a low tree branch.

Flinders also noticed, for the first time, the damage to the bar. He does not know if it had been caused while the vehicle was driven by Shears.

There was apparently no discussion about the damage to the vehicle. Stanton does not recall seeing any structural damage to the vehicle.

Shears testified that any damage to the frame or bodywork of the vehicle occurred prior to his seizure of the vehicle.

Stanton says that after inspecting the vehicle, he confirmed with Shears the advice he had given the previous evening, and accordingly, left Shears to drive the seized vehicle to Cooktown.

Stanton may be mistaken in this regard, because Ronald Teece secured the vehicle and its contents in the shed at Lakefield. This, according to Teece, was carried out in accordance with the instruction of Stanton, to "keep an eye on the vehicle and if anybody asked say nothing". According to Teece, Stanton explained that "there could be complications over it". Teece's understanding of his role is that he was to say and do nothing.

Stanton conceded in testimony that he instructed Ronald Teece that the reporting of the incident would be undertaken by him upon his return to Cairns.

According to Shears, having determined to leave the seized vehicle at Lakefield, he drove the departmental vehicle to Cooktown, via Hopevale where he dropped off Flinders and Monaghan.

Upon arrival at Cooktown at about 11.45am, on Friday 12 November 1993, Shears proceeded to the police station where, he claims that he spoke to Detective Senior Constable Darren Somerville about, what Shears termed, "a bit of a breakdown in law and order" at Cape Melville. Shears suggested that Detective Sergeant Gavin Ricketts of the Fauna Squad should travel to the area and, with his powers and authority, "help sort it out".

Somerville recalls very little of his contact with Shears on 12 November 1993, other than it concerned the seizure of a motor vehicle. Somerville claims he walked into the Cooktown Police Station to find Shears speaking to Meadows. The conversation proceeded mainly between Shears and Meadows, while Somerville attended to other matters.

Somerville did not feel the need to take any action as a result of what Shears had reported. In particular, Somerville cannot recall Shears requesting that he contact Ricketts or the Fauna Squad.

Somerville's diary for Friday 12 November 1993 contains the following relevant entry:

T.U.W. (take up with) Pat SHEERS (sic) re offences committed Cape Melville Nat. Park.

A corresponding entry by Somerville in the Cooktown CIB occurrence sheet for the shift 9.00am to 5.00pm Friday 12 November 1993 records:

Take up with Pat SHEERS (sic) re activities in Cape Melville National Park. Info obtained from SHEERS however he is known to exaggerate and is not considered overly reliable. Info surrounds possible crops and taking of foxtail palms from the area. SHEERS has not actually seen any unlawful acts however just KNOWS it is happening. SHEERS employed by National Park. Further information that SHEERS had 'seized' a motor vehicle in the park and (sic) hidden it. Vehicle reported as stolen on morning of 13/11/93 and matter sorted out by Sgt MURPHY. Fauna Squad contacted and to attend. Detailed statement taken from SHEERS by S/Const. MEADOWS all info obtained from SHEERS to be treated with caution.

According to the Cooktown Police Station occurrence sheet for 12 November 1993, Senior Constable Meadows was rostered for duty during the shift 6.00pm to 2.00am. However, Meadows resides in a residence at the rear of the Cooktown Police Station and saw Shears arrive in a departmental vehicle. Meadows walked over to the police station thinking that Shears had taken the seized vehicle back to Cape Melville in according with the advice he had given Shears the previous day.

According to Meadows, Shears asked if he could use the telephone and they both went inside the police station. Meadows asked Shears: "How did you get on with that car?" Shears replied: "It's at Lakefield, locked up at Lakefield."

Shears asked if he could use the telephone. Shears did not state whom he wished to call, but Meadows says that Shears showed him a piece of paper on which was written a telephone number, which Meadows did not recognise. During the subsequent telephone call, Shears turned to Meadows and said, "He wants to talk to you about this." Meadows then took the telephone and realised Shears had been speaking to Acting Inspector John Hartwell, Officer in Charge of the Cairns Drug Squad. Hartwell requested Meadows to speak with Shears and furnish a report.

That afternoon or the following day, Meadows prepared a report in the form of a chronological summary of events according to Shears' diary, commencing on Tuesday 26 October 1993 and concluding on Friday 12 November 1993. The diary entries were supplemented by Shears' responses to questions put by Meadows, and with Meadows' own observations and comments.

While Meadows' report notes that Shears had noticed three firearms and a chainsaw prior to confiscating the vehicle, Shears, according to Meadows, did not suggest that the presence of those items was the reason for his seizure of the vehicle. Although not recorded in his report, Meadows claims that during his telephone conversation with Shears the previous day, and again, whilst speaking with Shears on 12 November 1993, he asked Shears why he had the vehicle and Shears had said, in effect, that he had had enough of people taking foxtail palm seeds and he wanted to "teach the bastards a lesson".

Meadows says that he considered it important in his report to Hartwell "to try and paint a picture of Pat Shears more or less just the way he works". In this regard, Meadows reported that Shears:

.....set up a road block on two of the three tracks that traverse the park. Shears also stated that he set up wheel traps using lengths of 3 x 2 timber with 2" nails which were buried in the sand on the tracks beyond the road closures.

To this, Meadows added his personal comment: "I don't know where he gets the authority to close the tracks or to set wheel traps."

Another incident reported by Meadows was, that on 9 November 1993 Shears:

...Intercepted grey Nissan travelling south which had entered park on previous Sunday. Occupants stated that they had been fishing in the Muck River (Shears stated that he had intercepted the vehicle pretending to be a Customs Officer. He stated that he did this because no one stops for the National Parks officers).

Meadows' report indicates that although Shears did not sight or approach the occupants of the seized vehicle, he:

chose to take the located Landcruiser and leave the park, leaving whoever was using the vehicle abandoned in the park with no vehicle. Shears then travelled to Kalpowar Station from where he phoned the Cooktown Police. Shears was advised by police that it was believed that he had no power to seize the vehicle and that he should return it to the park from where he removed it. Shears apparently then took the vehicle further south and left it at the Lakefield Park ranger's station ignoring the advice from police.

Finally, by way of personal comment, Meadows reports:

In my opinion Shears is a bit of a 'cowboy' who thinks in his own mind that he is on to something big. From my experience not much credence can be placed in information supplied by Shears who in the past has provided police with information that is outdated and inaccurate. Shears has always stated to police that a drug crop can be located at location 'X' but when questioned as to whether he has actually sighted same he says no but believes that one would have to be there because of the water supply in the area.

The only thing that concerns me is that Shears has removed someone's vehicle from the park without their (sic) knowledge and in effect has left a person or persons abandoned in the middle of nowhere.....

When asked by counsel assisting to explain the picture he was trying to paint for Acting Inspector Hartwell, Meadows stated:

.....Oh, don't get me wrong - Pat's a very capable bushman. He's very good in the bush. But he seems to go off, in my opinion, half-cocked sometimes the way he does things. I've had experience with Pat now for three years, probably a bit more than three years, and he sometimes will - in my experience he does something and

then, when he's halfway there, he's sort of - it's like opening your mouth before thinking about it. He'll do something and then halfway through he'll do something different to try and justify what he's done the first time.

.....

...You know - Pat's harmless. He's just - I think he's just trying to - my other impression of him is he - he is sort of like this person that wants to be a policeman but can't be a policeman, you know what I mean? He - he's trying to do good, but sometimes he's not doing it - you know - he exaggerates things and - like, for instance, the story that I got told from Johnny Hartwell when I spoke to him on the phone was that somehow the word had got back down to Cairns there that World War Three had started at Cape Melville; that there was - the Air Force was being shot at, and people getting shots fired over their heads left, right and centre. And when I sat down with Shears this day and took this report, from my conversations with Shears it appeared that, rather than multiple shots being fired at everybody, it sounds like Charlie Martin's reported a shot fired in his direction.

Meadows qualified his comments about Shears, pointing out that any criticism of Shears' conduct was not directed at his personal traits, but at his lack of training. In this regard Meadows testified:

.....I still regard Pat Shears as a very competent bushman and good - but I just felt that he didn't have the - like, he had a lot of good ideas. I still don't think that he had the - the necessary training or support to - to do the job - what he was doing, like, powers to seize vehicles, powers to do this, powers - he just didn't know where it came from. And it appeared to me that National Parks had just picked up Pat Shears, said, 'You're a good bushman. There you are. Put a ranger's uniform on. You're a ranger. Go and be a ranger,' without telling Pat what he had to do or where he had the powers to do things.

After obtaining from Shears details of the circumstances surrounding the confiscation of the vehicle, Meadows went on to complete the report to Hartwell later that same evening. Meadows says he is not certain whether these events occurred on Friday 12 November 1993 or Saturday 13 November 1993. The report bears the date 13 November 1993, but Meadows says that this might be explained if he did not print the document from the computer until Saturday 13 November 1993 and the computer automatically inserted the date.

According to Shears, while at Cooktown Police Station on Friday 12 November 1993, an inspector of police from Cairns telephoned and spoke with him. Shears says that the police officer had sounded "pretty upset over something" and had asked whether

someone had been pointing guns at him (Shears). Shortly after, Shears was asked to hand the telephone over to Senior Constable Meadows.

Other enquiries suggest that the inspector of police to whom Shears spoke was Acting Inspector Hartwell. There must be considerable doubt as to whether Shears spoke to this officer on Friday rather than Saturday for the reasons set out below.

Shears remained in Cooktown overnight on Friday 12 November 1993, apparently oblivious to the chain of events unleashed by his actions the previous day.

6.6 NEWS OF SHEARS' SEIZURE OF THE VEHICLE REACHES CAIRNS

Sergeant Charles arrived in Cairns late on the morning of Friday 12 November 1993. He reported his encounter with Shears to his Operations Officer, Major Mitchell, who in turn, telephoned the Cairns Drug Squad and outlined the incident as reported to him by Charles.

According to Harris, at about 4.00pm to 4.30pm on that Friday afternoon, he received a telephone call from someone with the Army, either Lavaring or Charles, who informed him that one of two Army patrols had returned from the Cape Melville area and reported that there was some concern about a meeting which had occurred between Shears and a patrol at Lakefield or Kalpowar Crossing. The person reporting to Harris declined to go into detail, pending the return and debriefing of the second patrol later that afternoon. According to Harris, he was given an undertaking that he would be again telephoned when more details were to hand, but such call never eventuated.

Just prior to 3.00pm on Friday 12 November 1993, acting on the information provided by Sergeant Charles, Chief Superintendent Galway of the Queensland Police Service Far Northern Regional Office arranged for Charles to attend the Regional Police Headquarters, which Charles did at about 3.00pm. Charles there briefed Acting Inspector Hartwell, the Acting Regional Crime Co-ordinator, in respect of his encounter with Shears the previous evening. According to Hartwell, Charles described Shears as "babbling on very quickly" about shots being fired at him and his two Aboriginal rangers in the Cape Melville area and of the presence of firearms in a vehicle which Shears had confiscated. Charles is also said to have reported Shears'

request for Charles to return with him to Cape Melville to assist in armed confrontation with the offenders.

On the basis of the information provided, and out of concern for the safety of Shears and the two Aboriginal rangers, whom he believed to have returned to Cape Melville, Hartwell, in consultation with Galway, commenced arrangements to have the Queensland Police Service Special Emergency Response Team (SERT) and the Bureau of Emergency Services' helicopter placed on standby.

While speaking with Charles, Hartwell telephoned Harris and informed him of the information he had received from Charles. Hartwell was endeavouring to ascertain if the DEH had heard from Shears or, if he was regarded as missing. According to Hartwell, Harris could give very little, if any, information, suggesting instead that Hartwell contact Wellard.

Apart from recalling the fact that there were telephone conversations that afternoon, Harris' recollection of the sequence of calls, the identify of persons he spoke with, and the nature of information he was provided, is confused.

Hartwell says he telephoned Wellard at about 4.30pm and informed him of Charles' allegations. According to Wellard's testimony, Hartwell explained that:

.....he had a soldier with him and that apparently one of our rangers had taken a vehicle in Cape Melville National Park, had flagged down the soldier's party, requested armed assistance because there'd been exchange of gunfire and - and - you know - the general description was that Third World War had broken out in Cape Melville, and here was a soldier down with the police saying, 'There's a ranger up there who has taken a vehicle. He didn't want us to tell the police because he's hidden it in the bush and the police have made him give vehicles back in the past, but my commanding officer said I should come and tell you.'

Either Harris or Wellard, Hartwell is unsure which, commented at that stage that Shears was "a bit of a loose cannon who had his own way of dealing with things".

Significantly, there was no suggestion to this point, that Hartwell had spoken to Shears or Meadows at Cooktown Police Station as is suggested on the accounts of both Shears and Meadows. Indeed if he had, his decision to place SERT on standby would have been unnecessary as he would have known that there was no danger of armed interaction between Shears and the owners of the vehicle.

This supports the conclusion that Hartwell spoke to Shears or Meadows on the following day.

6.7 THE INITIAL RESPONSE OF THE DEPARTMENT OF ENVIRONMENT AND HERITAGE

As this was the first Wellard had heard of Shears' actions of the previous day, he informed Hartwell that he would contact Kelly and Harris to try to ascertain more about Shears' actions.

Moreover, as Wellard had found out about the matter "by accident", over 24 hours after the event, and being aware of his uncomfortable professional relationship with Harris, Wellard harboured some ill-feeling. He testified that his immediate thought was:

.....I've been set up. Probably if one looks at that in the cold hard light of day now, it was an over-reaction, but you have to remember that I'd been up to Iron Range the day before with Mr Harris, and he had clearly - he was clearly uncomfortable with the decision I'd made up there about allowing some Aboriginal people to establish a camp in the National Park, even though the land on which I allowed them to establish the camp, was land that he had identified, could be exchanged with them for other land which was of higher conservation purposes. I suppose I was already primed on the Thursday and Friday that he was upset - not happy with my decision.....

Wellard sought advice from Kelly and Harris. Kelly recalls Wellard informing him that Cairns Police had relayed a report from an Army patrol claiming that Shears had requested armed assistance, seized a vehicle at Cape Melville and exchanged shots with drug smugglers.

Wellard, in the presence of Kelly and Harris, telephoned Hartwell and held a telephone conference with a view to sharing further details. Wellard also directed Harris and Kelly to make urgent contact with Shears, to find out what had occurred and to instruct Shears to return to Cairns.

Wellard says, based on the limited information available, his immediate concerns were threefold:

- the safety of Shears and the two Aboriginal rangers;

- his belief that Shears had not been appointed a "Field Officer", and therefore did not have the authority to seize the vehicle;
- the safety of the occupants of the seized vehicle who, irrespective of what they were doing in Cape Melville National Park, appeared to have been left stranded in the park, potentially exposing the DEH to criticism and/or litigation.

In accordance with Wellard's instruction, Kelly contacted Lakefield Ranger Station late on Friday afternoon. He spoke with Ronald Teece who, although initially declining to say anything in response to Kelly's request for information, ultimately revealed that Shears had left the vehicle at Lakefield and proceeded to Cooktown.

According to Truelove (Shears' Vietnam veteran friend at Cape Tribulation), late on Friday afternoon, he received a call from Harris, who requested Truelove to pass a radio message to Shears to come out of Cape Melville immediately. Before Truelove could make radio contact with Shears he received a telephone call from him.

At about 5.00pm, Harris telephoned Flinders at Hopevale. Flinders advised Harris that Shears had dropped him off at about 10.00 o'clock that morning and was heading to Cooktown Police Station before returning to Cape Melville. Flinders also took the opportunity to advise Harris that he and Monaghan had told Shears that they wanted to leave Cape Melville because they were frightened of people discharging firearms and other illegal activities in the park. He says that he told Harris "the place is too hot", and that although he had never left a job previously, he "quit". He says that he told Harris that he, Monaghan, and the rest of the traditional owners did not want anything more to do with it "until the place is cleaned up".

Later that afternoon, as a result of receiving the message from Truelove, Shears telephoned Harris from Cooktown.

According to Harris, at the time of Shears' call, Wellard was still in the office and he was aware that Shears was on the telephone. Harris testified that Wellard indicated to him that he wished to speak with Shears. Harris says that apart from confirming Shears' safety and that of Flinders and Monaghan, he did not discuss anything at length with Shears because "we were already at, if you like, panic stations as to where he was and to what had happened (and) Greg Wellard had wanted to talk to him". Harris says he conveyed to Shears Wellard's instruction that Shears should return to Cairns as soon as possible to report to Wellard on what had occurred. More

importantly, Harris claims that he then either transferred the telephone call to Wellard, or that Shears then hung up and almost immediately telephoned Wellard.

According to Harris, he, in turn, relayed to Kelly and Wellard the information he had been given by Shears, which indicated that things did not appear to be as bad as had been believed from first reports. In particular, he confirmed that Shears, Flinders and Monaghan were not in any danger.

Shears recollection of this contact with Harris is poor. He recalls that he telephoned Truelove, his contact at Cape Tribulation, to advise him that as he was in Cooktown there was no need for him to monitor the radio. According to Shears, Truelove told him that Harris had called and that Shears had better give Harris a call. Shears also recalls that Truelove told him that "Peter sounds a bit worried".

According to Shears, after he left the Cooktown Police Station, he telephoned Harris. During this conversation, Shears says he could hear Wellard in the background telling Harris to ask him questions. His best recollection of the telephone conversation was that the first concern Harris had was for the safety of himself and his two colleagues. He advised Harris that he was safe and he had dropped Flinders and Monaghan at Hopevale. Shears says that he did not inform Harris that he had confiscated the vehicle because Harris already knew about it.

Shears says he believed from the conversation he had with Harris, that Harris had received inaccurate information about the incident. He believed that Harris may have gained the impression that people had been stranded in the park, as Harris raised the possibility of a plane being made available to collect the people up there. Shears says he also has a vague recollection that the issue of a helicopter was discussed.

Shears says that the name, Barbagallo, was never mentioned by Harris and he was not told that any officer of the Department knew who owned the vehicle. Shears believes that Harris advised him to return to Cairns on Wellard's instructions.

Shears says that when Harris had told him that Wellard was in the room, he was not prepared to go into detail about the matter, as he believed that Wellard would interfere with the prosecution of the people from whom he had taken the vehicle. Shears states that he gained the belief whilst talking to Harris, that his job was on the line.

Later that night, Shears again telephoned Harris, on this occasion at Harris' residence. Shears testified that the conversation was as follows:

I think at first I said, 'What's Wellard up to?' and - the trouble is, I can't - we would have discussed what happened; then when Peter could talk more freely, I would have told him about the vehicle seizure, and I said, 'You know, they're a bunch of crooks whoever they are' - they're the words I used - and he said, 'Oh, there's a bit of a flap.' He said, 'The Army have told the police something.' I said, 'What have they got to' - you know - and he said, 'The Army has got some' - he said, 'It's changing by the minute. There's four different reports already coming in that I'd' - the way that it had been reported was that there was a big shoot-out in the park and, oh, just people running round with guns, you know, all this sort of thing.

BARNES: That you had been involved in the exchange of fire between people. That was the story that had got back to Wellard? --- Yes, yes.

Harris testified that during this second telephone conversation, Shears described the events surrounding his confiscation of the vehicle. Furthermore, Shears stated that there was no cause for concern about the welfare of the occupants of the seized vehicle because they had access to a second vehicle at Bathurst Bay, which was approximately six kilometres away from the point of seizure.

Harris says that he did not communicate details of this second conversation to Wellard, either that night or the next day, because he did not think there was anything in particular arising from the conversation that needed to be brought to Wellard's attention.

Wellard, Kelly and Shears did not support Harris' claim that Wellard spoke with Shears on the evening of the Friday 12 November 1993, Harris' assertion that he conveyed to Wellard information gleaned from the first telephone conversation with Shears.

Nor does Wellard agree with Shears' claim that during Shears' telephone conversation with Harris, he was in the background telling Harris to ask Shears particular questions.

According to Wellard, by the time he departed his office late that afternoon, he possessed no more information about the Cape Melville incident than that which had been conveyed to him by the police and the Army. That is, Wellard remained unaware that the seized vehicle was secured at Lakefield, that Shears had briefed Stanton, or that Shears was in Cooktown and had reported to Cooktown Police Station. So far as the attempts to contact Shears were concerned, Wellard knew only

that Harris had been in contact with someone at Cape Tribulation who was believed to have radio contact with Shears.

Kelly asserts that it was not until the following morning, Saturday 13 November 1993, that he received a telephone call from Harris, who advised that he had made contact with Shears.

Wellard claims that throughout Friday evening, he had a continuing concern over the fate of the people whom he believed to be still stranded in Cape Melville National Park. That fact, and his disquiet as to the legality of Shears' actions, meant that Wellard was already considering the possibility of providing the owners of the seized vehicle with alternative transport.

Kelly corroborates Wellard's claims as to his concerns.

Wellard says, that during a telephone discussion with Kelly at about 7.15pm on the Friday evening, he instructed Kelly to make inquiries about the availability of alternative transport. Wellard does not recall if he made any specific suggestion, or whether there was discussion about the Bureau of Emergency Services' helicopter.

Kelly confirms that he suggested to Wellard the option of the Bureau of Emergency Services' helicopter, but says he took no action in this regard on the Friday night because at that stage the whereabouts of Shears, Flinders and Monaghan, and for that matter the occupants of the seized vehicle, was still unknown.

In a sense, Harris corroborates Kelly in this regard, for Harris testified that Kelly informed him on Friday evening:

...that it appeared there is something unusual in this in that we might have to take action to hire a vehicle or a helicopter to rejoin . . . the parties to their vehicle . . .

According to Wellard, on the evening of 12 November 1993, he received a telephone call at home from Kelly, who suggested that Wellard should contact Acting Inspector Hartwell and relay the Department's concern over the fate of the seized vehicle - the location of which Wellard says he was still unaware. Wellard says that at about 8.30pm, he telephoned Acting Inspector Hartwell to discuss what should be done about the seized vehicle, and Hartwell advised he would contact Cooktown Police Station the following morning to decide what action should be taken.

Hartwell believes however, that Wellard telephoned on the Friday evening to advise that Shears and his companions had arrived safe and well in Cooktown.

Wellard does not agree with Hartwell's recollection of this telephone conversation. Wellard says he had not been told on Friday evening that Shears was at Cooktown, and believes that he first learned of Shears' presence at Cooktown when he telephoned the Cooktown Police Station the following morning.

Wellard's recollections on this point are not consistent with a filenote prepared by him on Monday 15 November 1993, which indicates Kelly and Harris contacted Shears via scheduled radio contact at 5.30pm on the Friday.

For his part, Hartwell claims that plans for the involvement of the SERT were abandoned after he learned that Shears had not gone back to confront the vehicle owners. Instead, believing that the occupants of the seized vehicle were probably stranded in the Cape Melville area, Hartwell was considering instructing Cooktown Police, the following morning, to drive into the Cape Melville area in an attempt to locate the occupants of the seized vehicle.

Harris claims that on the Friday evening, Kelly had suggested to him that:

...we'd stumbled onto something big . . . Greg (Wellard) had been advised by people in Brisbane of this somehow secret event that we'd blundered into.

Harris says that Kelly reported Wellard as having declared, "there's more to this than meets the eye."

Kelly confirms having had a telephone conversation to this effect with Harris, but declares that it did not take place until the following morning, that is, Saturday 13 November 1993. Kelly explains that his comments were pure speculation, about which he and Harris joked privately. The speculation was brought about because of the bizarre nature of the scenario unfolding.

Wellard cannot recall making any comment to Kelly to the effect that "there's more to this than meets the eye." As Wellard points out, it is unlikely that he would have said anything to Kelly which might have led Kelly to believe that Shears had stumbled across some clandestine activity because, as at close of business on Friday evening, Wellard had no information on which to base such a comment.

Not surprisingly perhaps, there remains some degree of disparity in the various accounts of the events of Friday 12 November 1993.

For example, both Shears and Meadows claim that Shears spoke to Acting Inspector Hartwell from Cooktown Police Station on Friday 12 November 1993. Shears says

that this occurred when Hartwell made a telephone call to Cooktown Police Station. Meadows says that Shears instigated the call, and subsequently handed the telephone to Meadows.

Curiously, Hartwell does not claim to have spoken with Shears at all on Friday 12 November 1993 - and Hartwell's subsequent actions in briefing DEH in accordance with the Army reports, and in making arrangements for deployment of SERT, are obviously inconsistent with Hartwell having knowledge that Shears was in Cooktown on that day.

If Wellard's account is correct, then Hartwell's telephone contact with Shears must have occurred on Saturday 13 November 1993 and not as otherwise suggested, on Friday 12 November 1993. Hartwell's recollection is not inconsistent with contact with Shears occurring on Saturday. The date shown on Meadows' report also adds credence to the suggestion that Meadows was not directed by Hartwell to prepare the report until Hartwell had spoken with Shears on Saturday 13 November 1993.

It is impossible to reconcile Hartwell speaking to Shears on Friday 12 November 1993 and not then immediately relaying the fact of such a call to the Army and DEH. Logically, Hartwell would have taken steps to cancel the deployment of SERT on Friday afternoon, had he been aware on Friday (from speaking personally with Shears) that Shears was at Cooktown.

Logically too, had Hartwell spoken to Shears on Friday, he would have communicated that fact to Wellard and not received the information from Wellard, as would be the case if Hartwell's recollection of the Friday evening telephone call from Wellard is accepted.

Therefore, the more logical and better view is that Hartwell's conversation with Sears did not occur until Saturday 13 November 1993 and that the date shown on Meadows' report was in fact the date that the report was prepared.

In any event, the more important aspect of the evidence on this issue, is that Hartwell asserts that he did not inform Wellard of the identity of the owner of the seized vehicle on Friday 12 November 1993. Neither Harris nor Kelly suggest that anyone in the office knew on Friday who owned the vehicle

There is therefore no evidence to contradict Wellard's claims that his concerns at this stage were in no way influenced by knowledge of the identity of the owner of the seized vehicle.

6.8 WELLARD ADVISES THE MINISTER'S OFFICE OF THE CAPE MELVILLE INCIDENT

Damien McGreevy is a Senior Ministerial Policy Adviser to the Minister for Environment and Heritage. According to McGreevy between 5.00pm and 6.00pm on Friday 12 November 1993, he took a telephone call from Wellard, who advised that:

... an incident had occurred which may come up in the media that he felt the Minister's office should be aware of. He indicated that there had been an incident in Cape Melville National Park involving a ranger also involved with Aboriginal rangers. He mentioned there had been an incident involving firearms, shots being fired. He mentioned the background to the ranger having had Vietnam war experience. He indicated that he did not have full details at that time but would keep me informed if the matter developed.

McGreevy asserts that there was no reference by Wellard to the seizure of a motor vehicle, nor that concern was held for the welfare of people stranded in the park. McGreevy also claims that there was no mention of any names.

It is accepted protocol, according to McGreevy, for Regional Directors to forewarn the Minister's office of matters which may attract media attention or may result in someone contacting the Minister's office for comment. McGreevy relayed Wellard's advice to the Minister that evening. Although uncertain, McGreevy believes that he also advised the Director-General, Dr Craig Emerson, of Wellard's contact. According to McGreevy, neither the Minister nor Dr Emerson expressed interest in the incident because they were at the time both fully preoccupied with an industrial waste issue involving Ace Waste at Willawong.

Emerson confirms that some time between 5.00pm and 7.00pm on Friday 12 November 1993, McGreevy informed him in scant terms that:

...something's gone on up in Far North Queensland. It involves Aboriginal people, gunshots and a ranger in a National Park.

Emerson asserts there was no mention of the seizure of a vehicle or of the identity of any of the persons involved. Emerson recalls that he was dismissive of the information at the time because of his pre-occupation with the Ace Waste issue.

McGreevy had no further contact with Wellard concerning this matter during the relevant period.

Wellard confirms in a general sense his telephone contact with McGreevy on 12 November 1993. He does not recall attempting to contact Emerson until the following morning, Saturday 13 November 1993.

6.9 DAVID BARBAGALLO AND ATKINS FLY TO FAR NORTHERN QUEENSLAND

On the day following the seizure of the vehicle by Shears, David Barbagallo and Dennis Atkins flew from Brisbane to Cairns. All parties deny there was any communication between members of Paul Barbagallo's group and David Barbagallo or Atkins in the intervening period. Paul Barbagallo denies he had a radio in the second vehicle and there is no evidence that contradicts the claim of Dennis Atkins and David Barbagallo that they knew nothing of the incident when they arrived in Cairns.

Upon arrival of their flight at Cairns, David Barbagallo and Atkins proceeded directly to Cairns Four Wheel Drive Hire and collected the vehicle which had been booked the previous day through American Express Travel. The rental agreement, which was signed by David Barbagallo, contains the following material particulars:

DATE OUT:	12/11/93
TIME OUT:	1.00pm
DAYS ALLOWED:	2 Days
AREA WHERE VEHICLE IS TO BE USED:	Cairns - Cooktown - Cairns

After collecting the hire vehicle, David Barbagallo and Atkins drove to Cooktown using the inland route via Mareeba. They arrived in Cooktown late in the evening of Friday 12 November 1993. David Barbagallo believes it was "six-ish". They checked-in at their pre-booked accommodation at the Sovereign Hotel and awaited the arrival of Paul Barbagallo.

An American Express Business Travel Statement of Account dated 10 January 1994 records that David Barbagallo and Atkins were accommodated at the Sovereign Hotel on 14 and 15 November 1993. The Sovereign Hotel's invoice/statement also shows that David Barbagallo and Atkins stayed overnight on the evening of 14 November 1993.

The dates shown on these accommodation invoices are clearly incorrect. All other evidence establishes that they are inaccurate. The operators of the Sovereign Resort Hotel have explained that their accounting procedures were responsible for the error.

A document supplied to the Commission by the Sovereign Hotel noted the date of arrival of David Barbagallo and Atkins as "12-11-93", and their date of departure as "13-11-93". A further document, in the form of an invoice in respect of a breakfast partaken by David Barbagallo and Atkins, was prepared on the morning of 13 November 1993 and records that the breakfast account was processed at a cash register at 10.36 am that morning.

The Commission has also confirmed that American Express Travel forwarded a facsimile to the Sovereign Hotel on 11 November 1993, reserving accommodation for David Barbagallo and Atkins for the evening of 12 November 1993.

David Barbagallo describes the arrangement to meet his brother as a "loose" one. He says he had advised his brother that he and Atkins would be staying at the Sovereign Hotel and that it was agreed that if Paul Barbagallo reached Cooktown that evening, he should try to make contact. Alternatively, in the event that Paul Barbagallo did not arrive on Friday evening, they would meet early Saturday morning.

Atkins recalls that he had expected to meet with Paul Barbagallo on the Friday evening and that David Barbagallo became increasingly annoyed about the failure of his brother to appear.

6.10 DAVID AND PAUL BARBAGALLO MEET IN COOKTOWN

Atkins says that at about 5.00 o'clock the following morning, he knocked on the door to David Barbagallo's hotel room - as he had been requested to do the previous night by David Barbagallo. In the result, David Barbagallo told Atkins to go away - which he did, returning at 6.00 o'clock. At that time, he and David Barbagallo packed and went to the balcony of the hotel where they commenced breakfast. According to Atkins, by this time he and David Barbagallo had resigned themselves to the apparent non-arrival of Paul Barbagallo and were planning on finding their way to Starcke Holding unaided.

At the same time, Paul Barbagallo and Uechtritz were still at the River of Gold Motel. According to Uechtritz, Paul Barbagallo was unsure of his brother's whereabouts and made at least one telephone call trying to locate David Barbagallo.

Paul Barbagallo says that at about 7.00am on Saturday morning, he and Uechtritz were driving past the Sovereign Hotel when he observed a four wheel drive hire vehicle and at the same time heard his brother whistle. Paul Barbagallo and Uechtritz then went into the Sovereign Hotel where they found David Barbagallo and Atkins in the process of eating breakfast.

David Barbagallo says that he had no prior notice that Uechtritz would be accompanying his brother.

When giving evidence before the Commission, Atkins asserted that he could not recall David Barbagallo mentioning Uechtritz's name prior to meeting Uechtritz on the hotel balcony. However, when Atkins had previously been interviewed by Commission officers, he had stated that David Barbagallo had advised him on the Friday evening that Paul Barbagallo would have a friend with him. When his previous assertion was put to Atkins during his evidence, he clarified his evidence by saying that it was either on the Friday evening or Saturday morning that he learned that Uechtritz was accompanying Paul Barbagallo.

After exchanging pleasantries, Paul Barbagallo told David Barbagallo and Atkins that one of his four wheel drive vehicles had been stolen on Thursday 11 November 1993, when he and his companions had gone pig shooting and had driven into Cape Melville National Park. Paul Barbagallo is said to have explained that upon leaving his vehicle to go for a walk to take some photographs, the party returned to discover the vehicle was missing.

When David Barbagallo testified before the Commission, he gave the following account of the initial conversation with his brother:

PEARCE: He told you his vehicle had been, to use his expression, 'ripped off'? ---
Yes.

What happened then? --- Well, we had some initial discussion about it and, you know, they said they had seen another campsite and so they thought that, you know, some cowboys had ripped it off - that was one of the possibilities. You know, I asked him what was in the vehicle and they said, 'You know, guns.' And, you know, we canvassed the possibility of National Parks and Wildlife, you know, taking it and

BARNES: Who raised that possibility? --- They did, because they said, you know, on the walk out they for the first time saw the sign that said, 'No vehicles'. You know, it was one of those little signs, because when he'd gone in, he'd gone in on a,

you know, slightly different track because he'd seen the barricade or something. I mean, you know, I don't - I don't know - there's so much - I've heard so much since, that I just worry about the overlap of my evidence from what I actually remember at that time.

.....

PEARCE: Had either Paul Barbagallo or Gordon Uechtritz told you what they were doing at the park? ---- Yes, they told us they had gone in - well, over breakfast they said they'd - you know, they'd been pig shooting. They were coming back in and Paul said, 'Come on, I'll show you where this great stand of foxtail palms is and we'll photograph it,' and they went in, and there was some discussion about the fact that - they had two cameras and halfway towards walking towards this thing, Paul said - I think it was Paul's camera - he said, 'Oh, I've forgotten my camera,' you know. And he told me that in the sense that he said, 'I was going to go back and get it, and if I'd gone back to get it I probably would have sprung this bloke doing it, but, you know, we decided we had one camera and that would be enough,' and so they continued on they took photographs.

Counsel assisting questioned David Barbagallo as to whether, during the initial conversation with Paul Barbagallo, he had enquired whether the party had been taking seeds from the park. David Barbagallo responded:

Whether I did it over breakfast or whether I took him aside discreetly and asked him subsequently I'm just not sure, but I established the fact very firmly in my own mind, because obviously that governed my actions from then on. You know, once I was confident that he hadn't done anything that could, you know, damage the Government and all the rest of it, then I was willing to obviously accompany him to the police station and all the rest of it.

.....

PEARCE: What are you saying, if he had indicated to you that he may have been there for the purpose of gathering seeds you may have acted differently? ---- Oh, yes, I would have cut him dead. I mean he knows the rules and I'd explained them to him before. I mean, the Government and my role with the Premier was far more important than any familial relationship.

During the course of an interview, Atkins told Commission officers that Paul Barbagallo had made no mention of firearms, a chainsaw, or dangerous drugs being in the missing vehicle. Equally, he could not recall any mention of the fact that members of the party had been taking photographs.

When Atkins subsequently gave evidence before the Commission, his account of Paul Barbagallo's initial comments varied slightly from the version he had given during the interview process. In this regard, Atkins testified that Paul Barbagallo had said that:

They had been in Cape Melville National Park and they'd gone off to take some photographs and when they came back the vehicle was gone, and he said they were really worried because there were guns in the vehicle. I didn't know who had taken it, so they were a bit worried that whoever had taken it might have, sort of, chased them, or something, and he said they then had to walk back to where the other vehicle was, which he said was a long walk.

6.11 DAVID AND PAUL BARBAGALLOS' FIRST VISIT TO THE POLICE STATION

Upon hearing Paul Barbagallo's account of the loss of his vehicle, David Barbagallo and Atkins agreed to accompany Paul Barbagallo and Uechtriz to the Cooktown Police Station to report the apparent theft of the vehicle. This they did at approximately 8.00am.

During the course of his interview with Commission officers, Atkins asserted that he had remained outside the police station while David Barbagallo, Paul Barbagallo and Uechtriz went inside. He stated that a short time later, the three came back outside with Sergeant Murphy who then, in the presence of Atkins, explained that the vehicle had been confiscated by a National Parks ranger. According to Atkins, Sergeant Murphy expressed doubt as to the authority of the ranger to seize the vehicle, and undertook to attempt to locate the ranger, whom he believed was still in Cooktown. Sergeant Murphy suggested that the group return to the Police Station at 9.00am, by which time it was proposed that Murphy would have contacted the ranger and arranged for him to speak with Paul Barbagallo.

When giving evidence at the investigative hearing, Atkins said he was unable to recall whether the other three went inside the building, or merely remained on the front steps outside the police station. He could not recall whether Sergeant Murphy spoke to the group in his presence or alternatively, whether he was merely told of what Murphy had said. Atkins acknowledges that his recollection of the events is poor, claiming that he did not take much notice at the time.

All other persons present at Cooktown Police Station place Atkins with the group standing at the front of the building. Apart from Atkins himself, nobody suggests that

Atkins was seated in a vehicle, standing beside a vehicle, or anywhere other than on the steps of the police station listening to the conversation.

Whether or not Atkins sat in the vehicle or was present for the conversation with Murphy matters little. It is clear however, that Atkins' recollection of the initial visit to Cooktown Police Station is, by his own admission, unreliable. His account of that matter is at odds with that of all other participants.

Sergeant Murphy's evidence to the Commission was to the effect that Paul Barbagallo was the only person to whom he was introduced and with whom he conversed during this encounter. It is Murphy's assessment, based on Paul Barbagallo's facial expression, that Paul Barbagallo was surprised when informed that his vehicle had been seized by a ranger. Uechtritz, David Barbagallo and Paul Barbagallo offer a similar account of this meeting with Sergeant Murphy.

Sergeant Murphy telephoned Shears at about 8.30am and advised him that the occupants of the seized vehicle had reported to the Cooktown Police Station and would be returning at 9.00am to meet with Shears.

6.12 DAVID BARBAGALLO AND ATKINS CONTACT EMERSON

After being informed by Sergeant Murphy that his vehicle had been seized, Paul Barbagallo and the others left the Cooktown Police Station and returned to his motel room, where a discussion took place concerning the seizure of the vehicle.

According to Atkins, Paul Barbagallo expressed surprise and concern over the incident and asked his brother and Atkins if they were aware of a ranger's authority to seize vehicles.

When David Barbagallo was first questioned by Commission officers, he stated that his immediate reaction on learning of the seizure of his brother's vehicle was one of concern for the potential embarrassment to the Government, that is:

that some cowboy had left five people in danger of their lives in a National Park and, given our training and our professionalism, we were concerned about the impact this might have on the Government.

David Barbagallo testified that in an effort to ascertain the extent of a ranger's powers, he telephoned his wife, Fleur Kingham, who is a solicitor. His wife was unable to provide an immediate answer, but undertook to look into the matter and call back.

At the same time, Atkins suggested that he might telephone Dr Emerson, Director-General, DEH in Brisbane, with whom Atkins has a professional working relationship. Atkins telephoned Emerson between 8.00am and 8.30am.

According to Atkins, Emerson was initially unaware that he was calling from Cooktown and presumed that Atkins was calling from Brisbane regarding a front page article appearing in that morning's edition of *The Courier-Mail*. Atkins says that after discussing the article which dealt with the Department's handling of a dispute with a commercial incinerator operator, he spoke to Emerson in the following terms:

The reason ... I'm ringing you is David Barbagallo and I are up in Cooktown. We're advancing a possible trip by the Premier. We were using Paul Barbagallo, David's brother, as a guide to get into Starcke and some National Park's people have seized one of his four wheel drives. I am just ringing to ask if you know what power, what authority they have for seizure and why they would seize vehicles?

According to Atkins, Emerson expressed uncertainty as to the scope of the ranger's powers, but advised Atkins that he thought they were extensive.

During the course of his telephone conversation with Emerson, Atkins in response to a query from Emerson, asked Paul Barbagallo whether he had fired shots at Cape Melville. Paul Barbagallo denied that he had, explaining that he had only been at Cape Melville for two days. Atkins explained to Emerson that there had been no "shoot-out" and that it was simply the case that the motor vehicle had been "confiscated".

Atkins says he then informed Emerson that the group was soon to return to the Cooktown Police Station where they would hopefully receive an explanation from the ranger concerned. Atkins said he would call Emerson again to advise of the outcome of that meeting.

Both Emerson and David Barbagallo (insofar as the latter claims to have overheard the telephone conversation) substantially corroborate Atkins' version of his conversation with Emerson. They are adamant that there was no suggestion by Atkins that Emerson might do anything to become involved or otherwise interfere in the matter.

Paul Barbagallo confirms that David Barbagallo telephoned Fleur Kingham to enquire as to the legality of the removal of the vehicle. He also confirms that Atkins rang Dr Emerson. Paul Barbagallo states that at the time he did not know who Emerson was - adding that he did not know Atkins either, until meeting him earlier that morning. Paul Barbagallo says he did not listen to Atkins' telephone conversation, although he recalls reference having been made to the firing of some shots. He believed that Emerson indicated to Atkins something about shots being fired in Cape Melville National Park three days previously.

Paul Barbagallo cannot recall any other calls being made from his motel room, with the possible exception of a second call to David Barbagallo's wife.

6.13 DAVID AND PAUL BARBAGALLO MEET SHEARS AT THE COOKTOWN POLICE STATION

6.13.1 Who was at the Meeting

At about 9.00am on Saturday 13 November 1993, in response to a telephone call from Sergeant Murphy, Shears went to the Cooktown Police Station. Shears said in evidence that he did not want to meet with the owners of the vehicle but that he went to the police station none the less.

According to Shears, when he arrived at Cooktown Police Station, Sergeant Murphy named "Paul Barbagallo from Upper Daradgee Road or somewhere in Innisfail" as the owner of the confiscated vehicle. According to Shears, this was the first time he had heard the name of the owner of the vehicle. Shears denies Meadows assertion that the name of the registered owner was supplied to him when he rang the Cooktown Police Station on the day he seized the vehicle.

Murphy claimed in evidence that he would have had a conversation with Shears in the absence of the Barbagallo group "just to find out for my own self what had actually transpired...". However, Murphy is unable to recall what, if anything, Shears told him. Murphy thinks he was advised at that point that Detective Sergeant Ricketts was on his way north and he (Murphy) therefore did not see the need to duplicate the process.

In an interview with Commission officers, Shears said that he was inside the police station with Murphy when "three blokes" walked in. Only two identified themselves: Paul Barbagallo and Gordon Uechtritz.

When he testified before the Commission, Shears says Murphy introduced Paul Barbagallo and Uechtritz but not the third man. At that time Shears did not know who the third person was, but subsequently assumed it must have been Dennis Atkins. Some months later, after viewing a video tape depicting David Barbagallo, Shears identified the third man as David Barbagallo. According to Shears, he never saw a fourth person with the group at the Cooktown Police Station:

According to Shears, the three men joined him and Murphy in Murphy's office.

Paul Barbagallo believes that he and Shears were the only persons introduced by Murphy, and adds that David Barbagallo at no time identified himself or the position he held. This is consistent with Shears' claim that he was not able to identify David Barbagallo until much later.

When interviewed by officers of the Commission and again when giving evidence before the Commission, David Barbagallo asserted that on the group's arrival at Cooktown Police Station all four men, including Atkins proceeded inside, where in the presence of all four a discussion took place with Shears.

It has been suggested that this assertion by David Barbagallo is at odds with an earlier account of events, recorded in a report provided by David Barbagallo to the Premier dated 30 November 1993. In that report David Barbagallo fails to mention Atkins' presence at the meeting with Shears at Cooktown Police Station. David Barbagallo there stated:

I subsequently accompanied my brother to the Cooktown Police Station where we had discussions with both the police officer and the National Parks and Wildlife officer, Mr Pat Shears . . .

During the course of his evidence to the Commission, David Barbagallo explained that his report had been prepared hastily in response to "outrageous" allegations made against him in Parliament. David Barbagallo asserts that the word "we" should have been used instead of the word "I", to begin the sentence and stresses that the report was not written with a view to the matter ending up in a Criminal Justice Commission inquiry.

Later in the same report of 30 November 1993, the following paragraph appears:

We left the police station and journeyed to Starcke Station where we inspected the site...

In light of all of the evidence and when taken in the context of the entire report, use of the word "we" in this paragraph should must be taken as including a reference to Atkins.

Atkins recalls that after arriving at the police station at 9.00am, a police officer, whom he believed to be Sergeant Murphy, invited Paul Barbagallo, David Barbagallo, Uechtritz and himself inside the building to talk with the ranger. Atkins says he walked in company with the others to a room where there was insufficient seating. Atkins says he stood by the door to the room and leaned on the door frame. He recalls that there were four or five chairs and a desk in the room. He estimates the room to have been 6 feet wide and 15 feet to 20 feet long. He is unable to recall whether or not there was a bookshelf, filing cabinet or telephone within the room, nor is he able to recall "whether the ranger was sitting down or standing up." Atkins does not recall anybody being identified by name.

For his part, Paul Barbagallo believes that Murphy and Uechtritz remained standing, while Shears, David Barbagallo and he were seated.

Uechtritz confirms the claim that Shears was already in Murphy's office when Paul and David Barbagallo, Murphy and he entered. On Uechtritz's account, he sat towards one end of the room to the right of Paul Barbagallo, and David Barbagallo sat on Paul's left, closest to Shears who, according to Uechtritz, appeared nervous and remained standing at the other end of the room.

Murphy and Uechtritz support Shears contention that Atkins was not present in Murphy's office during this discussion. According to Paul Barbagallo, Atkins had accompanied the group inside the police station but remained outside the door to Murphy's office whilst the meeting with Shears was in progress. According to Uechtritz, Atkins was left sitting on the steps outside the police station.

Further support for Shears' contention concerning the absence of Atkins comes from Constable Meadows, who claims that he arrived at the police station sometime after 8.00am that morning, intending to talk with Murphy. When he walked inside the building, Meadows noticed Murphy sitting at the desk in his office, with Shears sitting on one corner of the desk and, to the best of his recollection, three others seated in

front of the desk. Meadows did not disturb the meeting and carried on with other duties.

6.13.2 What Was Said And Who Said It

This meeting with Shears at Cooktown Police Station has been described as a discussion rather than a formal interview. It was not recorded.

There is an understandable variation between those present as to who made what statements. However, it is the effect of what was said, and the tone of conversation which is important. In these respects, the descriptions of the respective roles and temperaments of Paul Barbagallo, David Barbagallo and Uechtriz differ between Shears on the one hand, and all of the others who claim to have been present.

It appears that either Paul or David Barbagallo opened the discussion by asking Shears to explain why he had taken the vehicle. Shears stated that he had found firearms and a chainsaw in the vehicle and pointed out that it was a breach of the *National Parks and Wildlife Act 1975* to have possession of those things within a National Park.

The following extract is from the evidence of Paul Barbagallo:

PEARCE: Can you, as best you can, recall in the first person what was said when you went into the room. Were you introduced? --- Yes, I was introduced to him - to Pat Shears.

Was everybody introduced? --- No, I think I might have been the only one - no, I was the only one, definitely. That's right, yes.

...
...Well, what happened first of all - what was said first of all? --- I think I just asked him, 'Why did you take the vehicle?' And he seemed fairly agitated and nervous at the time, and he said, 'I just took it.' And I think David said, 'What, you just took it?' And (David) said, 'Is that departmental policy just to take a vehicle without notifying the owners?'

And what did (Shears) say to that? --- I can't remember.

...

Did David say anything else that you can recall? --- There was other things said but I can't recall. There was a little bit - I know Gordon said he wanted to make a complaint there and then about the way the ranger had acted, that he was very disappointed and he was not happy about it at all.

Wanted to complain to whom? --- To the ranger, that what he did was outright ludicrous, that he endangered people's lives.

Paul Barbagallo testified that Shears explained that shots had been discharged at a ranger some three days before the seizure of the vehicle. The following extract refers to Paul Barbagallo's evidence in this regard:

PEARCE: Did he give you that explanation very early? --- Yes, yes, that's right. After I said that, and he said he had taken it because his two black trackers, who he had left back down the track, were extremely scared that there was rifles in the vehicle. So when he explained that I sort of understood possibly why he did it. I can't imagine anyone being real brave when there is people with guns. So I sort of sympathised with him. At the time I was not initially angry with him but when his explanations - I was quite convinced that was legitimate enough reason for taking it.

I am sorry, can you give me the details of that explanation; what did he say that had happened with the guns? --- Apparently three days prior to when we were at the National Park, either someone shot a tourist - he told me it was a ranger, but since the media have got hold of it - - -

Tell me what he told you? --- He told me that someone had taken a shot at a ranger.

Not him, another ranger? --- Another ranger, that's correct.

And what did he say about coming across your vehicle the day he took it; something about Aboriginal trackers or Aboriginal rangers? --- He just said they were extremely scared because the - three days prior, there was, you know, obviously someone up there who's extremely gun happy.

Paul Barbagallo claims that he told Shears his party had been pig shooting and, unaware that they had driven onto the National Park, they had left the vehicle intending to take some photographs.

Paul Barbagallo also testified that he asked Shears where the vehicle was then presently located and was informed by Shears that it was in a lock-up at Lakefield National Park.

Paul Barbagallo's testimony continued:

PEARCE: What role did David play in the interview, or the conversation? -- He just asked those couple of -- one question that I remember was whether it was departmental policy to confiscate a vehicle without the knowledge of the owner. That's the only question I remember David asking.

What else did he say, do you recall? Did he ask about the return of the vehicle or anything like that? --- No, I asked where it was.

.....

Gordon Uechtriz' role was limited, was it, just to complaining to the ranger about his actions? --- As far as I remember, yes. The parts I remember is -- I definitely remember the part where he put in a -- he more or less wanted to make an official complaint about the ranger's actions.

Did Dennis Atkins say anything at all? --- Not a word.

BARNES: But so far as you are aware, Atkins was present throughout the whole conversation though? --- That's correct, yes.

PEARCE: Standing at the door? --- That's right.

Inside the room or outside the room? --- I think he was outside. I don't know if the door was open or not, but ---

Were you conscious of his presence throughout...? --- Yes. Oh, initially, at the initial sit down, yes, I was conscious of his presence, yes.

....

What was the tone of the conversation with Mr Shears? --- It was -- it was reasonably friendly as far as I saw it. It was -- possibly Gordon was the most aggressive for making official complaint and saying he was totally, you know, disgusted in his actions, but no one else -- there was no shouting or any accusations or voice raising in any way.

During the course of his evidence to the Commission, David Barbagallo described the meeting with Shears in the following terms:

...Well, the discussion went on for about half an hour during which I attempted to establish what - and only for two or three questions and most of them directed at Sergeant Murphy, you know, because I saw him as the appropriate authority in the police station, obviously. But I did address one question directly to Shears and I also directed a statement at him basically.

PEARCE: ...Well, perhaps if we start at the beginning. How did the discussion get underway? --- I really can't recall, I really can't. I mean, I think ranger Shears said, you know, 'I confiscated your vehicle because it had guns in it', you know.

Was he asked why he had confiscated the vehicle or did he just launch into an explanation? --- Well, I - I think Sergeant Murphy said, you know, 'Would you like to explain why you confiscated this vehicle?' and he said - he said, 'I had the power to, there were guns in it.' You know, he said - and then he talked about an incident of shots being fired and all the rest of it, to which my brother, most graciously I thought, said, 'Oh, well, I can understand why you did it, mate', you know, sort of thing. I then sort of said, 'Well, you know, what's the process now? What's...', I said, 'What's got to happen now for my brother to get his vehicle back', or, 'for Paul to get his vehicle back?' So I may have identified myself as his brother at some stage during that thing. I don't really recall. . . . And, you know, Murphy and - Sergeant Murphy and ranger Shears, you know, basically supplied the answer to that, you know, 'It's got to be reported to the Fauna Squad', and all that sort of stuff, you know. So - and I think I then said - you know, I said, 'Hasn't the vehicle got to be, you know, part of the commissioning of a crime? I mean, can you just seize a vehicle', blah, blah, blah. And he said, 'Yes, you can, because it had guns in it', blah, blah, blah. I said, 'Oh, well, fair enough', you know. And I said, 'Well, is there any' - Paul said some things and, you know, about, well, you know, 'We weren't using the guns. They were in the vehicle. You know, if we'd been using the guns maybe', blah, blah, blah. So - but this was all fairly amicable. There was no sort of shouting or yelling at any stage. Then Gordon Uechtritz wanted to make a statement, because he was pretty angry about having been left up there, and Gordon said he wanted to register an official complaint about the fact that they - being left stranded there. And he was fairly irritated. And I just sort of said, 'Look, you know, it doesn't help matters for you to get upset.' I said, 'Let's just find out what we've got to do to get this vehicle back, you know, and the possession of it.' ranger Shears indicated that his two Aboriginal offsidars were very nervous because of this shooting incident, and all the rest of it. He also indicated that he knew that they had a second vehicle, so he wasn't particularly concerned about confiscating it. And I asked him, well, how did he know that, and he said, 'Well, we monitor all movements in and out of the thing.' And I said, 'Well' - he indicated initially that the shooting occurred on the

Monday or the Tuesday and I said, 'Well, you know that they first came into the Park, into the area on the Wednesday.' And he said, 'Yeah', and I said, 'Well, you must have known then that they couldn't have been involved in that shooting accident.' And he said, 'Yeah.' You know, so I just wanted to establish that, because Paul hadn't been involved in any shooting incident. ...

As a result of questioning by counsel assisting, David Barbagallo conceded that he had made at least five separate comments during the course of the meeting with Shears. He was also questioned regarding statements contained in his report to the Premier of 30 November 1993, to the effect that during the meeting with Shears on 13 November 1993, he (David Barbagallo) had said on several occasions that it appeared a technical breach of the law had been committed and, as such, due processes would need to be followed.

The following exchange occurred during David Barbagallo's evidence:

PEARCE: You have used the expression 'several occasions.' Would that indicate that perhaps you had made your feelings known on more than one or two occasions? --- Well, my recollection of it is that - that I wanted to establish in the mind of - of the, you know, sergeant of police that it was - it was a technical breach, you know. But it was all - all in the context of what has to happen now, you know, for it to occur. And I - I'm - I would have said it at least obviously two occasions, but I don't think - you know, I don't think it was six or seven occasions.

...Well, what do you say about the accuracy of your statement in your report of 30 November? --- Well, given that, you know, there are some - well, the grammatical issue with respect to me using 'I' instead of 'we' and - and all the rest of it, I mean, these - these statements are not made with a view to ending up in a CJC inquiry five months down the track; it was because the Opposition had raised some fairly, you know, outrageous allegations about my behaviour, so I penned this off quickly for the Premier because he was in Parliament. I mean, I'm not going to live or die by the words in there. ... But - but I will say that, you know, because I wrote that at the time, then I think it has to be given more credence. ...

This claim by David Barbagallo was explored with Paul Barbagallo during the course of his evidence before the Commission. The following passage refers:

PEARCE: Did David make any comment about the legality of Mr Shears' actions? -- Just basically, as to whether it was departmental policy or whether it was legal, yes, I imagine that was part of the same question.

Did David say anything about your actions in traversing the Park? --- Not at all, not at all.

Did he say anything to the effect of, 'Well, it looks like you may have broken the law ... let's leave it go'? --- No, definitely not.

Words to the effect of, 'Let's just let the matter take its course'? --- Definitely not.

Did he say that to you at any time? --- The only thing he said to me later on was, it's in the police hands and it's going to run its course.

When did he say that to you? --- I think that was the same - either the same morning after he spoke to Craig Emerson again or it was when he was first in Brisbane, and I was first home after the trip.

When asked who he considered to have been the major player in the discussion with Shears, David Barbagallo answered:

Paul and myself. Paul mostly.

David Barbagallo was then questioned as to whether he had been asked if he was a lawyer. He responded in the following fashion:

---Oh yes. Murphy did when we left - Murphy obviously picked up that I was more than your average sort of pig shooter. And, I mean, obviously having spoken to Fleur and heard her legal assessment of the rights or otherwise of, you know, confiscation and the notion of, you know, vehicles being able to commission a crime and all that; that obviously worked its way into my language. Murphy came out and said, 'Are you a lawyer?' I think he thought that Paul had somehow got a lawyer up to represent him or something. And I said, 'No,' - I was offended, I said, 'No, mate, I'm not a lawyer.' And he said, 'You seem to know a lot about the law and the National Parks Act,' and I just said, 'I know a lot about a lot of things. See you round,' and walked off.

Uechtritz, Paul Barbagallo and Atkins give a similar account of this exchange between Murphy and David Barbagallo.

David Barbagallo concedes he "eyeballed" Shears and "gave him a hard stare". He added:

There's no doubt about that and - it was meant for effect. I mean, basically you know, I still think his actions were inappropriate, premature and against Government - against departmental policy.

When asked what effect his looks were meant to have, David Barbagallo responded:

Oh, to shut him up, basically, yes. I mean, I didn't yell at him. I mean, I can shut people up without having to yell, basically. I mean, I just said, 'Look, you made your decision based on the evidence before you at the time. Don't try and post-justify it. Let's just get on with the business of finding out what the process is now?' That's more or less what I said to him, and I, you know, stared at him the whole - prior to that I hadn't really made contact with him, because in a sense I didn't think that - it particularly appropriate for the Principal Private Secretary, notwithstanding the fact that I hadn't identified myself, to be grilling a government employee, who - you know, despite my concerns about his actions, in the final analysis - used his own judgment. I think that judgment's impaired or whatever, but he still - you know, I don't think it was malicious or anything, if you know what I mean.

Uechtriz describes the events at the Cooktown Police Station in the following terms:

...we got to the Cooktown Police Station and myself, Paul and David went into a room. I think it was Sergeant Murphy's office or work - place of work. I'm not too sure. Dennis stayed outside. Well, when we left him outside he just - he was just sitting on the stairs outside the police station. So when we entered the room - what's his name, Pat Shears was already in there. We ... were asked to seat, we sat down ... I was down one end and Paul was beside me and David was beside him and then Pat Shears stood in the far end of the room. ... I virtually didn't have - didn't say too much at the meeting, but Paul did most of the talking and most of the questioning. One of the questions fired at Pat was, 'Why did you take the vehicle?' And his response was that he'd been shot at three days before and he thought that we were the people that shot at him, and I think I made the comment that, 'Well, we only arrived that night, Pat. It certainly wasn't us. You've got the wrong people.' So, he made a comment then - Pat made a comment that he though he wanted to go back in. He realised that he may have done the wrong thing. Something - words to those effect, and he said he wanted - 'I wanted to go back and let you know - let you guys know what was going on, but when I rang my boss in Cairns he said if I went back in I'd get the sack.' That's what he said.

...And then he went on to say that - I made a comment about abandoning people in that type of country and I said it was a really dangerous thing to do and I thought it was a bit stupid, and he said he knew that we were in no danger because he monitored us as we came in and he knew that we had another vehicle. I later realised that he shot himself in the foot when he said that because he said earlier on that he thought that we were the people that shot at him three days before.

Paul Barbagallo corroborates Uechtritz's claim that Shears stated he had been threatened with the sack by his boss if he returned the vehicle. Shears denies making such a statement, and says that such a statement is incorrect in any event.

Shears testified as follows:

PEARCE: And what happened? --- I think David Barbagallo started into me straight away. Why did I take the vehicle. ... I remember him exactly saying, 'Why did you take the vehicle?' and it wasn't very pleasant, and I said, 'Well, you guys had gone round the sign into the Park and you had guns and a chainsaw in there, and you were at the end of track where smuggling goes on at this time of year. The seed collection goes on at this time of the year.'

What else was said to you? --- He got up me about leaving them stranded.

Who got up you about leaving them stranded? --- David Barbagallo.

What did he say? --- He said, 'You left us in a life-threatening situation, and, you know, without any water,' and I said, 'Bullshit, you drove right past that waterhole. There's a waterhole right near those old yards. There's plenty of water in that.' And I said, 'Plus you had other vehicles,' and he said - he kept going on about a life-threatening situation, and I said, 'Yeah, it could have been a life-threatening situation. There's no water, no vehicles, and there's pensioners in wheelchairs.'

BARNES: You have put these words in David Barbagallo's mouth but they would not make much sense coming from someone who had not been there? --- See, this is the whole thing. I'm just wondering what the hell is going on.

Is it the case that you might have been confused with Paul Barbagallo, that he was saying 'you've left us stranded there'? --- No, no, Paul didn't - he didn't do much talking at all. He - when I mentioned about the shooting, he said, 'Oh, did you think it was us?' I said, 'I didn't know who it was.'

...

PEARCE: Did any of them tell you that they had been there shooting pigs? --- Oh, yes. Every smuggler you pick up is fishing and shooting pigs. The only one problem is most of the blokes haven't got any fishing lines in their car for a start and there's not too many pigs around that side. All the pigs are around the other side. There's big herds of them because the country is more swampy.

But did someone say this to you, to this effect: that they had been pig shooting. They did not now they had driven onto the Park and they had climbed the hill to look at the palm trees to take some photographs. Did one of them say that? --- Oh, yes, I remember the photographs and they sort of laughed because I remember the cameras were in the flaming car.

Well, did you say that when whoever it was mentioned the photographs? --- No. I was being - all I was doing was being the meek and mild ranger and just - just sort of said, you know, 'I'm just doing my job.' And Barbagallo came back - David Barbagallo came back with saying, 'Oh, just doing your job, were you' - very sarcastically.

...

Can you describe David Barbagallo's demeanour? --- Well, if there's no one in the Cooktown Police Station, he would be beaten shit out of me. ... David Barbagallo was very antagonistic.

How did he display that antagonism? --- Oh, he fired questions at me as though I had personally done something to him, you know, because later on I said to Spud (Murphy), I said, 'Who's that joker? A lawyer?' ... And Spud said, 'No, some sort of cousin or something!'

Well what about Paul Barbagallo? --- I wasn't game to look at him.

Why not? --- He would bloody beat me to death.

Why? Why did you think that? --- Well, I thought he - are you acquainted with trawler blokes? They are - you know, he's a typical...

You did not know then that he was a trawler bloke, though? --- No, but as soon as I saw them - soon as I saw him and Uechtritz, I said 'trawler blokes' straight away, because they just fit the description.

Even Mr Uechtritz, you think? --- Yes. He's got a drawn face and knocked around, you know.

Shears claims that he felt a little intimidated by the entire process, thinking, "Why am I here? Spud (a reference to Sergeant Murphy) should be doing all this, not me." He remains adamant that David Barbagallo did the majority of the speaking:

PEARCE: According to you, it would be correct to say that David Barbagallo had the most to say. Is that true? --- Yes. No, that's why I thought he was - he was a lawyer, because he's shooting all the questions at me.

Could you be wrong in that regard? Could it have been Paul Barbagallo who had a most to say? --- No, no. No.

...
If I was to suggest to you that Sergeant Murphy was of the view that Paul Barbagallo was the main spokesperson for the group what would you say to that? --- No. No, it was the other bloke, because that's why I said to Spud - I said, 'Who's the - is that their lawyer or solicitor or something,' I said, because he was in a white shirt, you know - cleaner than the other two blokes.

BARNES: He was dressed like a lawyer? --- Yes, he was all fat and shiny as well, you know.

Like Mr Pearce? ---

PEARCE: If I was to suggest to you that everybody in the room, other than yourself, says that Paul Barbagallo was the man who had the most to say? --- No.

You just don't accept that? --- No.

Is it possible, you think, that you might be mistaken? --- No, no because, no, because I remember I said, 'He's the owner of the car.' I said, 'This other joker is doing all the questioning.'

Did you ask any questions yourself? --- Wasn't game to. I just wanted to get out of there, you know. Just get it over and done with so I could shoot through.

...
Well, how would you describe the tone of the meeting generally? --- Well, they were all antagonistic towards me.

...Would you describe the meeting as being antagonistic, would you? --- Yes, on their side.

BARNES: Am I right in saying there was no banging of the table? --- Oh, no, no. We weren't throwing ashtrays at each other, but ... it was the tone.

Am I right in saying no raised - no one was shouting at you? --- No, not shouting, just hard - - -

- - - they were just firing pointed questions at you? --- - - - hard questions.

PEARCE: And being sarcastic? --- Yes.

Shears agreed that he was apprehensive about going to the meeting. He did not want to be there and upon seeing Uechtritz and Paul Barbagallo his concerns heightened. He agreed that it was a sensitive situation and that for him not to feel threatened the others would have needed to be particularly disarming.

However, he remained of the view that David Barbagallo was antagonistic.

According to Shears, at one point in the discussion, Paul Barbagallo stated that he had to meet up with another brother on a trawler in the Cape Melville area. Sergeant Murphy also recalls something to this effect being said, but is unable to remember who made the statement.

For his part, Sergeant Murphy has only a limited recollection of the discussion between Shears and the others. Sergeant Murphy testified as follows:

...Pat Shears was already at the Station. I showed the two Barbagallo brothers and a third person who, up until the airing of the *Four Corners* programme, I couldn't say for sure who it was but I could say, definitely, that it wasn't - after that, I can say definitely that it wasn't Atkins, and Mr Uechtritz in the foyer now, and he was the third person that was in my office. So there was Uechtritz, the two Barbagallo's, Shears and myself.

PEARCE: Now, perhaps you can tell us what took place? --- It was just a brief meeting where Shears explained to them what he had done and why he done it. David - Paul Barbagallo asked a couple of questions; David Barbagallo asked a couple of questions; I think Uechtritz may have asked one or two questions; and that was the end of it. It lasted somewhere between, 5, 10, 15 minutes. It wasn't very long at all.

Right, and do you recall what Mr Shears said to the group? --- He explained to them that he had taken the vehicle and why he had taken it was because he found it on a National Park with prohibited things in it and he had taken possession of it.

Do you recall what questions the Barbagallo's and Mr Uechtritz asked of Shears? --- No, I'm sorry. ... I've given it considerable thought and I can't - I can't recall the actual questions. It was along the lines of, you know, what authority he had and that sort of things and it was mainly asked by Paul Barbagallo.

Was he asked why he had done what he had done? --- I believe so but, as I say, I can't say with any degree of certainty.

Can you comment upon the tone of the meeting? --- I thought it was a cordial, friendly sort of meeting. There was definitely no animosity on anyone's part that was, sort of, expressed through their voice. It was friendly.

Well, was Paul Barbagallo upset or angry? --- They were upset, as anyone else in their sort of situation would have been upset and that would have been borne out in his - his expression of his voice but it certainly wasn't agro or - there was, you know, there was a certain amount of animosity but it sort of wasn't an unfriendly sort of meeting where you would feel uncomfortable participating in it.

How did he demonstrate his distress? --- Oh, just a - facial expressions and that sort of thing and a little bit unhappy with the - shaking the head at times and, sort of, just generally being unhappy...

That is Paul Barbagallo. What about David Barbagallo? --- Much the same. I think they were both of the opinion, as I was, it was a bit ludicrous to leave people stranded up in that neck of the woods or possibly leave people stranded up in the neck of the woods and that was it.

Paul Barbagallo recalls that his brother spoke to Uechtritz in an attempt to calm him down. According to Paul Barbagallo, Uechtritz became quite agitated, saying that he wished to make a formal complaint about Shears. David Barbagallo has a similar recollection.

While admitting having said something to the effect that he wished to make a complaint, and that he was "upset and seething inside", Uechtritz claims that he outwardly remained composed. Uechtritz concedes, however, that he may have spoken in a "curt" tone which, may have prompted David Barbagallo to tell him to calm down.

Paul Barbagallo claims that while his brother may have made a sarcastic remark at some stage, he was not aggressive, but rather, was "very diplomatic". Uechtritz rejects the suggestion that David Barbagallo was aggressive and testified that:

....David virtually said very little, if anything. I'd say he asked a couple of questions right at the end, which I'm not even sure what they were about. Something to do with a vehicle or something. And - but at no stage did he reveal his name, his position, or who he was or anything like that, and I'm - actually, at the time, I made a mental note to myself thinking how well he handled the situation under the circumstances that it was his brother. So, yes, as far as me, as far as me personally, those accusations that are made against David are very incorrect, very false.

David Barbagallo describes his own role throughout the discussion as, "ensuring that the whole process was amicable."

Atkins claims that he refrained from saying anything during the discussion and says that the only persons who spoke with the ranger were Paul and David Barbagallo and Uechtritz. Atkins recalls that Paul Barbagallo and Uechtritz expressed some unhappiness and frustration at the vehicle seizure, but claims that the discussion was "fairly orderly and amicable - not nasty". Atkins' version of the discussion is as follows:

The policeman then sort of introduced the ranger and the ranger then told his story about how he had been in the area, there had been some gunfire and other suspicious activity in the area in a preceding time to the 11th, and that he and two Aborigines who he is working with were going along one of the tracks. He said that they were terrified because of the gunfire that had been heard earlier and so he told them to wait and he went up the track. He said he discovered the vehicle, saw that there were guns and a chainsaw in it. He presumed that the vehicle was being used for illegal purposes and so he seized it. A discussion then ensued about, you know, whether or not he had the power to do it, whether he knew what he was doing, didn't he know that he was - he'd stranded them. He'd said that there was another vehicle. I mean, just a general sort of backwards and forwards discussion about the seizure of the vehicle. I didn't take any part in that discussion. It was mainly Gordon Uechtritz and Paul Barbagallo. David Barbagallo asked a few questions as well and then at the end of it the sergeant said that the matter would be handled by the Fauna Squad. I think somebody, I think it was Paul Barbagallo, asked about whether or not he would get his vehicle back, and the sergeant said something to the effect that normally they do give them back, he said, but it can take some time.

There is no evidence suggesting David Barbagallo or Dennis Atkins identified themselves or their official positions.

When Shears was interviewed by officers of the Commission, he stated that as the Barbagallo group were walking out of Murphy's office, Paul Barbagallo said to him, "Don't let me catch you walking around anywhere". Shears interpreted this as a threat.

When Shears subsequently testified before the Commission he gave the following account of Paul Barbagallo's comment:

PEARCE: What did he say to you? --- He just looked at me and said 'Don't let me catch you walking around, Pat.'

And that was - was it just after you told him that you had walked into the vehicle? --- It was - it was at the end of the meeting, when they were going out.

Do you think he might have said something like this, after you had told him that you had walked into the vehicle, he said to you words to the effect, 'I hope I don't see you walking because I'll leave you to walk'? --- No. Because things like that you remember. Because I wrote it down and told Gav (Ricketts). You know, I said 'As far as I'm concerned, that's a threat.'

But you had a certain impression of the man, didn't you? You thought he was being a little bit antagonistic towards you? --- Oh, yes. Yes.

Well, is it possible that he said something to the effect, 'Well, I hope I don't see you ever walking around, because I'll always leave you to walk,' and you have taken it the wrong way? --- No, no. He said - because he used - right at the end of the sentence, he used my name. He said, 'Don't let me catch you walking around, Pat.' And that - those - they're some words I won't forget. I remember those. ... There's no mistake about those, and that was as they were getting up and walking out.

What was the tone of his voice? --- Oh, you could say threatening.

Paul Barbagallo testified that he did not threaten Shears, but had, in a "laughable way" said, "I hope I don't see you ever walking because I'll always leave you to walk" - or words to that effect.

Atkins has no recollection of Paul Barbagallo making such a statement, and Uechtritz, although claiming to have remained in close proximity to Paul Barbagallo, says that he did not hear Paul Barbagallo say anything to that effect.

Shears subsequently left the Cooktown Police Station, but remained in Cooktown pending the anticipated arrival of Ricketts and Fletcher on Monday 15 November

1993. As he was leaving the police station, Shears recognised the white Toyota Troop Carrier which he had seen in Cape Melville National Park three days previously.

Paul Barbagallo and Uechtritz left the Cooktown Police Station and proceeded to collect a spare tyre which they had earlier left at a garage for repair.

6.14 EMERSON AND WELLARD BECOME INVOLVED

After being contacted by Atkins, Emerson became actively involved in attempting to sort out what had happened and in determining how the Department should respond.

Having made some connection with the information he had received from Atkins and the information he received the previous evening from McGreevy, the Minister's Policy Adviser, Emerson was keen to deal with this issue as quickly as possible because of the overriding urgency of the publicity being generated by *The Courier-Mail* article concerning events that became popularly known as the "Ace Waste affair".

According to telephone records supplied to the Commission by Emerson, he made a telephone call to Wellard at 8.34am. Emerson says he explained to Wellard that two people from the Premier's Office were in Cooktown on official business and had contacted him about the seizure of a vehicle by a National Parks ranger.

Wellard does not recall whether Emerson named the people involved, but he did gain the impression from what he was told by Emerson, that Emerson was aware of the information which Wellard had conveyed to McGreevy the previous evening. Wellard therefore spoke to Emerson of his concerns, in particular, that the occupants of the vehicle may have been left stranded and that Shears may not have possessed the legal power to seize the vehicle.

According to Emerson, Wellard expressed frustration and annoyance at the fact that he was having great difficulty discovering exactly what had occurred.

Both Emerson and Wellard claim that they assumed that the seized vehicle was to be used by the two Premier's Office staff on an official inspection of Starcke Holdings, and that the official inspection had been disrupted by the questionable actions of Shears. Therefore, they discussed the possibility of arranging alternative transport. Emerson and Wellard concluded their conversation on the basis that Wellard would

obtain more information about what had occurred and make enquiries about transport options.

Emerson says that he did not specifically direct Wellard to arrange a hire vehicle at departmental expense. Rather, he simply left Wellard with the assumption that any cost would be met by the Department.

Later that morning when Wellard telephoned Kelly to discuss the options available to restore possession of the seized vehicle to the Barbagallo party, he was informed by Kelly that it was at Lakefield.

Kelly says that in response to his inquiry about the identity of the owner of the seized vehicle and that person's purpose at Cape Melville, Wellard replied with words to the effect, "that it was a peculiar affair and he would be in a better position to discuss the whole situation later". Wellard confirms that he made a comment to this effect to Kelly. Kelly describes Wellard's immediate concern as being to repatriate the owners with their possibly unlawfully-seized vehicle and to thereby ameliorate the Department's exposure to litigation.

Wellard gave evidence that, in accordance with his preferred management practice, he did not speak directly with Harris at all on Saturday 13 November 1993, preferring instead to deal only with Kelly. Kelly, in turn, telephoned Harris to discuss transport options. Kelly says he jokingly speculated with Harris "that Pat might have stumbled across some sort of undercover Drug Squad operation and stuffed up their entire operation...".

According to Kelly, by that time Harris was already convinced that a conspiracy was afoot.

Kelly contacted an aircraft charter operator to inquire about the possibility of flying to Cooktown that morning, collecting the owners of the seized vehicle, and flying them to Lakefield to be reunited with the vehicle.

Harris claims that sometime that morning he was contacted by Stanton, who informed Harris of his contact with Shears at Lakefield on the evening of Thursday 11 November 1993.

Stanton says he telephoned Harris between 8.00am and 9.00am to advise Harris of the seizure of the vehicle, but that he was interrupted by Harris, who stated he was already aware of the matter. Having been advised of the seizure by the Police

Service. Stanton says he commented to Harris that "that was a pity" because he would have preferred Shears' actions not to have become common knowledge within the Department until after the weekend, because by then the Police Service would have had sufficient time to commence action without departmental interference.

According to Stanton, Harris stated that there was a general panic; Wellard had been in contact with somebody in Brisbane and was acting under instructions, with the main interest being to find Shears and return the vehicle back to Cape Melville. Stanton is "pretty sure" that Harris told him he knew Shears was at the Cooktown Police Station with the seized vehicle and that there was no problem. Stanton says that Harris was not critical of Shears' actions, appearing more concerned about possible efforts to undo what Shears had achieved.

Stanton says that he was not surprised at the Department's apparent reaction. He says that he told Harris that on the basis of his understanding of the legislation, Shears had acted within his powers in seizing the vehicle.

According to Emerson's telephone records, he again telephoned Wellard at 9.03am. On this occasion, Wellard advised Emerson that he had located the seized vehicle at Lakefield National Park, about six hours drive from Cooktown, and the only practical way of delivering people from Cooktown to Lakefield in a reasonably short time was by aeroplane. Emerson dismissed that idea saying, "I don't think we can hire a plane", and concluded the conversation, leaving Wellard to explore other transport options.

According to the evidence of Detective Sergeant Ricketts, in the vicinity of 9.30am to 10.30am, he received a telephone call at his Brisbane residence from Harris, who alerted Ricketts to the actions of Shears. Ricketts says that this was the first he knew of the matter.

Ricketts' account of this conversation is set out below:

PEARCE: What were you told? --- He told me that a vehicle had been seized by Pat Shears from Cape Melville and that - I think he more or less inferred that, you know, he'd only sort of really just found out about it; that there was a lot of phone calls taking place between the Far Northern Region and Brisbane and, you know, words to the effect that he felt that the events required our investigation.

Can you be any more specific with us? What were the details of the information he passed on to you, particularly concerning the phone calls? Did he express a suspicion to you? --- I believe he did. Whether he expressed it to me in a pointed way, I can't recall, but I think - you know, I mean, I didn't make any notes of that conversation

because you get phone calls about things like that - I mean, I made a brief notes but not the whole conversation.

Where were you, I should ask? --- I was at home at the time.

Right. Okay. --- Because we were preparing to go up there anyway to do some jobs for Townsville. I recall that I got the impression from what he told me that there was - seemed to be some sort of a - well, I suppose a cover-up going on up there over the seizure of this vehicle.

Was he concerned that the incident itself was being covered up or that it was being covered up because of the people who may have been involved with the vehicle? --- Well, I can't recall whether it was either one of those two or whether it was - you know, whether it was just that the - all of the events were being covered up for whatever reason. I mean, he didn't use those words. Again, I repeat, that's the impression I got.

Well, was he concerned that the bureaucrats within the Department were trying to protect themselves from an otherwise embarrassing situation or that there was perhaps some other impropriety going on whereby they were trying to protect people from prosecution? What was the thrust of his suspicion? --- Well, no, I would say the latter. I would say the latter in that case.

He was concerned that someone was being protected? --- Well, I don't know whether it was - that someone was being protected but that an inquiry into the events or an investigation would not go ahead.

BARNES: What was his basis for saying that, do you recall? --- I think he mentioned the fact that - that Greg Wellard had become involved in it and he may have mentioned the fact that phone calls were made to the Director-General down here but, you know, there was nothing - I can't recall anything specific that he said but that was the impression that I got.

According to Shears, at some time while Paul Barbagallo was at the Cooktown Police Station, he received a telephone call from Greg Wellard, who directed Shears to return immediately to Cairns to provide a full report of his actions. Shears claims that he informed Wellard that he had already contacted Detective Sergeant Ricketts, who had indicated that he required Shears to remain in Cooktown in order to accompany the Fauna Squad to Cape Melville. Shears says that he suggested that Wellard contact Ricketts.

There is some minor confusion as to the timing of the discussion at Cooktown Police Station, its duration, and the timing of Shears' telephone contact with Ricketts and Wellard.

Shears, Paul Barbagallo, David Barbagallo and Atkins claim that they each went to the police station at about 9.00am, shortly after which the discussion commenced. It is Murphy's recollection that the discussion took place between 10.00am and 10.30am.

In his initial interview with Commission officers, Shears stated that his telephone conversation with Ricketts took place at about 9.30am. This is roughly supported by Ricketts who, when first interviewed by Commission officers, stated that at about 9.45am he had received a telephone call from Shears who was, at the time, at Cooktown Police Station. Ricketts says Shears told him that Paul Barbagallo and some associates were present at the Police Station inquiring about the seized vehicle.

When first interviewed by Commission officers, Shears stated that a short time after his first call from Wellard, Wellard rang back and inquired of Shears whether "the people you confiscated the car off were still at the police station." Shears confirmed that they were, and Wellard directed Shears to tell them that a hire vehicle was available if they required one. Shears claimed that he relayed that offer to Paul Barbagallo but that he said they would make his own arrangements.

When Shears gave evidence before the Commission he was unsure whether the offer of alternate transport was made by Wellard during his first telephone call, or second.

Wellard confirms that he telephoned the Cooktown Police Station that morning and spoke initially, with a police officer, who stated that Shears was present. Wellard says that after obtaining details of four wheel drive hire businesses in Cooktown, he spoke with Shears, expressing his dissatisfaction at Shears' actions and directing him to return to Cairns.

Wellard says he subsequently made telephone inquiries concerning the availability of four wheel drive vehicles in Cooktown.

Wellard confirms instructing Shears to offer a replacement four wheel drive vehicle to replace the seized vehicle.

In the course of his testimony before the Commission, Wellard denied that his offer of alternative transport was made because of the connection between the owner of the vehicle and staff of the Office of the Premier.

Neither David Barbagallo nor Atkins have a recollection of there being any telephone calls made or received during their time at Cooktown Police Station, or any offer by Shears of a replacement vehicle.

Paul Barbagallo claims that it was Sergeant Murphy who raised the subject of an alternative vehicle, and that this occurred on the verandah of the police station after the discussion with Shears had ended and while Shears remained inside. Paul Barbagallo says that Murphy mentioned that Wellard had telephoned and was inquiring about organising a replacement vehicle. Either he (Paul Barbagallo) or David Barbagallo, responded that a replacement vehicle would not be necessary and that the party would make their own arrangements.

David Barbagallo is adamant that there was no offer of an alternative vehicle whilst the party was at the Cooktown Police Station.

When interviewed by Commission officers, Shears maintained that at the conclusion of the meeting at Cooktown Police Station, he had stated that the vehicle seizure would be reported to the Fauna Squad, an investigation would be undertaken and due process would be followed. This claim is endorsed by Murphy. Neither Shears nor Sergeant Murphy suggested that any charges would be laid.

Murphy claims that to his knowledge, there has been no attempt to improperly influence the investigation of the seizure by Shears of Paul Barbagallo's vehicle.

Sergeant Murphy asserts that he received a number of telephone calls from Wellard during the course of the morning of Saturday 13 November 1993. Murphy is unable to recall how many calls he received from Wellard because he estimates that he received "about a dozen or so" telephone calls in the space of 30 to 45 minutes from various callers, including Shears' direct superior whose name Murphy could not recall. Murphy did not keep notes of any of those telephone conversations.

According to Murphy, Wellard expressed the view that Shears did not have the authority to confiscate the vehicle, and indicated that he was desirous of arranging alternative transport to re-unite those people left stranded in the Park with their vehicle.

Murphy recalled asking Paul Barbagallo on one of the two occasions he came to the Cooktown Police Station whether he required the hire of a four wheel drive vehicle. Murphy says that "they" said it was unnecessary and Murphy in turn relayed this response to Wellard.

The Cooktown Police Station occurrence sheet for Saturday 13 November 1993, records Sergeant Murphy as being rostered alone for the shift 8.00am to 4.00pm. During that shift Sergeant Murphy recorded the following relevant entry on the occurrence sheet:

Numerous telephone calls from National Parks regarding vehicle taken possession by Parks Officer Pat SHEERS (sic). Paul BARBAGALLO of Innisfail attended station to report the vehicle stolen and advised that not stolen but taken possession of by SHEERS. SHEERS advised and after meeting with BARBAGALLO at station all parties departed. No further at this time. Detective Sergeant RICKETS (sic) of Fauna Squad advised that he would be attending Cooktown on Monday and will investigate matter then.

Uechtritz testified that he and Paul Barbagallo were accompanied back to their motel room by David Barbagallo and Atkins. Uechtritz recalls that a telephone call was made from the motel room, although he is unable to recall who made the call or to whom.

Paul Barbagallo, David Barbagallo and Atkins testified that upon leaving Cooktown Police Station, they proceeded to a public telephone box situated outside the Sovereign Hotel, from which Atkins telephoned Emerson and outlined the events which had occurred at the police station. Atkins explains the purpose of this call was to assure Emerson that everything was in order.

According to Atkins, Emerson advised that he had been speaking with someone in North Queensland (whose name Atkins could not recall), and that it would be difficult to arrange alternative transportation. Atkins says he informed Emerson that alternative transport was not required. Emerson apologised for the misunderstanding, stating that he had assumed Atkins and David Barbagallo were relying on the confiscated vehicle for their inspection of Starcke Station.

Atkins says that he concluded the conversation with Emerson by saying that the matter would be handled by the Fauna Squad and that, "we should all just let the process take its course". When asked by counsel assisting why he said this to Emerson, Atkins responded as follows:

Because, I mean, it was in my mind after everything I had listened to in the police station that myself and David and Craig should be very careful to let this matter take its natural course, so I mean, I would always presume that Craig Emerson, who I've known for a number of years, would never do anything but let a matter take its

natural course, but I felt, given the circumstances, that it was important just to state the obvious.

PEARCE: What circumstances; given what circumstances? --- Well, the circumstances of ... David Barbagallo's brother having his vehicle seized in a National Park with guns and a chainsaw in it. I knew nothing of the circumstances of that vehicle in terms of, you know, sort of other than what I'd heard in the police station; the fact that David and I were there - we're both senior members of the Premier's staff, even though the people didn't know who we were - and the fact that Craig Emerson is one of the most senior public servants in the State; I mean, sometimes it is necessary to state the obvious that nothing should be done, stay away from it, let it ride.

Emerson corroborates Atkins' version of this conversation, in all material respects.

David Barbagallo claims to have overheard some of the telephone conversation between Dr Emerson and Atkins, particularly that the matter of the vehicle seizure would be referred to the Fauna Squad and due process would be followed.

Atkins and David Barbagallo also assert that at the conclusion of Atkins' conversation with Emerson, David Barbagallo spoke with Emerson for a short time about unrelated matters. David Barbagallo claims that he also emphasised to Emerson that the situation with his brother's vehicle should be resolved in the normal way. He asserts that he did not ask Emerson for any assistance.

Although Paul Barbagallo was not present for this telephone call to Emerson, he says that he was subsequently told by Atkins that Emerson had mistakenly thought that the vehicle being used to go to Starcke had been confiscated.

Emerson, in turn, telephoned Wellard at 9.36am to inform him of the misunderstanding on Emerson's part and that alternative transport would not be required. Wellard, of course, had already ascertained this directly from Shears and/or Murphy.

Wellard claims not to have been aware of the identity of the owner of the seized vehicle until Monday 15 November 1993. As at Saturday 13 November 1993, the only connection between the seized vehicle and the Office of the Premier of which Wellard says he was aware, was that the owner of the seized vehicle was guiding or accompanying the Premier's staff to Starcke Station.

According to Emerson, during the course of the conversation with Wellard on 13 November 1993, Wellard expressed his annoyance at Shears' potentially unlawful actions and foreshadowed the need to take disciplinary action against Shears. Emerson claims that, recognising that it would be improper for him to tell Wellard to take no action against Shears, he nevertheless counselled Wellard against any hasty conclusions or action with respect to Shears. Emerson also claims to have told Wellard that the events surrounding the confiscation of the vehicle were possibly to be subject to police investigation which should take its natural course without departmental interference. Emerson's stated reason for making the latter comment to Wellard was simply that he considered it "a very sensible, proper and prudent thing to say" at the time.

In evidence before the Commission, Wellard denied that Emerson's advice was a direction that there should be no favours offered to David Barbagallo or Atkins. According to Wellard, the prospect of offering favours did not cross his mind and he did not interpret Emerson's comment other than simply saying:

Look, you're obviously angry about this, settle down and let it happen. It's already in the police hands. There's nothing you can do about it. Your ranger's done something wrong. Let it go. Let them sort it out.

While Emerson does not recall identifying David Barbagallo and Atkins by name to Wellard, he does remember identifying them as staff from the Office of the Premier and had added words to the effect "but don't worry about that....I know them well and it's not an issue". In this regard, the following exchange occurred between counsel assisting and Emerson:

PEARCE: Well, one may then ask, why bother to tell him at all? --- Well, the reason for telling him was if this matter ever did reappear, he would be entitled to ask me why I didn't tell him that they were from the Premier's office.

And your response would be, well, it was not relevant to any consideration that you had on the day? --- You see, the way I behaved was in a very open way, and particularly with regional directors, in whom I have confidence and I think, generally have confidence in me. I don't operate on the basis of a Foreign Affairs Department 'needs to know' and say, well, Wellard needs to know this, this, this, and this, and I won't tell him anything else. I don't operate on that basis. And it entered my mind at that time that I should just mention that in case it ever arose again, and he would be entitled to say, 'Well, why didn't you tell me they were from the Premier's office?' But I did not tell him that with the purpose of getting him to do something that he wouldn't ordinarily have done in the case of private citizens.

But nonetheless you added to the information the rider that he should do nothing special for these people? --- That's right.

Well, why did you do that? --- Just in case it entered his mind. I mean, regional directors don't often get confronted with an issue that is related to the Premier's Office. Regional directors of line departments just don't do that, and he could well have - a regional director - I'm not saying Greg Wellard in particular - might say, 'Oh, you know, that's terrible, what can we do', you know, and go into some sort of flap about it. My point was simply to pass on the information but for him not to respond in any different way, so that he had the complete information."

Emerson testified that the third telephone conversation he had with Wellard was the last contact he had relative to this matter on that day.

Sometime during the morning of Saturday 13 November 1993, and after Wellard had learned that alternative transport was not required, Kelly telephoned Wellard to advise that the Marine Parks charter aircraft was available if required. Wellard informed Kelly that it would not be required.

When interviewed by officers of the Commission, Ricketts said that on the Saturday morning, sometime after 9.45am and after he had spoken with Shears, he telephoned Wellard, who expressed the belief that Shears had acted without authority and possibly unlawfully in seizing the vehicle. Ricketts could not remember the precise conversation, but claimed he informed Wellard that, based on what Shears had told him, although the circumstances of the seizure were unusual, given that Shears was alone in a potentially dangerous situation, Ricketts was satisfied that Shears had acted correctly and that irrespective of the attitude of DEH, the Fauna Squad was going to investigate the matter.

Ricketts also claimed that Wellard expressed concern about people being left stranded by Shears' actions, saying that "something" should be done to replace the vehicle. However, Ricketts said he did not receive instructions from Wellard concerning the hire of a vehicle, nor did Wellard inform him of any inquiries or arrangements that might have been made in this regard.

At Ricketts' request, Wellard decided to permit Shears to remain in Cooktown pending the arrival of Ricketts and Senior Constable Fletcher on Monday 15 November 1993. Shears was then to accompany Ricketts and Fletcher to Cape Melville for a field inspection of the area of the seizure. Shears was then to return to Cairns to provide Wellard with a full briefing on the incident.

Wellard says that during conversation with Ricketts, he was given an undertaking by Ricketts that a formal statement of events would be obtained from Shears, and that Ricketts would discuss the statement with Wellard on Ricketts' return to Cairns. Ricketts confirms Wellard's evidence in this regard.

On the morning of Saturday 13 November 1993, Harris contacted Chep a former detective who is now a senior enforcement officer with DEH and requested that he attend the DEH office to assist in following-up the suspected rendezvous between Paul Barbagallo and another brother on a boat, as well as establishing the events surrounding the vehicle seizure.

Chep arrived at the DEH office at about midday and, following discussion with Harris, contacted the Queensland Police Service and Army Sergeant Alan Lavaring, to confirm the information received from Army Sergeant Charles concerning his encounter with Shears on the evening of 11 November 1993.

According to Chep, during that morning, and in the course of a telephone conversation between Harris and Shears, Harris handed the telephone to Chep who chastised Shears for having made contact with the Army contrary to express instructions Chep says he gave Shears prior to going to Cape Melville. Shears, according to Chep, stated that he needed assistance.

Chep agreed with the suggestion of counsel assisting that he did not ascertain from Shears the circumstances of his contact with the Army patrol (that is, while the Army patrol was passing on a public road) before chastising him. Chep also concedes that had he known of the circumstances of Shears' contact, he would not have chastised Shears. Chep explains his motivation for criticising Shears as being the potential it posed to jeopardise future Army co-operation.

Although Harris recalls the telephone conversation between Chep and Shears, he rejects the suggestion that Chep chastised Shears for having contravened an instruction not to speak to the Army. Rather, according to Harris, it was more of an informal remark by Chep about the unnecessary confusion flowing from Shears' contact with the Army which might otherwise have been avoided.

Equally, Harris cannot recall Chep expressing any view to Shears about the lawfulness of the seizure, except perhaps to suggest that it was possibly a bit doubtful. As far as Harris recalls the only issue in that regard related to considerations of the appropriateness of Shears' action, and whether Shears had a reasonable basis for

suspecting that the vehicle was being used to commit offences. According to Harris Chep did not suggest Shears did not have the power, *per se*, to seize vehicles.

Shears has no recollection of this conversation with Chep, much less being chastised by Chep for making contact with the Army patrol.

According to Chep, following his conversation with Shears, he telephoned Ricketts. Ricketts expressed the view that Shears had acted lawfully in seizing the vehicle, and identified the owner of the vehicle as "Barbagallo". Ricketts also expressed concern that Barbagallo and his companions "were to be picked up by his brother's trawler" - suggesting that the trawler may be involved in the unlawful removal of foxtail palm seeds.

Ricketts says that Chep did not state his views on the lawfulness or otherwise of the seizure. He recalls however, that Chep considered that something was going on which warranted investigation.

Chep subsequently telephoned Sergeant Murphy at Cooktown Police Station. Murphy confirmed that the Fauna Squad and not Cooktown Police would be conducting an investigation of the matter.

Chep claims he ascertained from the Australian Customs Service that the name "Barbagallo" was not associated with any fishing vessel, and he made arrangements with Customs to ascertain if there were any surveillance flights proposed for the Cape Melville area.

Harris confirmed in the course of his testimony that Chep made numerous inquiries endeavouring to establish the identity of any fishing boat that may have been in the Cape Melville area, and any association between such vessels and Paul Barbagallo.

Chep also ascertained that Paul Barbagallo was known to Innisfail Police, having previously been convicted of a drug-related offence.

Chep discussed his inquiries with Harris who, according to Chep, did not indicate that the identity of the persons involved in the incident was at all relevant to any action then being taken by the Department. Chep says he was not aware of any attempt to hire a motor vehicle or organise a charter flight to assist people who may have been stranded in Cape Melville National Park.

6.15 ATKINS, UECHTRITZ AND DAVID AND PAUL BARBAGALLO GO TO STARCKE STATION

After Atkins and David Barbagallo concluded their telephone conversation with Emerson, Paul Barbagallo and Uechtritz checked out of their motel. The four men then departed Cooktown at about 10.00am on Saturday 13 November 1993 and proceeded to Starcke Station.

According to Uechtritz, as Paul Barbagallo had to pick up a few bits and pieces before departing Cooktown, it was decided that David Barbagallo and Atkins would go ahead accompanied and guided by Uechtritz. Uechtritz, who had to that point driven the road each way once, claims that by 13 November 1993, he knew the way to Starcke Station sufficiently well to find his way to the property.

The effect of Uechtritz's testimony is that it was he, rather than Paul Barbagallo, who acted as the guide for David Barbagallo and Atkins to Starcke Station.

Uechtritz recalls the distance from Cooktown to Starcke Station was about 140 kilometres, and says that the journey took about one and a half hours. He describes the journey as "pretty straight forward", with the road being in a fair condition and well-signposted.

Uechtritz says that on arrival at Starcke Station before Paul Barbagallo caught up with them, David Barbagallo indicated that he wanted to locate an airstrip. Uechtritz, having not previously been on the property, could not assist, so David Barbagallo drove a short distance to the top of a hill to look for the airstrip. Uechtritz asserts that he, David Barbagallo and Atkins then proceeded to Starcke Homestead, where Uechtritz and David Barbagallo attempted to ascertain if anyone was present on the property. To this end, they knocked on the doors of three different buildings, but were unable to locate anyone. It did not appear to Uechtritz that anyone was living on the property and he describes one of the buildings as being devoid of furniture. He rejects the suggestion that a generator was operating, and says there were no dogs around the Homestead.

Uechtritz asserts that Paul Barbagallo arrived at the Homestead a few minutes after he had arrived with David Barbagallo and Atkins. David Barbagallo and Atkins then engaged in a lengthy conversation with Paul Barbagallo, during which Paul Barbagallo was asked questions about the property and pointed out various features. According to Uechtritz, at one stage while standing "a couple of hundred metres from the homestead", David Barbagallo asked Paul about the location of a pocket of rainforest,

which Paul then pointed out to be about half a kilometre away. Uechtritz says that no one actually went and inspected that area of rainforest. He said that Paul Barbagallo spent about half an hour showing them about Starcke Station.

The versions of David Barbagallo, Atkins and Paul Barbagallo differ from that of Uechtritz as to the sequence of events from the time of their departure from Cooktown. According to David Barbagallo and Atkins, Atkins was the sole passenger in the four wheel drive hire vehicle driven by David Barbagallo from Cooktown to Starcke Station; and David Barbagallo followed the vehicle driven by Paul Barbagallo. Uechtritz travelled as a passenger in Paul Barbagallo's vehicle. Paul Barbagallo's account of the journey from Cooktown to Starcke Station is different again. He says that he travelled alone in his vehicle, but that he led the way.

The Commission is therefore left with three separate and distinct accounts of the journey from Cooktown to Starcke Station.

When it was suggested to Paul Barbagallo that one does not require a guide to locate Starcke Station, he responded:

I was never really going to be a guide, it's just that it was blown out of proportion with the media saying I was a guide and all the rest of it. It was one brother meeting another brother basically, and just helping him out a little, I guess.

When Paul Barbagallo was first interviewed by Commission officers, he claimed to have spent one-half to three-quarters of an hour showing his brother and Atkins Starcke Homestead, the airstrip and the rainforest. When he subsequently testified before the Commission, Paul Barbagallo estimated this time to have been about 30 minutes. He asserts that the two vehicles stopped at the top of a hill on the property, where he there explained to his brother the location of the station, the airstrip and the National Park. He recalls that both vehicles were then driven through a gate and stopped close to the homestead, at a point approximately 100 metres from the junction of the road to Bathurst Bay. It was from this point that Paul Barbagallo departed shortly after for Bathurst Bay.

Paul Barbagallo concedes that he did not think he had been of much assistance to David Barbagallo and Atkins.

David Barbagallo and Atkins differ with Paul Barbagallo as to their recollection of Paul's involvement in events at Starcke Station. Both David Barbagallo and Atkins assert that Paul Barbagallo did not spend much time pointing out features of the

property before departing for Bathurst Bay. Atkins says Paul Barbagallo spent a total of a few minutes saying his "goodbyes" before departing for Bathurst Bay.

After Uechtritz joined David Barbagallo and Atkins, they drove up to the homestead. David Barbagallo says that as they discovered no one in residence, they had a "brief look around the property" for 30 to 45 minutes. Atkins testified that they drove out to an area not far from the homestead where they thought the airstrip was located, but could not find it. His estimate of time spent around the Homestead and searching for the airstrip was between 15 to 30 minutes.

Atkins testimony was similar to that given by David Barbagallo.

Paul Barbagallo says that because he had only one vehicle and was "pushed for room" in fetching those still at Bathurst Bay, it was agreed that Uechtritz would accompany David Barbagallo and Atkins back to Cairns, while Paul Barbagallo continued on alone to Bathurst Bay.

According to Uechtritz, after about half an hour of conversation at Starcke Station, David Barbagallo and Atkins were preparing to return to Cairns, and Uechtritz suggested to Paul Barbagallo that he could go back to Innisfail with David Barbagallo.

David Barbagallo claims that Uechtritz's property was transferred into the hire vehicle being used by Atkins and Barbagallo before they left Cooktown. According to his account, it had been decided at Cooktown that Uechtritz should return to Innisfail with David Barbagallo at the conclusion of the visit to Starcke Station. Atkins has a similar recollection.

In view of the delay occasioned to Atkins' and Barbagallo's inspection of Starcke by their attendance at the Cooktown Police Station, David Barbagallo was asked whether they were able to adequately achieve the objectives of their trip.

How long had you planned to spend on Starcke Holding? --- Well, as much time as was necessary to elicit what we needed to know, cognisant of the fact of the Bloomfield River constraint.

Well, giving the time - given the timings that you had anticipated, you would have had two or three hours, is that correct? --- Yes.

Were you able to achieve everything you needed to achieve in the short time you were then able to spend on the property? --- Oh, yes. Sufficient to make the

decision, yes. ... Well, not everything we sought to achieve because, obviously, we didn't actually locate definitely beyond the - - -

No, but you were able to see sufficient of the property to recognise the difficulties involved in planning a trip? ---- Yes, yes.

Having planned to return to Cairns that afternoon via the Daintree route, David Barbagallo was mindful of having to cross the tidal Bloomfield River, by about 3.00pm. Accordingly, the original plan to spend 2 to 3 hours looking around the property was reduced significantly. Nevertheless, David Barbagallo claims that he and Atkins performed the assessment they had proposed. In this regard, David Barbagallo states that locating the airstrip was central to the plan to deliver the Premier and a media contingent into and out of Starcke Station within one day. Given that there would likely be a thirty minute time constraint upon any visit to the property by the Premier, David Barbagallo asserts that the half-hour inspection was sufficient time in which to make the desired assessment.

Atkins too, says that the events at Cooktown prior to the inspection of Starcke Station did not interfere with or frustrate the planned trip. He adds that it merely delayed it and they had:

Pretty-well done everything that they had proposed doing.

...

I mean given - given what was there when we got there, yes there wasn't much more to do. I mean, if - if the property had had been different, I might've wanted to spend longer there - you know - but - you know, you can only go with what you get and there wasn't much to do because of what - what was there which was a large bit of cattle property.

Atkins says that the biggest effect the delay at Cooktown occasioned, was the fact that he had lost any opportunity they may have had to return to Brisbane on the Saturday night, rather than the Sunday morning.

6.16 PAUL BARBAGALLO COLLECTS HIS PARTY AND GOES HOME

Paul Barbagallo says he arrived back at his campsite at Bathurst Bay at approximately 4.00pm on Saturday 13 November 1993 although, if the evidence that he left Starcke at about midday is correct, that is unlikely to be accurate. He informed the remainder of his party of the events at Cooktown.

The following day, that is Sunday 14 November 1993, the party decided to return home. They broke camp and returned directly to Innisfail. Paul Barbagallo asserts that they were forced to leave some of their gear at the campsite because it could not fit in the remaining vehicle.

6.17 ATKINS AND DAVID BARBAGALLO RETURN TO CAIRNS

After their brief inspection of the Starcke property, David Barbagallo and Atkins accompanied by Uechtritz returned to Cairns via the Daintree route. They completed their crossing of the Bloomfield River a little later than planned, at about 4.00pm. On arrival in Cairns, sometime around 5.30pm or 6.00pm on Saturday 13 November 1993, David Barbagallo left Atkins at the Pacific International Hotel and then continued to drive the hire vehicle to Innisfail, where he delivered Uechtritz to his property. David Barbagallo then visited his parents, before returning to Cairns later that evening. Atkins testified that David Barbagallo telephoned him upon his return to the Pacific International Hotel. Atkins estimates this may have been between 8.00pm and 9.30pm.

David Barbagallo claims that his principal purpose in travelling to Innisfail was to inform his parents of his resignation from the Office of the Premier. When interviewed by Commission officers, David Barbagallo said he thought that in previous discussions concerning the plans for the advance trip, he had indicated to the Premier that he intended to drive to Innisfail to inform his parents of his resignation.

When giving evidence before the Commission, David Barbagallo said that he doubted he would have mentioned the possibility of a visit to Innisfail to the Premier. The following exchange occurred:

PEARCE: Did you seek approval to take the vehicle to Innisfail? --- No, I don't think I would have sought approval. No.

Did you make mention to the Premier that you would be going to Innisfail? --- I doubt - I doubt it because I hadn't, obviously, made a final decision to do it.

You mentioned during the interview we had that - I asked you this question:

Do you think you were in a position to give the authority to give the man a lift to Innisfail from Cairns?

and you said:

Well, insofar as I had, I think I'd indicated to the boss that I wanted to go and tell my parents, you know, the fact that I was leaving, just so they were aware of it.

Well, then you went on and explained - - - --- Yes. Well, if that's what I said maybe that's - that I had - I may have mentioned it to him. On occasions that we travelled up there - you know, for example - you know, on a previous trip during the election campaign we were in Innisfail doing something. I said to Wayne, 'Do you mind if we go out to my parents' place?' and he said, 'No. Let's - Let's go out there.' So, you know, we'd gone out - well actually it was to Paul's farm. ...

A visit by the Premier to your brother's farm? --- Yes, I mean, wonderful. Let's - let's add that to the conspiracy.

As long he didn't take away any foxtail palms. --- ... So in the context that he knows how I feel about my family and, I mean, whilst I may have said that at the time I'm not sure that I would have talked to him about the details of - of, you know, my advance trip, particularly since, as I said, you make those decisions on the spur of the moment, essentially.

Would you regard your trip from Cairns to Innisfail as being official business? --- In the sense that I took Gordon down there?

Well, I think it is best that you answer it. How would you regard your trip from Cairns to Innisfail as being official business? --- Well - well, I was helping out someone who had had their vehicle, you know, stranded - you know, they had been stranded up there. There was basically no way they could get back to - to Innisfail other than by me going down there, concomitant with that I was going to go and see my parents and, you know, and I had dinner there as it turned out, and - is it official business? No, I don't think it's official business, but if you say would I do it again; yes, I would. Do I - do I have any qualms about that; no, I don't. I mean, I worked long hours. That - I was up there on my week-end - you know, at the margin, it was five dollars worth of diesel fuel for that trip. You know, I don't think it's a slippery slide sort of, taking graft.

Were you otherwise entitled to the ... private use of a government vehicle? --- Yes, I was. Yes.

You would have been entitled, then, to have driven your personal vehicle from Brisbane to Innisfail? --- That's correct, yes.

Is there some procedure nonetheless whereby you should account for a portion of the trip if it is not official business? --- I'm - I'm not entirely sure. I suspect there would be. You know, I'm not aware of anything, but I suspect there would be give the - - -

Well, the Fringe Benefit Tax implications and such like? --- I'm not a - I'm only - I'm not knowledgeable about the tax laws, yes.

Well, were you responsible for the account keeping process in respect of Fringe Benefits Tax? --- De facto I was, because I was the Chief of Staff, yes.

Did you ever do anything about declaring this portion of your trip, to Innisfail, as being anything other than an official business trip? --- No, no.

Was there any reason for that? --- No, there was no reason for that except that it didn't exactly occupy my mind at any stage to do as such. As I said I would do the same thing again even being apprised of the information you have now laid before me.

... With the benefit of hindsight, I suppose, even with the - - - ? --- Yes, even with the benefit of hindsight I would still do to the same thing because - because whilst it may not fall strictly into a definition of official business I don't consider it outside what I would consider to be the guidelines that govern the actions of an officer, you know, in a political office who has - is called on to make sacrifices in a whole range of areas.

The Premier has advised the Commission that he was unaware of Barbagallo's intention to travel to Innisfail.

Atkins says that so far as he understands, David Barbagallo had not planned to visit Innisfail. Atkins was of the belief that he and David Barbagallo were both merely returning to Cairns. His recollection is that he found out that David Barbagallo was to return Uechtritz to Innisfail during the journey from Starcke Station to Cairns. He believed at that time that David Barbagallo was returning Uechtritz to Innisfail out of some sense of friendship. Atkins says he had never spoken to David Barbagallo about the matter either before or after the event.

6.18 ATKINS AND DAVID BARBAGALLO RETURN TO BRISBANE AND BRIEF THE PREMIER

On Sunday 14 November 1993, David Barbagallo and Atkins caught a 6.45am flight from Cairns to Brisbane, arriving in Brisbane at approximately 9.00am.

David Barbagallo says he orally briefed the Premier on the results of the advance trip before the next morning's Cabinet Meeting, on 15 November 1993. Atkins recalls that he and David Barbagallo provided an oral briefing to the Premier - about the visual aspects of Starcke Station and the logistics of getting into and out of the property.

According to Atkins, he told the Premier that "it was not crash hot country" and "it's not going to be easy to get up there and back quickly". He also says that following the Cabinet Meeting, he gave the Premier a more-detailed briefing on the logistics, and also referred to the seizure of Paul Barbagallo's motor vehicle, and the events of Saturday morning at Cooktown. He says he informed the Premier that the incident was being investigated by the Fauna Squad. There was never any suggestion, according to Atkins, that the Premier might intervene or seek to influence that investigation.

So far as the proposed official visit to Starcke Station was concerned, Atkins testified that the Premier said that they should continue to consider the matter. Atkins also indicated that he had some photographs still to be developed and that he would show the photographs to the Premier when they were to hand.

The Premier confirms receiving a verbal briefing from David Barbagallo and Atkins, on the afternoon of 15 November 1993 during which he states that:

.....Mr Barbagallo informed me of the fact that a vehicle belonging to his brother had been seized in Cape Melville National Park. Mr Barbagallo also informed me that he and Mr Atkins attended a meeting at the Cooktown Police Station during which the circumstances of the seizure were discussed between himself, Mr Paul Barbagallo, his associate, Mr Gordon Uechtritz, the ranger who had seized the vehicle and the local policeman. Mr Barbagallo told me that the policeman said the matter would be handled by the Fauna Squad and that was where the matter was left. Mr Atkins told me that he had telephoned Doctor Emerson twice. I recall that he said that these calls were about what powers rangers had to seize vehicles and to tell Doctor Emerson that the matter was to be pursued by the Fauna Squad.

Furthermore, the Premier confirms that during that briefing he was informed:

...that an official visit to Starcke would take, at the very least, two full days and that if we wanted to make something more of such a visit by undertaking related or complimentary activities elsewhere in North Queensland we would need three or more days. I was also told that access to some of the higher conservation areas in Starcke would probably require the use of helicopters and would probably involve more time.

After receiving his photographs, Atkins says that he and David Barbagallo had a further discussion with the Premier about whether the Premier should undertake a trip to Starcke. Again, this is corroborated by the Premier, who confirms that they discussed difficulties in scheduling a visit before Christmas 1993. According to Atkins, it was ultimately determined to await the outcome of the Government's negotiations for acquisition of the property and further consideration of the matter was put off until the new year.

Although uncertain of the timing, David Barbagallo corroborates the substance of Atkins' recollections of those briefings. There was no minutes kept of any briefings.

When an article subsequently appeared in an Innisfail newspaper on 30 November 1993, indicating that David Barbagallo had been in Cape Melville National Park with his brother, Paul, at the time of the vehicle seizure, David Barbagallo provided the Premier with two memoranda dated 30 November 1993, detailing his account of events.

Atkins was unaware of Barbagallo preparing any written report in connection with the advance trip or the matters surrounding the seizure of the vehicle. Atkins himself did not prepare any form of written record until 21 February 1994, when he provided a statement to the Premier after an article appeared in *The Sunday Mail* on 20 February 1994. According to Atkins, the statement was prepared on 21 February, not 12 February as appears on the document.

6.19 THE ACQUITTAL OF THE TRAVEL EXPENSES OF DAVID BARBAGALLO AND ATKINS

Upon return from the advance trip to Far North Queensland, neither David Barbagallo nor Atkins completed any documentation to acquit travel expenses.

It was Atkins' belief that secretarial staff within the Premier's office attended to these matters and that all travel expenses claimed in the normal course on the American Express corporate card are processed through the Ministerial Services Branch. According to David Barbagallo, the Ministerial Services Branch furnishes a monthly "Business Travel Account - Remittance Advice" in respect of the Office of the Premier (as for all Ministerial offices), which the Premier retrospectively "signs off".

At the request of the Commission, the Auditor-General performed an audit of all expenses associated with the advance trip by David Barbagallo and Atkins. (The report of the Auditor-General is appendix 3.)

The audit objective was expressed as being:

Directed to establishing whether or not the expenditure incurred by Messrs Barbagallo and Atkins substantially complied with prescribed requirements in terms of the *Financial Administration and Audit Act 1977*, the Guidelines for the financial management of the office of the Minister which were tabled in the Legislative Assembly on 25 August 1992 and the Ministerial Procedures Manual issued by the Ministerial Services Branch (MSB), Queensland Treasury.

The Auditor-General notes that the requirement for the relevant Minister, in this case the Premier, to authorise proposed travel by signing the applicable travel order constitutes an internal control "critical to the proper functioning of the system as described". In this regard, the Auditor-General notes that in relation to the travel under investigation, the Office of the Premier applied an alternate authorising procedure approved by the MSB in 1992 whereby:

Ministers are permitted to signify their approval to relevant travel by certifying the Business Travel Account - Statement received monthly from American Express for each Minister's Office.

In accordance with that procedure, the relevant remittance advice showing aggregate expenses on the business travel account for the Office of the Premier for the month of November 1993 bears the Premier's approval, dated 20 December 1993. That approval appears in the following terms:

Approval is given for this expenditure. It is in accordance with the Approved Ministerial Guidelines.

In summary, the Auditor-General finds:

There is nothing evident in this particular case to suggest non-compliance with the prescribed procedures.

In relation to the use by David Barbagallo of the hire vehicle for private purposes to travel from Cairns to Innisfail and return on 13 November 1993, the Auditor-General considers that in monetary terms, the matter is of little consequence, and given the minor benefit gained by David Barbagallo, it is unlikely that any tax would be attracted by virtue of section 58P of the *Fringe Benefits Tax Assessment Act 1986*. However, the Auditor-General concludes that the issue of recouping of the value of the excess kilometres incurred at public expense, and the question of whether such vehicle use may be subject to Fringe Benefits Tax, are matters which "could be pursued further by the Ministerial Services Branch, Treasury".

The Commission's response to the conclusions reached by the Auditor-General are contained in Chapter 12 of this report.

CHAPTER 7

THE INVESTIGATION AND PROSECUTION OF PAUL BARBAGALLO AND GORDON UECHTRITZ AND THE CONSPIRACY THEORIES

7.1 THE FAUNA SQUAD GO TO FAR NORTH QUEENSLAND

Having been notified on Saturday 13 November 1993 of the seizure of Paul Barbagallo's vehicle in Cape Melville National Park, the officers of the Fauna Squad, Detective Sergeant Ricketts and Senior Constable Fletcher prepared to travel to Far North Queensland to commence an investigation into possible offences arising out of the presence of the vehicle and its contents in the National Park.

On Sunday 14 November 1993, Ricketts and Fletcher proceeded to Innisfail and upon arrival, conducted inquiries to locate Paul Barbagallo. They ascertained, that he was not then at his home. They also made inquiries on the police computer in relation to his green Toyota Landcruiser, and sought to determine whether he held a licence under the *Weapons Act 1990* to be in possession of firearms.

That afternoon, Ricketts and Fletcher proceeded to Cairns.

At about 8.30am on Monday 15 November 1993, Ricketts and Fletcher went to the Cairns office of DEH and spoke with Harris and Chep.

Later that day, Ricketts and Fletcher drove to Cooktown where they met with Shears at about 5.00pm.

Shears' diary entry for that day records his meeting with Ricketts and Fletcher, and the notation: "Police Chief in Cairns wants me buried." Shears claims that Ricketts told him this, and explained that it was because of the "big fuss" he (Shears) had caused. Ricketts does not recall making these comments to Shears, but concedes he may have said something to that effect to Shears after he had overheard derogatory remarks made about Shears at the Cairns Drug Squad.

On the morning of Tuesday 16 November 1993, Ricketts and Fletcher attended at Cooktown Police Station. Thereafter, Shears, Fletcher and Ricketts drove to Lakefield National Park Ranger Base. Upon arrival, Ricketts spoke with Teece, and later, in

On the morning of Tuesday 16 November 1993, Ricketts and Fletcher attended at Cooktown Police Station. Thereafter, Shears, Fletcher and Ricketts drove to Lakefield National Park Ranger Base. Upon arrival, Ricketts spoke with Teece, and later, in company with Fletcher and Shears, went to a locked shed and inspected the seized vehicle.

Located in the front cabin of the vehicle were the three firearms, a female's handbag, and two rolls of film. A chainsaw was located in the rear of the utility. The contents of the handbag were not then closely examined. After the inspection the shed was again secured and Ricketts, Fletcher and Shears drove on to Cape Melville National Park.

On Wednesday 17 November 1993, Shears directed Ricketts and Fletcher to the location of the National Park sign beyond which the seized vehicle had proceeded. According to Ricketts, he was shown the debris and logs that Shears claims to have placed across the track. Ricketts describes observing the remnants of a track circumventing the debris that Shears had placed across the track. This "alternate" track, he describes as going to the left of the sign as one faces it. He recognised definite tyre tread marks traversing the alternate route.

On Thursday 18 November 1993, Shears, Fletcher and Ricketts returned to Lakefield Ranger Base, arriving at about 11.20am. Fletcher took possession of the seized vehicle and drove it to Cooktown Police Station. Ricketts and Shears travelled in Ricketts' departmental vehicle, arriving at Cooktown at about 4.00pm. The seized vehicle was placed in the holding yard at Cooktown Police Station and the firearms and chainsaw were placed in the police station exhibit room. According to Fletcher, other items in the vehicle, such as the handbag, were left in the vehicle.

The following morning, Friday 19 November 1993, Ricketts obtained a statement from Shears regarding the events leading up to and including the seizure of the vehicle.

At about 10.00am, while Shears, Ricketts and Fletcher were still at the police station, Constable Meadows approached them with a pipe and a plastic bag containing a small quantity of green leafy material (later identified as *Cannabis sativa*) in a plastic fuse box which Meadows explained had been located from the handbag in the seized vehicle. Fletcher entered these items in the Drug Exhibit Register.

In response to a request from Ricketts, Meadows provided to Ricketts a copy of his report to Hartwell (dated 13 November 1993). Realising that the report contained comments critical of Shears which might cause embarrassment to Ricketts because of

his association with Shears, Meadows edited his report by deleting two comments before he handed the report to Ricketts. Those two comments were, firstly, Meadow's claim that Shears ignored police advice to return the vehicle to the location from where he seized it and, secondly, Meadow's opinion that Shears was a "cowboy", prone to exaggeration and of doubtful reliability.

7.2 WELLARD AND KELLY EXPRESS DOUBTS ABOUT PROSECUTING

On Friday 19 November 1993 Ricketts and Fletcher drove Shears to his home at Cape Tribulation and proceeded to Cairns where, at about 5.00pm, they met with Harris, Wellard and Kelly at the Cairns office of DEH to report on the visit by Ricketts and Fletcher to Cape Melville National Park. They indicated their intention to proceed with charges against one or more of the occupants of the seized vehicle. During that meeting, Ricketts handed copies of the statement he had taken from Shears earlier that day to Wellard and Harris.

Kelly and Wellard both gave evidence that at this meeting they anxiously expressed their concern as to whether Shears had statutory authority to seize the vehicle. They considered that if he had no such power a prosecution was inappropriate and would bring further embarrassment upon the Department. This contradicts a view expressed by Kelly to Harris in a memorandum three days earlier, on 16 November 1993, when, commenting upon a draft "Interim Incident Report" prepared by Harris for Wellard in which Harris strongly defended Shears' actions, Kelly stated, "...I would admit that...Pat has not acted outside of his legal powers..."

However, by the time of the meeting on 19 November 1993, both Kelly and Wellard were openly expressing the belief that Shears had not been appointed as a Field Officer, and therefore did not have the necessary authority under the *National Parks and Wildlife Act 1975* to seize a vehicle.

Harris testified that by the time of the meeting with the Fauna Squad on 19 November 1993, he, Kelly, and possibly Chep too, had examined the relevant legislation and documents evidencing Shears' appointment as a Field Officer. On the basis of this material, Harris argued that Shears had the authority to seize the vehicle.

Ricketts explained that even if Shears was not empowered as a Field Officer to seize the vehicle, his actions did not amount to stealing, and a court would view his actions as reasonable in the circumstances. Kelly claims he accepted Ricketts' opinion in this

regard and did not thereafter entertain any doubt about the lawfulness of Shears' actions. Kelly asserts that no pressure was placed on Ricketts during that meeting to refrain from charging Paul Barbagallo or Uechtriz.

According to Harris, the debate about the lawfulness of Shears' actions reached the point where Wellard said something to the effect, "well only a court could decide".

Wellard denies that he ever attempted to influence the investigation or the prosecution of Paul Barbagallo and other members of his party. Rather, according to Wellard, given his position as Regional Director, it was his prerogative to raise with Ricketts what he perceived to be potentially contentious issues associated with their prosecution. Furthermore, Wellard claims that he was never given any specific directions by Emerson in this regard - other than Emerson's previous observation that due process had to be observed and the police investigation must take its proper course.

Subsequently, in a letter to Wellard dated 18 February 1994, Ricketts alleged that at the meeting on 19 November 1993:

the view was strongly put by you that it would be inappropriate to charge Uechtriz with the offence (of being in possession of a firearm in Cape Melville National Park) as the offence was minor and would not stand up in court.

The letter concluded:

Furthermore, there appears to be an attempt by the DEH to have the seized firearm returned to the offender.

Please be advised that any such attempt by the department will be vigorously opposed by this squad through other channels if necessary.

By way of response, in a letter to Ricketts dated 23 February 1994, Wellard rejects what he viewed as the inference that he had attempted to interfere with Ricketts' investigation. Wellard's letter states:

During our discussion on the 19th I clearly recall suggesting to you that your case against Uechtriz could be complicated by the reality that many persons travelling throughout Cape York Peninsula were known to, or could be reasonably expected to, carry rifles. I recall commenting that this was generally overlooked provided those persons did not openly display and did not use such weapons whilst within a National Park. I also may have pointed out, but you would no doubt be fully aware, that most

major roads through National Parks in the Peninsula are gazetted main roads and staff have no jurisdiction to prevent travellers carrying firearms on such roads. I do recall making the comment that a Magistrate might view this matter in a different light to that taken by yourself.

I completely reject the implication in your letter that this was some attempt at interfering with your investigation. Is this to mean that as Regional Director I am unable to express an opinion on matters relevant to this Department?...

As you will no doubt recall from our discussion my primary point of concern was that you had apparently made the assumption, without investigating the matter it appeared to me, that Ranger Shears was a Field Officer appointed pursuant to the *National Parks and Wildlife Act 1975*. You will recall my surprise at your comment in this regard and my advice to you that as far as I was aware he was not so appointed. I therefore had, and continue to have, serious reservations about the legality of his confiscation of the vehicle from the National Park. ...

When Ricketts testified before the Commission, he acknowledged the accuracy of Wellard's account of the discussion, except that he did not agree that Uechtritz had been mentioned by name because his identity had not been established at that time. Ricketts agrees that there was no pressure applied to him to have charges against Paul Barbagallo or Uechtritz withdrawn, either on that day or any subsequent occasion. Ricketts also confirms that Wellard was concerned as to the legality of the seizure, because it was thought Shears had not been appointed a Field Officer.

Fletcher too, confirmed in evidence that Wellard was primarily concerned with the lawfulness of the seizure of the vehicle. He added:

I just felt it strange that he didn't show sort of much interest in finding out if there was any offences committed up there and all he was concerned about was getting Shears back to Cairns and finding out when his contract expired.

7.3 WELLARD INSTRUCTS THAT RUMOURS SHOULD CEASE

Harris testified that on or about 19 November 1993, he was told by Kelly that Wellard had asked whether he had informed anyone of the matters of which Wellard had been informed on the evening of Friday 12 November 1993, and of the efforts to arrange alternative transport for the occupants of the seized vehicle. According to Harris, Kelly was also instructed by Wellard that those matters were to be kept confidential.

Harris says that he commented to Kelly that it would be difficult to comply with that instruction given the passage of time and events. In particular he responded that given the suspicions already entertained by Harris, Chep and possibly others as to the intentions of Paul Barbagallo in Cape Melville National Park, the suggested trawler rendezvous, and possible political overtones in the subsequent events, speculation was rife.

Both Kelly and Wellard deny that Wellard ever said anything of the nature claimed by Harris. Kelly says he knew and Wellard acknowledges that he suspected that Harris and others had been engaged in speculating and theorising about undercover operations and political interference. Both Kelly and Wellard conceded that they may have given instructions for this to cease.

Harris does not accept the notion that what Kelly had reported was nothing more than Wellard's instruction that departmental officers should stop engaging in baseless rumour mongering.

7.4 THE FAUNA SQUAD INTERVIEW AND CHARGE DAVID BARBAGALLO AND UECHTRITZ

On 20 November 1993, Ricketts and Fletcher interviewed Paul Barbagallo at the Innisfail Police Station concerning the vehicle and contents located in Cape Melville National Park. Paul Barbagallo admitted ownership of the vehicle and acknowledged having driven the vehicle to the location from where it had been seized. He claimed he had been unaware of any signs prohibiting the access of vehicles to that location, and was unaware of the National Park boundary. Paul Barbagallo declined to identify any of his companions and made no admissions concerning the items found in the vehicle, that is, the three firearms, the chainsaw, a quantity of *Cannabis sativa* and the pipe.

The transcript of the interview between the police officers and Paul Barbagallo contains no reference to David Barbagallo. However, David Barbagallo subsequently complained to the Commission that he had been informed by his brother, Paul, that Ricketts had asked whether Paul had a brother who worked for the Premier. Paul Barbagallo confirmed that his brother, David, worked for the Premier and that he (Paul) had accompanied David Barbagallo upon an inspection of Starcke Station.

Ricketts confirms that this information was gleaned from Paul Barbagallo after the conclusion of the formal interview process.

After speaking with Paul Barbagallo, Ricketts and Fletcher interviewed Uechtritz. During this interview, Uechtritz admitted being a passenger in Paul Barbagallo's vehicle prior to its seizure. Uechtritz conceded that he was aware that the vehicle had gone into the National Park, and claimed that the party had done so to have a look at the foxtail palms and take photographs. Like Paul Barbagallo, Uechtritz claimed that he had not noticed any sign prohibiting entry of vehicles, and that it was not until he and the other members of the party were walking out of the park that the sign was discovered.

Uechtritz told the police officers that although Paul Barbagallo owned the chainsaw it had not used on the National Park. Uechtritz admitted ownership of one of the firearms, a pump action shotgun, which he said was loaded, but claimed to be ignorant of laws restricting the presence of vehicles and firearms on National Parks without a permit. He claimed that the firearms had not been discharged on the National Park.

Uechtritz denied any knowledge of the *Cannabis sativa* which had been found in the vehicle.

During his interview, Uechtritz was shown ten photographs which Ricketts had had developed from one of the films located in the seized vehicle. Uechtritz identified the seized vehicle in one of the photographs.

Following the interviews with Paul Barbagallo and Uechtritz, Ricketts and Fletcher determined to commence action by way of complaint and summons against them for the following offences:

Against Paul Barbagallo:

- Possession of a Dangerous Drug: section 9, *Drugs Misuse Act 1986*.
- Possession of a Utensil: section 10(2), *Drugs Misuse Act 1986*.
- Traversing a National Park with a vehicle: section 51(d), *National Parks and Wildlife Act 1975*.
- Possession of firearms on a National Park: regulation 21(d), *National Parks and Wildlife Act 1975*.

- Possessing a chainsaw on a National Park: regulation 21(e), *National Parks and Wildlife Act 1975*.
- Possession of a firearm whilst unlicensed: section 3.1, *Weapons Act 1990*.

Against Uechtritz:

- Possession of a firearm on a National Park: regulation 21(d), *National Parks and Wildlife Act 1975*.

Fletcher subsequently returned to Brisbane where, on Monday 22 November 1993, he completed the required form for the police prosecutor, swore out complaints against both Paul Barbagallo and Uechtritz in respect of the above offences, and obtained corresponding summonses returnable before the Cooktown Magistrates Court on 24 January 1994.

The forms completed by Fletcher contained a statement of facts relevant to the alleged offences. Of particular note, Fletcher stated that when interviewed on 20 November 1993, Paul Barbagallo said that he "had no knowledge of the G.L.M. (green leafy material) or the pipe".

Ricketts prepared a report dated Monday 22 November 1993, addressed to the "Regional Director, Department of Environment and Heritage, Far Northern Region" (ie., Wellard). Ricketts' report contained both a synopsis of the investigation of events surrounding the seizure of the vehicle on 11 November 1993, and certain recommendations.

Ricketts also expressed his intention to summons Paul Barbagallo and Uechtritz in respect of the offences referred to above.

In what appears a clear contradiction of the transcript of the interview between Ricketts, Fletcher and Paul Barbagallo on 20 November 1993 and the court brief prepared by Fletcher on 22 November 1993, Ricketts reported that Paul Barbagallo "...took responsibility for a quantity of cannabis and a pipe which were located in the seized vehicle".

Fletcher testified that Paul Barbagallo did not made any admission concerning the *Cannabis sativa* or pipe, and indeed had denied any knowledge of those items.

Ricketts says however, that at the conclusion of the formal interview, he informed Paul Barbagallo of an evidentiary provision within the *Drugs Misuse Act 1986*, the effect of which is that the owner of a vehicle in which drugs are found bears responsibility for possession of the drugs. The following extract is taken from the evidence of Ricketts:

PEARCE: Did he in fact do that? Did he take responsibility for those items? --- Well, he did, because he explained to him what the situation was.

Well, you had better explain to me what the situation was? --- All right. We explained to him, and I think this might have been after the interview ceased, because he said he didn't wish to answer further questions, because we had intended to ask him about that, and we told him that he would also be charged in relation to the quantity of cannabis and the pipe. And he said, 'Why is that?' I said, well, they were, or we said, whoever said, 'They were located in the vehicle and, under the provisions of the *Drugs Misuse Act* the owner of the vehicle is responsible' - you know, or the house or whatever is responsible for possession, unless - 'unless you can nominate someone else who may have committed that offence.' Then he said words to the effect, 'Oh, no, I can't,' so, well, words to the effect, 'I'll wear that one as well, I suppose,' something like.

That is hardly taking responsibility for it, thought, is it? --- Well, I don't know. I suppose it could be debated but it would be my view that he is taking responsibility for it by virtue of the fact that it's his vehicle, if found in there, and the provision of the *Drugs Misuse Act*."

Ricketts was at this point referred by counsel assisting to the following passage from the transcript of the interview with Paul Barbagallo:

FLETCHER: Well, there is also other matters I wish to speak to you about which also includes these rifles that were found in the car, and there is also, when the vehicle was taken back to Cooktown to search, this was also located in the vehicle as well.

RICKETTS: In what appears to be a lady's bag.

FLETCHER: There appears to be a pipe and also a quantity of green leaf material in a plastic fuse box. What can you tell me about this?

BARBAGALLO: I know nothing about it.

FLETCHER: Are you going to answer it?

BARBAGALLO: No, no, no.

FLETCHER: You do not know anything about it at all?

BARBAGALLO: I honestly don't. I really don't. You can probably check my record. I've been in trouble before. They were not even in the car with her to my knowledge.

The following exchange then took place between counsel assisting and Ricketts:

Do you remember him saying that? --- Yes that's - I accept that, yes.

Well, it is hardly taking responsibility for it, is it? --- Oh, I accept that, yes. I - yes, I accept that.

What were you trying to convey by saying in your document of 22 November 1993 that 'he took responsibility' for these items: the fact that he did not argue with you when you indicated the provisions of the Drugs Misuse Act? --- No, I didn't mean anything untoward towards him ... that's just the way I did the report; from my recollection at the time. I mean, you could call it a slip-up, I suppose, but there was definitely - there was nothing - there was no ulterior motive in putting that there.

Ricketts' report also contained the further observation:

I also believe from my inquiries that a brother of P BARBAGALLO, a David BARBAGALLO was with the party. I understand that D BARBAGALLO is/or was attached to the Premier's department and was conducting some inquiry in relation to the purchase of STARCKE Station. Whether this person was on the park at any stage is unknown.

I have also established that a trawler was to meet the party on or about the 12/11/93 at Bathurst Bay.

Ricketts concluded:

The overall result of investigations despite the questions raised and concerns over the 'seizure' of the vehicle at the start, are to my mind quite satisfactory. There is little doubt in our minds as to the intentions of the party at Cape Melville National Park however there is no evidence to support any charge of 'Interfering with forest products'.

RECOMMENDATIONS:

1. That Toyota 4WD utility reg. no. 564-AUI seized and impounded by us following Ranger SHEARS action be returned to the owner P BARBAGALLO.

It is my view that forfeiture of the vehicle under the circumstances (traversing a Nat. Pk.) would not normally warrant forfeiture and disposal. It should be noted that the firearm and the chainsaw remain under seizure pending court proceedings.

I have spoken to Barbagallo and he is prepared to collect the vehicle from Cooktown in the event of the seizure being lifted.

2. That patrols of Cape Melville National Park by "Field Officers" be recommenced immediately as obviously there is continued activity and interest in the area. Furthermore, the season is now right for the availability of the seeds.
3. That any decision not to re-employ Ranger SHEARS after the expiry of current arrangements not be taken too hastily as the D.E.H. is short of personnel keen to become involved in the more unpleasant activities and duties under relevant statutes.

Under strict supervision, SHEARS has performed well when performing duties with this squad.

In accordance with the first of those recommendations, the vehicle was returned to Paul Barbagallo at Cooktown on 25 November 1993.

In evidence before the Commission, Ricketts stood by his previously-stated opinion that Paul Barbagallo and his party had been attempting to take foxtail palm seeds "in one way or another", claiming that there was little doubt in his mind that this was the case. According to Ricketts, the following circumstances caused him to form this view:

- the occupants of the vehicle had firearms which were loaded at the time;
- the vehicle travelled past a 'no-entry' sign;
- they knew exactly where the palms were;

- Paul Barbagallo's brother was in a fishing boat in the area and – although he knew nothing about this brother – he believed that the removal of seeds from the park by boat was the most popular and effective method;
- and
- he had received information from Innisfail Police that Paul Barbagallo had previously been involved in 'drugs' and 'foxtails'.

Ricketts was also asked in evidence, to explain why he believed David Barbagallo was "with the party", as he had reported. The following extract refers:

BARNES: What inquiries had you made that led you to believe that? --- That was – I'm pretty sure I had that conversation again with Paul Barbagallo at Cairns. I think he mentioned the fact that he was up there and they were going to show him around, or something like that. But, again, I mean, I can't be – I can't be – - -

PEARCE: But if that had been the case, if that had been something that Paul Barbagallo had told you, you would have written it as such, would you not? You would have said, 'I understand from speaking with Paul Barbagallo that David Barbagallo was in the area'. You have not written it like that? --- I think it was just a general suspicion that I had from talking to the police up there at Cooktown, and also when we interviewed Gordon Uechritz we started to get onto the part about who was – 'Who was with you – who went up – who else was with you when you went up to Cape Melville?' And he – at that stage he sort of – he didn't want to answer any more questions. He said, 'Oh, I don't want to get into that', or something like that. So – see, there was information from Paul Barbagallo that he was going to meet his brother up there and so on, or that he had met him up there – well, he had met him up there at that stage. And I just assumed that he was with them, but I didn't – I didn't suspect any – or know of any – you know – other activity at that stage. . . . But you know what I was saying was that I believe that he was with the party up there, but not necessarily on the park.

As stated, Ricketts' report was addressed to Wellard, as Regional Director. Ricketts believes he sent the original report to Wellard by post, and transmitted a copy of the report by facsimile, to Harris. He concedes he may not have sent the original to Wellard, but may have retained it. The Commission has obtained a copy of the report as transmitted to Harris by facsimile. It bears the transmission time of 1.11pm on 22 November 1993.

In testimony, Harris expressed the belief that the document he had received was simply a duplicate of a document which Ricketts had independently forwarded to the

Regional Director, as addressed. In other words, Harris did not believe that Ricketts had forwarded the document to him for it to be, in turn, delivered to the Regional Director.

It is apparent from correspondence appearing on the relevant DEH file, that some four weeks later, on 23 December 1993, Harris forwarded a copy of Ricketts' report to the Regional Manager, Symonds (who had by this time returned from leave and replaced Kelly). On 4 January 1994, Symonds passed the report to Chep, for his information.

According to Wellard, Ricketts' report of 22 November 1993 first came to his attention on 16 February 1994. At that time Wellard endorsed the report as follows:

I, Gregory Wellard, hereby state that I first became aware of this letter to me on Thursday 16/2/94. Mr Mike Chep first brought it to my attention.

Signed and dated 17/2/94.

7.5 THE CONSPIRACY THEORIES FLOURISH

On the day he interviewed Paul Barbagallo, Ricketts telephoned Harris and Shears. Harris also telephoned Shears. They shared information, misinformation and perhaps disinformation.

According to Shears and corroborated by an entry in his diary, after interviewing Paul Barbagallo and Uechtritz on 20 November 1993, Ricketts telephoned Shears and advised that "Barbagallo has been charged on six offences".

Shears diary for 20 November 1993, also contains an entry alleging that "He (Harris) called" and advised him that:

Paul Barbagallo has a brother in the Premier's Department and he was in the Cape Melville area at the time of the seizure. He was sent up by the Premier to assess the worth of the Starcke Pastoral Holding.

Conceding that he telephoned and possibly communicated that information to Shears, Harris explains:

If I did at the time, that would have been the sum total ... of information that had come through in that previous week. I mean ... the picture was evolving. At times

the information was obviously wrong or distorted and subsequently, you know, you would delete things...

The entry in Shears' diary continues:

David Barbagallo was the Premier's Private Secretary until last week when he suddenly resigned.

It is now believed that after I had seized the truck and headed for Lakefield, Barbagallo must have had a radio in his other truck and called Brisbane. With his links to the Premier, pressure was brought to bear for the police in Cooktown to do nothing and for Wellard to have me recalled to Cairns.

Harris testified that he may also have given that information to Shears during that telephone conversation:

PEARCE: Is that information which you might have passed on to Mr Shears on 20 November? --- Yes, I - I'd consider that a possibility.

Shears says that he was informed of this theory by Harris, but was not told where Harris had gathered his information.

Harris received most of his information from Ricketts. Ricketts testified that after Paul Barbagallo had confirmed that his brother, David, had worked in the Office of the Premier, he telephoned Harris and passed on that information. Ricketts claims that he said to Harris, "Well this might explain why there's so much interest by Wellard and a few other people". He also concedes that he may have told Harris that there had been some interference or undue influence brought to bear in the matter. Ricketts acknowledges having told Harris that David Barbagallo had resigned (although he does not recall suggesting that the resignation had been sudden), and that at the time of the vehicle seizure, he had been sent by the Premier to assess Starcke Holding. He further acknowledges telling Harris that Wellard had pressure placed on him by David Barbagallo to have Shears recalled to Cairns. The rest of Shears' diary note Ricketts ascribes to the fertile imagination of Harris or Shears.

Fletcher confirms that he and Ricketts had discussed the possibility that there had been a conspiracy between certain senior public servants to influence court proceedings. Fletcher also confirms that Ricketts discussed this possibility with Harris and Shears. When the entries from Shears' diary for 20 November 1993 were read to Fletcher, he acknowledged that the contents were consistent with the matters he and Ricketts had discussed.

Harris testified that until 20 November 1993, he had not been in contact with anyone other than Ricketts who might have provided the information which Shears has recorded in his diary. According to Harris, Ricketts is therefore the most likely source of that information.

Harris acknowledges that at the time of his conversation with Shears on 20 November 1993, he believed that it was definitely possible that there had been "political interference" in the events following the vehicle seizure. Harris explains:

... I would suggest that had the vehicle seized belonged to people who didn't have those connections, then the outcome would have been, I suggest or I anticipate would have been somewhat different.

Asked in what sense would it have been different, Harris responded:

Well I don't think the reaction, the immediate reaction to one that somehow Pat Shears had automatically - must have done something wrong and was to be terminated - and I don't want to get into that argument again - but that he wasn't to go back into the park. I think that may not have happened so quickly.

Harris says that the genesis of his suspicions in this regard arose from his discussions with Kelly on the evening of Friday 12 November 1993. The following extract of Harris' evidence to the Commission is therefore significant:

BARNES: What makes you think that at that stage anyone knew of the political connections you are now talking about? --- Well, I'm relying ... I suppose, on a combination of taking subsequent events back into what happened at the time and that is those conversations ... the conversations I'm referring to between Greg Wellard and Geoff Kelly, as relayed by Geoff Kelly to me, that - that we - you know, we'd stumbled onto something bit and so on and so forth, but what I'm saying is I'm reconstructing, if you like, later events back into that situation.

You have got suspicions that are based solely on the actions of Mr Wellard and Mr Kelly on Friday night, and that you believe they knew, at that stage, that the brother of the person who owned the vehicle that was seized was employed by (the Premier)? --- I don't believe Geoff Kelly knew that, but I think I'm correct in saying Geoff mentioned to me that Greg had been advised by people in Brisbane of this somehow secret event that we'd blundered into.

...

You agree that the response of Mr Wellard was quite frenetic? --- Oh, yes.

He was extremely concerned on the Friday evening? --- Oh, yes.

As soon as he became aware of the incident? --- Oh, yes, and that was subsequent to a phone call from - I'm not sure who - I think at one stage I understood he'd had the Director-General on the phone, but I wouldn't be certain of that. I know there was a lot of phone calls coming and going.

So your theory, to hold weight, must have been - - - ? --- That it had come from Brisbane, that whatever had caused him his consternation was not locally generated.

This is right. That is on the Friday night? --- That's on the Friday night.

So that if you were to later become convinced that on the Friday night Mr Wellard knew nothing about the identity of the owner of the vehicle, your suspicion would evaporate; is that fair? --- But why the consternation?

Well, I do not know why the consternation, but your explanation for it would not hold water any longer, would it? --- If he didn't know anything about the owner, he would not be - - -

Well, you could not any longer say that his activity would be expected because of the political connections of a relative of the owner? --- Oh, I see. Yes, I think that's logical, yes.

A further significant telephone call is recorded in an entry in Shears' diary for Sunday 21 November 1993. According to the diary, on that day Ricketts called on Shears at Cape Tribulation whilst making his way to Cooktown.

Shears' diary records that at 1830 hours on that day he then received a telephone call from Chep, who was "looking for Gav. (Ricketts)". Shears went on to record that Chep:

...tells me that there is a Barbagallo woman in business with Craig Emerson, the Director-General of N.P.'s (2020 Vision). Emerson is being investigated by the CJC.

Shears confirms that it was Chep who gave him this information. Shears says that he was not told where Chep had obtained the information, but acknowledges that Chep's statement added to his suspicions.

Chep acknowledges that he was endeavouring to locate Ricketts on Sunday 21 November 1993, but denies having a conversation with Shears in the terms recorded

in Shears' diary. Further, Chep says that any conversation with Shears would have occurred in the morning and not at 1830 hours.

Chep, on the other hand, suggests that he learned of the information from Ricketts:

BARNES: What can you recall that Ricketts said about that? --- He indicated that *2020 Vision* business with Bob Hawke and Craig Emerson, and I think he indicated that Craig Emerson was a person who was trying to get into politics and had this scheme in relation to *2020 Vision* which was some sort of insight into the future of the Labor Party or something.

And did he mention that Barbagallo's wife - David Barbagallo's wife was involved in that? --- No. I didn't even know Barbagallo was married.

I see? --- I don't - no, no, that's not right.

For his part, Ricketts denies ever learning of this information - although he concedes that he may have subsequently read about it in a newspaper.

According to both Harris and Ricketts, Chep shared and was party to the suspicions of a conspiracy involving the events which followed the seizure of Paul Barbagallo's motor vehicle. The following passage from Harris' evidence refers:

PEARCE: Did Mr Chep ever have any discussions with you regarding this theory that had been proposed of wrong doing? --- Oh, I think anybody involved with it had a number of - - -

No, well Mr Chep in particular? --- Oh, yes, yes, yes, amongst others.

And he shared your suspicions and concerns, did he, that you can recall? --- I'd suggest we were mutually, and again with others, trying to put a construct on what may or may not have happened.

And coming up with, if I can suggest, suspicious connotations? --- Oh, yes. I mean, it would be fair to say that, yes.

And Mr Chep was certainly party to those suspicious connotations? --- Oh, yes, yes. Yes, most definitely.

It is relevant to recall the evidence of Ricketts as to the views privately expressed by Chep:

PEARCE: What, Chep was a party to this - if you like - 'conspiracy theory' as well, was he? He thought there may have been something in it? --- Oh, Mr Chep was party to the - to all those procedures that commenced on the - the evening of 12 November.

...

...did it appear to you that (Chep) harboured the same sort of suspicions that you harboured? --- Oh, yes, yes.

And he expressed himself to you in those equal terms? --- Yes, he did.

'There is something going on here?' --- Yes, yes, yes.

In January 1994, Ricketts was so possessed with the conspiracy theory that he wrote a memorandum to the Director, Queensland National Parks and Wildlife Service seeking a response to the allegation that Emerson intervened in the investigation of the offences committed by Paul Barbagallo and seeking clarification of and explanation for the involvement of DEH personnel, including Emerson himself, in the events surrounding the seizure of Paul Barbagallo's motor vehicle. Ricketts specifically queried why a senior officer of DEH had been instructed to hire a vehicle at departmental expense to assist the occupants of the seized vehicle.

In his evidence to the Commission, Ricketts explained his motivation for writing this memorandum:

...I suppose I thought that what could be brought up in Court is the fact that if these stories were correct - that the Department viewed the actions of Pat Shears as unlawful or whatever, had taken measures to reverse what he had done officially - that that could be used in Court against us by the defence saying, 'Well, you've got the ranger seizing the vehicle on this hand and your Department who you work for is making arrangements to give the vehicle back or to arrange alternative transport'. I felt that that could damage the case.

PEARCE: What did you want Emerson to do about that? --- Well, I just wanted to know what his involvement was; if there had actually been some arrangements made or if they tried to make some alternative arrangements there.

What response were you expecting from him? --- Well, just an explanation as to his part in the proceedings that weekend, so that we could be forearmed, you know, it may well be something that could sabotage our case. We may require him as a witness. It may be something - my main concern was it would be something which would sabotage our case and maybe we should not proceed, because I have had similar things like that in the past where, you know, you have charged someone with keeping protected fauna and the next day somebody in the Department gives them a permit for that fauna or for other fauna and it's brought up in Court and you lose the case. I mean, there's no point in going to Court if that's going to happen.

So, you were still concerned at that fairly advanced stage the Department was not behind the prosecution? --- Well, I've always felt that the Department wasn't behind the prosecution. I've always felt that, but that that could go to the extent of them giving evidence for the defence. Yes, possibly; that did cross my mind.

By memorandum dated 14 January 1994, Emerson responded directly to Ricketts, detailing his involvement in the events in question. Emerson explained that he had made inquiries with Wellard about alternative transportation for David Barbagallo and Atkins to assist them in completing their official business, but that no final decision had been made as to the funding for that transport. The memorandum added that alternative transport was not ultimately arranged upon advice from Atkins that it was not required.

By this stage the Regional Director, Wellard had become aware of the attacks on his integrity by some of his subordinates and officers of the Fauna Squad and it appears he sought to shore up his position by having Chep, a departmental enforcement officer, and ex-Queensland Police Service detective assess the efforts of the Fauna Squad.

Chep was able to easily highlight some inadequacies in the Fauna Squad investigation. For example Ricketts had requested a satellite assisted survey of Cape Melville to enable the prosecution to prove that the vehicle and guns were seized within a National Park. This was unnecessary as the *National Parks and Wildlife Act 1975* contains an averment which provided that in proceedings brought under the Act it is not necessary to prove that a place is within a National Park. Chep claimed that Ricketts request would have caused the Department to unnecessarily expend approximately \$6,000.00. Chep pointed out in his report that in his estimation Shears had been involved in very questionable conduct. This, he stated, the Fauna Squad seemed content to ignore.

In a report to Wellard dated 28 February 1994, Chep went on to note that:

Due to the fact that this matter has been canvassed in Parliament by members of the Opposition parties and the incident has grasped the interest of the media, it may be beneficial for the Police Wildlife Squad to now conduct more exhaustive investigations into the first 24 hours of this incident.

Although the Police Wildlife Squad has initiated this inquiry, it may be the case that they are not in possession of all the facts. It is of concern to this department, as it would be to them, that confidential information which has bearing on the outcome of their pending court matter, has been canvassed in Parliament. The source of this 'leak' is of no doubt of great concern to the Police Wildlife Squad as it is to this department. We would be pleased of any assistance the Police Wildlife Squad may afford this department in identifying the source of the 'leak'.

It is of benefit to the Police Wildlife Squad that the Honourable Minister, Molly Robson, has declined to answer any further questions in relation to the matter until such time as the matter is finalised in the Innisfail Court.

I am aware that Mr Peter Harris of our department has been of great assistance to the Police Wildlife Squad in this matter, and I am sure that this assistance will continue, however there may be a need for them to further investigate matters that they do not appear to be completely familiar with.

Chep's observations received the endorsement of Wellard, and a copy of the report was forwarded to Ricketts, together with an invitation for Ricketts to contact Chep should further assistance be required.

7.6 THE PROSECUTION OF PAUL BARBAGALLO AND UECHTRITZ

On 24 January 1994, the complaints against Paul Barbagallo and Uechtritz were remanded from the Magistrates Court at Cooktown to Innisfail, for further mention on 4 February 1994. On that date, the complaints against Paul Barbagallo were further adjourned, while Uechtritz pleaded guilty to the offence of possessing a firearm in Cape Melville National Park. He was convicted and fined \$200.

Claiming to be concerned about the forthcoming proceedings against Paul Barbagallo, and the allegations in the media and Parliament that the DEH had not supported Shears, Emerson and Tom Tolhurst (Deputy Director-General, DEH) proposed that

advice be obtained from the Crown Solicitor as to the lawfulness of Shears' actions. Accordingly, by letter dated 25 February 1994, Tolhurst sought urgent advice from the Crown Solicitor as to:

1. Whether or not Shears was a duly appointed Field Officer under the *National Parks and Wildlife Act 1975* for the period 13 September 1993 to 3 December 1993.
2. The legality of the seizure of the vehicle by Shears on 11 November 1993.

By letter dated 14 March 1993, the Crown Solicitor advised, in effect, as follows:

1. Shears was a "Field Officer" at the time he seized the vehicle (by virtue of an obscure Order in Council dated 17 February 1987, which automatically declared as Field Officers, all QNPWS officers, overseers and gangers).
2. The power of a Field Officer to seize a vehicle under the provisions of the *National Parks and Wildlife Act 1975* is dependent upon there being forest products found in the vehicle. There being no evidence of forest products, other than leaf litter which could have been derived from any source in or outside the National Park, it followed that Shears did not have the authority to seize the vehicle.

Wellard wrote to Senior Constable Fletcher on 24 March 1994, attaching a copy of the Crown Solicitor's advice. Wellard claimed his original concerns, as expressed to both Ricketts and Fletcher on 19 November 1993, that Shears had seized the vehicle unlawfully had been vindicated by the Crown Solicitor, albeit, for reasons different to those originally expressed by Wellard.

On 7 March 1994, pleas of "Not Guilty" were entered on behalf of Paul Barbagallo in respect of the six complaints. The matters were adjourned to Friday 13 May 1994 for hearing.

By a letter, dated 7 March 1994, solicitors acting on behalf of Paul Barbagallo submitted to the Police Prosecutor at Innisfail that all six charges be withdrawn.

In support of the submission for the withdrawal of complaints 1 - Possessing a dangerous drug, 2 - Possessing a utensil, 4 - Possessing firearms in a National Park, and 6 - Possessing firearms whilst unlicensed, the solicitors furnished statements from three of Paul Barbagallo's companions at Cape Melville, namely Adams, Hands and

Wone, who made corresponding admissions as to their possession of the various items which were the subject of the complaints.

In respect of complaint 3 - Traversing a National Park without a permit, it was submitted firstly, that a permit was not required to drive into the National Park and secondly, that the sign prohibiting entry of vehicles was not sighted by Paul Barbagallo or any of his companions because it was not reasonably visible to them.

In relation to complaint 5 - Possessing a chainsaw in a National Park, it was submitted that the chainsaw was in the vehicle for the purpose of gathering firewood around the campsite on Starcke Station, and that it was not used or intended to be used in the National Park.

A full brief of evidence in support of all six complaints was prepared by Senior Constable Fletcher, checked by Sergeant Ricketts, and submitted on 30 March 1994 to Detective Inspector R B McKinlay, Major Crime Investigation Squad, Crime Operations Branch, Brisbane.

On 30 March 1994, Inspector McKinlay furnished the brief of evidence to Detective Superintendent A L Freeman with a recommendation that it be forwarded to the Inspector-in-Charge, Police Prosecution Corps, for vetting.

A copy of the brief was furnished to the Commission on 7 April 1994 for its information only.

Sergeant A W Richter of the Legal Services Branch of the Queensland Police Service, was assigned the task of vetting the brief of evidence. On 27 April 1994, after reviewing the evidence and the relevant law, and although unable to find any statutory authority to support the seizure of the vehicle and its contents, Sergeant Richter concluded that Shears had acted:

...in good faith and in the course of his duty ... at common law, law enforcement authorities have always had a duty to preserve and retain things which may be evidence of an offence: see R -v- Lushington, ex parte OTTO (1894).

Richter submitted that the prosecution could successfully argue that the property was lawfully seized and was therefore admissible as evidence in the proceedings against Paul Barbagallo. Richter recommended as follows:

- Complaints 1 and 2 be withdrawn - it was noted that Adams had since been summoned in respect of these offences.

- Complaint 6 be withdrawn upon the successful prosecution of complaint 4 - it was noted that even though Hands and Wone had admitted responsibility for the two firearms (and Hands had since been summoned in respect of one offence) there was sufficient prima facie evidence against Paul Barbagallo of constructive possession of the firearms.
- Complaints 3, 4 and 5 should proceed for determination in the Innisfail Magistrates Court.

By memorandum dated 28 April 1994 to Assistant Commissioner Williams, State Crime Operations, the Officer-in-Charge of the Legal Services Branch, Acting Superintendent P J Black, endorsed Sergeant Richter's recommendations, with the exception that complaint 6 be withdrawn regardless of the outcome in respect of complaint 4.

In accordance with those recommendations, on 13 May 1994, complaints 1, 2 and 6, were withdrawn. Complaints 3 and 5 were found proved against Paul Barbagallo, who was convicted and fined \$400 in total. The Court recommended that the chainsaw be returned to Paul Barbagallo. Complaint 4 was adjourned to 6 June 1994 at which time it was withdrawn as well. The charge was withdrawn as responsibility for possession of the firearm had been accepted by the persons in Paul Barbagallo's party. These persons were duly convicted of the charge.

7.7 DAMAGE TO PAUL BARBAGALLO'S VEHICLE

On the evening of Thursday 25 November 1993, having been informed that his vehicle was available for collection from the Cooktown Police Station, Paul Barbagallo drove to Cooktown in the company of one of his employees, David Sells. Paul Barbagallo arrived at the Police Station at about 7.30pm and saw that the lights of the Police Station were on, but that the Police Station was closed.

Paul Barbagallo says that he rang the buzzer and a police officer appeared and asked what he wanted. He told the police officer he was there to collect his motor vehicle and the police officer obtained the necessary paperwork and keys. Paul Barbagallo signed the paperwork and went to the back of the Police Station where he located his motor vehicle.

According to Paul Barbagallo, he climbed into the vehicle and found that the handbrake was stuck. He therefore drove the vehicle out of the locked compound and

left it standing until the following morning. When he returned in the morning, Paul Barbagallo noticed that the body work on his vehicle had been damaged, so he went and spoke to a person whom he knew worked for the local Council. This persons was David Forster. Paul Barbagallo asked Forster to witness the damage to the vehicle, which Forster did. As it was then 7.30am, and the Police Station was still closed, Paul Barbagallo drove the vehicle away in the damaged state he had found it.

When asked what damage had been occasioned to his vehicle since he had last seen it, Paul Barbagallo claimed that "It looks as though they'd run into a tree. There is a back bar that goes over the back of the Toyota and it had damaged all the tray, besides it wouldn't close and it was quite a mess". He explained that the front of the tray was actually twisted out of shape, and produced photographs depicting the damage. One photograph depicts a tree limb or branch in the rear tray section of the vehicle. Paul Barbagallo says that that was not present in the tray of his vehicle when he last saw the vehicle on 11 November 1993, adding that he imagined that the branch was what had hit the bar. He had obtained quotations of about \$1,200 to repair the damage.

Uechtritz says he observed the damage to the vehicle after it had been returned to Innisfail. He also says that the vehicle had not been in this condition before it was confiscated.

Hands says he was shown the vehicle by Paul Barbagallo on his journey home from collecting the vehicle from Cooktown. Hands says that he had been standing on the tray of the vehicle just before the party had left the vehicle, and the vehicle had not been damaged at that point.

The evidence of Teece, Flinders and Monaghan confirm that the vehicle was damaged when it was brought to Lakefield National Park on 11 November 1993.

The photograph of the vehicle bogged on the track into Bathurst Bay shows that it was not damaged on 10 November 1993.

Shears denied any responsibility for the damage to the vehicle. There was therefore a direct conflict between Shears' evidence on the one hand and the testimony of Paul Barbagallo's party on the other. The Commission determined that it was unnecessary to resolve the conflict for the purposes of the report as it did not bear on the original issues for consideration which had been formulated with careful regard to the Commission's jurisdiction.

CHAPTER 8

THE NON-RENEWAL OF SHEARS' EMPLOYMENT

8.1 THE TERMS OF SHEARS' EMPLOYMENT

Shears' engagement by DEH in September 1993, as on all previous occasions, was a temporary appointment. The duration of that engagement is variously described to be for twelve weeks, three months, or from 13 September 1993 to 17 December 1993.

According to Harris' Project Brief of 13 September 1993, Shears' employment was for "a maximum period of three calendar months from the date of commencement". During that time, when his presence was not required in Cape Melville, Shears was to:

...undertake infrastructure maintenance work at Cape Tribulation National Park, as directed by the District Ranger, Mossman.

According to a DEH document headed "NEW EMPLOYEE", which contains personal particulars and was signed by Shears on 13 September 1993, the "anticipated period of employment" and the "employment centre" were described respectively as "13/9/93 to 17/12/93" (i.e. 14 weeks) and "Cape Melville and Cape Tribulation NP's". The conditions of Shears' engagement as particularised in the "NEW EMPLOYEE" document were recommended by Harris, on 14 September 1993, and approved by Wellard, on 17 September 1993.

In a letter to Shears dated 22 September 1993, Wellard confirmed the period of Shears' employment as "13 September 1993 to 17 December 1993" with Shears' "headquarters ... either at Cape Melville or at other times Cape Tribulation".

While neither Wellard nor Kelly gave any indication that Shears' engagement would, or would not be renewed, Harris says he envisaged that consideration would be given to re-engaging Shears for a further temporary term upon the expiration of the initial period. In the normal course of events, according to Harris, he would have initiated such consideration by way of a request for further funding approval. Harris concedes that ultimately, any further temporary term of employment at Cape Melville National Park would have been dependent upon prevailing weather conditions and funding being available.

When approving Shears' engagement in September 1993, Wellard says he did not give consideration to extending the employment beyond the anticipated onset of the wet season in December 1993, even though Stanton's report had identified a requirement for supervisory presence at Cape Melville during the Christmas to March period. Wellard's reasons for this were:

- The only definite proposal was that from Harris, which did not extend beyond Christmas.
- Wellard's concern that the *Wodyetia bifurcata* issue was much broader than could be addressed by having someone on the ground at Cape Melville during the wet season, which itself is fraught with technical problems. For example there are no accommodation facilities at Cape Melville and camping during the wet season would be untenable.

According to Wellard, while a supervisory presence through until March may have resulted in seed poachers being caught in greater numbers, it would do little to solve the enduring broader problem of the organised nature of the activity. In order to target that problem, Wellard says he saw a need to develop a more comprehensive multi-agency surveillance and enforcement approach.

The suggestion that Wellard had from the beginning not intended to approve Shears going back to Cape Melville after his initial period of employment was completed, is supported by his endorsement on the submission made to him by Harris proposing Shears' engagement. On that submission Wellard noted:

This employment period should reflect the minimum time necessary to advise and impart knowledge to the traditional owners.

Harris testified that funding for Shears' position was to be met out of a "NEW INITIATIVES" programme. The funding was sufficient to employ one person full-time for twelve months. Instead, the Far Northern Region employed Shears and the two traditional owners each for an initial period of three months, thus exhausting nine months or three-quarters of the total available funding. Harris expected and would, in due course, have submitted that the balance of the funding be made available to extend Shears' surveillance presence at Cape Melville for a further three month period.

Harris testified that he was never informed at any time leading up to the non-renewal of Shears's engagement that further funding was not available. Nor was he ever told that the engagement of Shears would be extended or renewed.

Wellard and Kelly disagree with Harris' analysis of the funding situation and it is apparent that both have a greater knowledge of regional funding commitments than Harris.

This aspect of the matter has not been pursued, however, as the Commission accepts Wellard's evidence that funding was not the primary reason for the decision not to re-engage Shears. Indeed, there is evidence that Tolhurst the Deputy Director-General of DEH offered further funding for the position if necessary.

During the course of his evidence to the Commission, Shears was questioned as to his understanding of his contract of employment:

PEARCE: Was that made clear to you when you signed this document on 13 September, that your maximum period of employment would be three calendar months? --- Yes, but it was understood then, simply because the main smuggling season was after that - it finished and it just - see the whole thing of this three months, they don't have to advertise. See if it's over three months they have to put it out to, you know, like public tender, you know, you put it in the paper.

BARNES: Yes, position description, put it in the paper, all that sort of stuff? --- And it takes so long that by the time we got going half the season would be gone.

PEARCE: So who explained that to you or did you just - - - ? --- Peter Harris explained to me, he said with the three months we can just go bang, straight in there, and with funds available continue on because the main smuggling season is over Christmas, January, February.

It was quite clear in your mind, was it, that your operation would continue beyond the three calendar months? --- Yes, otherwise it's pointless, you know. You're up there at the start of it and then all you did was pull out and all the boys just help themselves.

And Mr Harris made it clear to you that that would be the case? --- Yes, you know, all things considered. - - -

Was that made clear to you at the time that you signed this document or beforehand or afterwards? --- Yes. Well, yes, when I signed that document - yes, we spoke about that and I said, you know, we need at least six months in there and Peter said, right, you know, providing everything goes - because he agreed with me the main smuggling season is after this.

The Commission discovered no evidence which indicated that DEH had originally made a decision to send Shears back to Cape Melville after Christmas but reversed it after he seized Paul Barbagallo's vehicle.

8.2 THE DEPARTMENT'S RESPONSE TO SHEARS' ACTIONS

Harris says that upon Wellard becoming aware of the seizure of the motor vehicle, Wellard was highly critical of Shears' actions, to the extent that Harris believed Shears' career, or certainly his then current engagement, was finished.

Wellard's initial reaction, as expressed to Emerson in their telephone conversation on Saturday 13 November 1993, was one of extreme annoyance, such that he proposed to immediately recall Shears to Cairns to provide a full briefing in respect of the incident. Emerson says he cautioned Wellard to curb his apparent annoyance and counselled Wellard against taking action against Shears until he was in possession of all information.

Wellard admitted in testimony that he was angry and "pretty fired up on the Friday night and Saturday morning". He conceded he may have conveyed the impression to others that he thought Shears' employment should be terminated. Kelly for one, testified that that was certainly the impression he had gained.

Wellard maintains he was not "out to get Pat Shears and to destroy him", and he made it clear during the following week that Shears should work out the remainder of his temporary contract at Cape Tribulation National Park. Wellard says he has stated a number of times that Shears could have further employment with DEH.

Kelly confirmed in testimony that as the true picture began to emerge on Saturday 13 November 1993, he no longer believed Wellard wanted to fire Shears, but rather, wanted to discipline or caution him.

In an interim report to Wellard of 15 November 1993, Harris was defensive of Shears' action. According to Harris, this was an attempt on his part, to convince Wellard that his immediate reaction to terminate Shears' employment was hasty and ill-advised. In the report, Harris recommended that the work of Shears, Fletcher and Monaghan:

...in which they have begun to reverse the longstanding and serious threat to the natural integrity of this Park, should be sanctioned to continue - but with increased support from both within this department and with firm commitments for assistance

as needed from appropriate law enforcement agencies such as police and customs services.

When giving evidence before the Commission, Harris conceded that in seizing the motor vehicle, Shears had taken enforcement action. Furthermore, Harris concedes that in coming to Shears' defence in the interim report to Wellard, he omitted to advise Wellard that Shears' actions directly contravened Harris' repeated instructions not to take enforcement action.

Harris denies that his motivation for withholding what he agrees was pertinent information was a deliberate product of his strained relationship with Wellard or an attempt to mislead him. Rather, Harris suggests that it was more an expression of annoyance and an over-reaction on his part to Wellard's immediate criticism of Shears.

Harris' interim report was sent to Wellard through Kelly. Kelly simply endorsed it with the word "noted" and initialled and dated it 19 November 1993 without qualification, criticism or other comment.

The significance of Kelly having simply "noted" as opposed to having "endorsed" the report (so far as Wellard and Kelly are concerned), is that it did not indicate to Wellard that Kelly agreed with the document. Notwithstanding, Wellard testified to having a minimum expectation that in a report which purported to assess Shears' conduct, Kelly, having been party to Shears' original briefing and being aware that Shears had breached an explicit instruction, should have rectified the deficiency in Harris' report or at least drawn it to Wellard's attention.

Kelly says that at the time of discussing a draft of the interim report with Harris, he did refer to Shears having breached the direction not to take enforcement action. Kelly concedes, however, that he did not expressly require Harris to make specific reference to that instruction in the report. Kelly denies that the motivation for his omission was to cover up for Shears. Rather, Kelly explains:

...I didn't want to make that judgment until I had more facts available to me and I didn't think Peter should be making judgments to the contrary for the very same reason. You see I didn't know, I wasn't at Cape Melville, I hadn't spoken to Pat. I'd had stuff third, fourth-hand. I wasn't, you know - I was aware that he had knocked off someone's vehicle. I wasn't aware of all the extenuating circumstances surrounding it.....

.....for the same reasons as I didn't want Peter to paint too glossy a picture of it, I didn't also want Peter to condemn Pat outright to Greg, who was likely to react fairly precipitously on that sort of information. If Greg had in writing that Pat had disobeyed a lawful direction, then Greg would have grounds to fire him on the spot and I thought it was a bit premature for that to happen. Now, I wasn't taking any sort of legally binding action in that regard. I was just advising people that that might be one of the outcomes and they should be cautious in what they write.....

.....I'm trying to do the best I can to mediate between two not very friendly people and try and get both people to cool down and address the facts and sort out the problem properly.

In fact, it was not until some days later, when he received Kelly's report of 23 November 1993, that Wellard learned of the specific instructions Shears had been given. By that time, of course, Wellard had met with Ricketts (on 19 November 1993) who had provided Wellard with a copy of Shears' statement and indicated his intention to commence proceedings against Paul Barbagallo.

Ricketts, in his investigation report of 22 November 1993 addressed to Wellard, recommended that:

- Patrols of Cape Melville National Park by "Field Officers" be recommenced immediately as obviously there is continued activity and interest in the area. Furthermore, the season is now ripe for the availability of the seeds;
- Any decision not to re-employ ranger SHEARS after the expiry of current arrangements not be taken too hastily as the DEH is short of personnel keen to become involved in the more unpleasant activities and duties under relevant statutes.

It is note worthy that Ricketts apparently shared Wellard's reservations about Shears returning to Cape Melville unsupervised. In his report to Wellard he commented:

Under strict supervision, SHEARS has performed well when performing duties with this Squad.

However, as noted earlier, Wellard claims not to have sighted Ricketts' report of 22 November 1993 until it was brought to his attention by Chep on 16 February 1994, after Chep had been tasked to locate, assemble and index all file documentation relevant to Shears' operation at Cape Melville. Chep says he discovered most of the documentation with Harris.

Harris denies not passing the document to Wellard, claiming that when he received the document from Ricketts, he believed it was merely a duplicate of a document which Ricketts had independently forwarded to Wellard.

It remained Wellard's understanding from his telephone discussion with Ricketts on 13 November 1993 and their meeting on 19 November 1993, and in light of the role of the Fauna Squad historically, that Ricketts and Fletcher would continue in the role of enforcing the provisions of the *National Parks and Wildlife Act 1975* as they related to Cape Melville at what ever level the Fauna Squad thought necessary.

Wellard says that even had Ricketts' report been brought to his attention on or after 22 November 1993, it is unlikely that he would have acted upon the recommendation that patrols of Cape Melville by field officers recommence given the problems he had just experienced. Wellard says he continued to focus on other issues of higher conservation significance.

Wellard was not alone in his criticism of Shears. On 16 November 1993, in his memorandum to Harris reflecting upon the draft of Harris' "Interim Incident Report", Kelly wrote:

I don't believe that seizing the vehicle was the most advised course of action in the circumstances. I don't believe that you, for instance, would have done the same thing. A more appropriate course of action would have been to record all details then radio information to base at first opportunity for follow-up. Even if the owners of the vehicle were scallywags of the worse sort, removing their vehicle would expose them to unacceptable risks given that they may not have been conversant with any bushcraft. Your report enthusiastically condones Pat's action which will probably raise the ire of persons with a more conservative view of due process. To avoid the likely resultant angst I would admit that while Pat has not acted outside of his legal powers, and while, as events turned out, he has probably done a tolerably amount of good, he did rather liberally interpret his powers and did act rather drastically and should be cautioned to think the matter through a little more cautiously next time.

Kelly went on to express the view to Harris that he did not think that Shears "should be castigated for his actions". What he meant by that, Kelly explained in testimony, was that action should not be taken against Shears at that time or until all the facts were known.

In contrast to those comments to Harris, in a subsequent memorandum to Wellard, dated 23 November 1993, Kelly was openly critical of Shears:

Although Mr Shears has done a tolerable amount of good in exposing some iniquity on the park, his methods were unacceptably risky and as it turns out, seem to have damaged this Department's relationship with at least some of the traditional owners.

Mr Shears seems to have assumed that direct enforcement role against his implied direction. This is understandable given the lack of immediate supervision, the confused sequence of events involving possible armed aggression, the lack of any formal training, and the strong perception that seed snitching has to be stopped as a high priority.

Unless additional information comes to light which better explains Mr Shears' actions, or until he has had extensive training, I do not believe that Mr Shears should be deployed in future in any situation which may require professional enforcement action or liaison with Aboriginal people.

Kelly asserts that his use of the expression "implied direction" was a mistake, and he should have stated "express direction" as all parties to the briefing of Shears prior to his going to Cape Melville agree that he was repeatedly told to avoid confrontation.

Kelly is also mistaken in suggesting that Shears' conduct seemed to have damaged the Department's relationship with the park's traditional owners. Although there was some suggestion from other departmental officers that this was the case it was rejected by both Aboriginal rangers when they gave evidence before the Commission.

When giving evidence Flinders explained that the principal reason for resigning and not wishing to return to Cape Melville National Park was the danger associated with encountering people involved in the illegal activities, and the fact that DEH would not allow Flinders and Monaghan to arm themselves for protection. Flinders' relationship with the Department further soured when, after returning from Cape Melville, he had to chase wages owing to him.

On the basis of the limited information then known, Wellard says he was not prepared to allow Shears to return to Cape Melville National Park and would have refused any request for him to do so unless accompanied by a team of experts, such as officers of the Fauna Squad.

That is precisely what occurred, following the telephone request of Wellard by Ricketts on 13 November 1993. Wellard approved Shears accompanying Ricketts and Fletcher back to Cape Melville National Park to assist the Fauna Squad in its investigation of alleged offences.

That field inspection concluded on Thursday 18 November 1993, after which Shears returned to his home at Cape Tribulation on 19 November 1993.

Wellard directed Kelly that Shears should serve out the balance of his temporary employment at Cape Tribulation. Kelly, in turn, instructed Harris that Shears should not return to Cape Melville but rather, should complete his contract at Cape Tribulation.

8.3 THE REASONS FOR SHEARS' EARLY TERMINATION

Shears has not worked for DEH since being dropped off at Cape Tribulation by the Fauna Squad officers on 19 November 1993.

A number of accounts have been given by Harris, his immediate supervisor, as to how this came about.

On 9 February 1994, Wellard was seeking information about the termination of Shears employment to enable the Minister to respond to a question in the House. He telephoned the Regional Manager, Symonds, who was with Harris in a hotel in Coen. After conferring with Harris, Symonds told Wellard that Shears had worked out his contract subject only to having a few days off in lieu of overtime accrued while he was in the field.

On 10 February 1994, Harris prepared a handwritten note to Wellard which stated in part:

Subsequent to an internal review of events which had involved (Shears) at Cape Melville N.P. on 11.11.93, a verbal instruction was relayed through then Acting Regional Manager (NPWS/CS) G. Kelly to myself that Mr Shears was not to return to his duties at C. Melville, as prescribed in his project brief dated 13.9.93.

As Mr Shears had no other duties than the above, the termination of his employment was then obviously required as soon as possible.

This last sentence is obviously incorrect as Shears notice of engagement provided that when not required at Cape Melville he would work at Cape Tribulation National Park.

When he gave evidence before the Commission Harris gave a completely different account. He said that after Shears was told that he would not be going back to Cape Melville, Shears decided to accept other employment which had been offered to him.

Harris testified that, Shears came to his office in Cairns on 24 November 1993, and they discussed the option of Shears returning to complete his contract at Cape Tribulation. Shears said the ranger at Cape Tribulation had told him that there was no work there. If he was not able to further his commitment to protecting the foxtail palms from poachers Shears said he would prefer to undertake worthwhile employment elsewhere.

Harris therefore calculated what hours were owed to Shears on account of the extra time he had worked while in the field. This resulted in Shears being paid up to 3 December 1993, although he did not actually undertake any extra duties.

In evidence before the Commission Shears agreed with this version as given by Harris.

On 10 February 1994, Wellard prepared a briefing note for the Minister based on what he had been told over the telephone by Symonds and Harris on the previous day. Although he is unable to recall whether he also had received Harris' memorandum of 10 February 1994, the contents of the briefing note to the Minister contained many similar features and it is therefore likely that Wellard did refer to it.

To the extent that the briefing note said Shears was engaged from 13 September 1993 to 17 December 1993 and that his employment was terminated on 3 December 1993, it is accurate. To the extent that it implies that Shears was terminated only in accordance with the terms of his contract it is not.

The issue of the non-renewal of Shears' engagement was the subject of Parliamentary debate.

On 18 February 1994, the Minister for Environment and Heritage, The Honourable Molly Robson, was asked the following question on notice:

Is the park ranger involved in the incident still employed by the Department of Environment and Heritage?

By way of response, and on the basis of a Ministerial Briefing Note prepared by Wellard, the Minister explained the nature of Shears' three month temporary engagement and its expiration after twelve weeks in accordance with regional office practice. The Minister also stated that, "there was no sacking, no political interference and no reason why this person won't be eligible for further employment in the future."

Subsequently, in a Ministerial Statement to the Parliament on 12 April 1994, the Minister repeated her statements and added, "Mr Shears departed on amicable terms".

In fact Shears' employment was terminated two weeks prior to the expiration of the period provided for in his notice of engagement, albeit at his instigation.

Kelly says he was unaware that Shears' engagement had been terminated early. Rather, Kelly says he believed that, in accordance with Wellard's instruction which Kelly had passed onto Harris, Shears had completed the full term of his contract at Cape Tribulation.

Tolhurst, Deputy Director-General, DEH recalls that as late as mid-December 1993, he had discussed with Wellard the need to clarify a number of issues arising from the seizure of the vehicle. In that context, and concerned about any administrative difficulties that may have been caused by Shears' impending departure, Tolhurst proposed the possible extension of Shears' employment by a "few weeks", pending finalisation of all matters relating to Shears' involvement in the Cape Melville incident.

Although uncertain, Tolhurst believes he may also have suggested to Wellard that he would consider funding such an extension on a "corporate basis" if the region had difficulty with funding.

According to Emerson, prior to Tolhurst discussing this question with Wellard, he, Emerson had discussed with Tolhurst the wisdom of keeping Shears on, at least while the issue was sorted out. Emerson rejects the suggestion that he played any part in the decision to terminate Shears' employment. Like Wellard, Emerson claims that he was not aware until February 1994, that Shears was no longer employed by the DEH.

Shears has a history of employment with the DEH extending back to 2 December 1985. Since 20 December 1989, he was continuously employed as a temporary or casual ranger on various projects until 30 June 1993. Then, after only a three-week break, he was again employed from 24 July 1993 to 3 September 1993. Understandably then Shears claims to have had an expectation that his engagement would be renewed for at least the remaining three month period of the foxtail seed harvesting season, if not longer.

According to Wellard, since his appointment as Far Northern Region Director in 1989, he has endeavoured, albeit by a slow process, to have the Far Northern Region staff function within the confines of bureaucratic procedures. The revised PSMC standards

on recruitment and selection was issued in July 1993 and it became imperative that "the previously cavalier attitude to employment procedures ... must change". Given the general tightening of human resource management in the Department in 1993, Wellard doubted that he would have extended Shears in any event "for a significant time, even if requested".

According to Harris, prior to his commencing annual leave on 24 December 1993, he had a number of discussions with his immediate supervisor, Symonds, and with Chep, agitating for something to be done about continuing patrols in Cape Melville National Park. Harris claims that there was a lack of clarity about Chep's role and precisely who was then responsible for continuing surveillance and enforcement action. Chep appeared to Harris to have been placed in charge of, or to have at least assumed responsibility for investigations regarding foptail palm poaching and associated activities.

According to Harris, as information relevant to the *Wodyetia bifurcata* issue came to hand, rather than acting upon it himself or conveying it to the Fauna Squad, he passed the information on to Chep.

Harris concedes he made no formal submissions seeking the re-appointment of Shears or anyone else to continue patrols in Cape Melville National Park for the rest of the foptail palm seeding season.

Wellard concedes that even if a formal request for approval to undertake additional patrols to Cape Melville had been made, he "would have been extremely cautious when deciding to support a request for further patrolling".

It was perhaps because of that view, which Wellard had openly expressed to Harris and others as early as 12 or 13 November 1993, that Harris and others considered any proposal involving Shears in further patrols in Cape Melville National Park would have been a waste of time. It may also explain why, despite two approaches which Shears claims he made to Chep, on 13 January 1994, and 7 February 1994, Chep showed no interest in having Shears return to Cape Melville to continue surveillance until the end of the seeding season.

CHAPTER 9

PUBLIC COMMENT ABOUT THE EVENTS

9.1 INTRODUCTION

After lodging his complaint with the Commission, Mr Slack MLA raised the matter in the Legislative Assembly on 17 February 1994 by way of a question to the Minister for the Environment and Heritage.

Thereafter the events which have been investigated by the Commission were frequently raised in the House and commented on in the news media.

No good purpose would be served by cataloguing each of those instances but some which may have had a bearing on the events under investigation or the investigation itself are referred to below.

9.2 DISCLOSURE OF INFORMATION TO THE MEDIA

On 27 November 1993, following the interviews conducted by the Fauna Squad with Paul Barbagallo and Uechtritz, a week earlier, Sergeant Ricketts telephoned Michael McKinnon, a journalist with *The Sunday Mail*, and provided information to McKinnon which subsequently formed the basis of the first media article relating to the seizure of Paul Barbagallo's vehicle.

According to Ricketts, he contacted McKinnon and, in accordance with Queensland Police Service policy, provided only "the facts of that particular case".

The following day, Sunday 28 November 1993, McKinnon's article appeared in *The Sunday Mail* under the headline "TWO ON PARK CHARGE" and opened with the statement:

Wildlife Squad police in North Queensland claim they have foiled a gang of alleged foxtail palm pirates.

Ricketts denies using those or any similar words in his interview with McKinnon. He claims that any comment made to McKinnon was made only with regard to the

Ricketts denies using those or any similar words in his interview with McKinnon. He claims that any comment made to McKinnon was made only with regard to the evidence as clearly reflected in the charges then pending against Paul Barbagallo and Uechtriz.

McKinnon claims that the opening paragraph represents "a fair summation of the facts as Ricketts provided them".

The following is a transcript of McKinnon's notes of his telephone interview with Ricketts on 27 November 1993:

A four wheel drive vehicle, a small quantity of marijuana, three firearms, chainsaw have been seized following a police investigation into an incident at Cape Melville National Park.

Two Innisfail men have been interviewed and are to be charged on summons with seven offences under the *National Parks and Wildlife Act*, *Firearms Act* and *Drugs Misuse Act*.

The investigation followed the seizure of vehicle and equipment by a ranger who located a party in the national park near known foxtail palm habitat.

Last year eight people charged with over 25 offences and 30,000 foxtail palm seeds were seized.

Det Sgt Gavin Ricketts of the Wildlife Squad said recent aerial and ground patrols had located two other men under suspicious circumstances . . . Starcke Station which adjoins Cape Melville National Park.

Another beach access into the Park off Ninian Bay had been discovered and would be monitored.

Exhibits lodged at Cooktown Police Station earlier this week.

He said that aerial, ground and sea patrols by squad and National Park rangers would continue until the wet season to prevent illegal activity in the park.

Under new legislation persons found interfering with foxtail palms could face a maximum fine \$195,000 and or two years in jail.

The illegal export aspect is now covered by Federal legislation and the fine is \$200,000. The Australian Customs service and Coastguard working with us on the issue.

There is nothing on the face of the transcript which would serve to challenge Ricketts' assertion that he properly informed McKinnon only of the evidence.

Paul and David Barbagallo complain that the article, although not naming them, implies that they are part of a foxtail palm stealing gang.

In support of this contention, David Barbagallo alleges that shortly after his brother, Paul, was interviewed by Ricketts, McKinnon telephoned him (David Barbagallo) and informed him that Ricketts had provided McKinnon with a story implicating David and Paul Barbagallo in some form of foxtail palm smuggling ring. David Barbagallo claims that the only source who could have provided his name to McKinnon was Ricketts.

Ricketts admits being informed by Paul Barbagallo on 20 November 1993 that he had accompanied his brother, David Barbagallo, to Starcke Holdings. Ricketts refers to such information two days later, on 22 November 1993, when he prepares the report for Wellard in which he states:

I also believe from my inquiries that a brother of Paul Barbagallo, a David Barbagallo was with the party. I understand that D Barbagallo is/or was attached to the Premier's Department and was conducting some inquiry in relation to the purchase of Starcke Station. Whether this person was on the Park at any stage is unknown.

Ricketts denies however mentioning any names to McKinnon. In particular, Ricketts rejects the suggestion that he named either Paul or David Barbagallo.

McKinnon's notes of his conversation with Ricketts contains no reference to either Paul or David Barbagallo and McKinnon himself cannot recall Ricketts mentioning those names. According to McKinnon, names would generally be immaterial to him because in an article of that nature people would not be named for legal reasons. McKinnon does not recall telephoning David Barbagallo seeking comment prior to publication of the article.

However, McKinnon says he has known David Barbagallo personally for seven or eight years, and was well aware that David Barbagallo was the Premier's Principal Private Secretary. He is therefore very confident that he would remember making such a call in the circumstances alleged by David Barbagallo, because "that would be a big story."

McKinnon claims that apart from his interview with Ricketts, he conducted no further inquiries prior to publication of the article.

Following publication of the article, McKinnon believes he spoke with David Barbagallo on approximately two occasions about the incident. He says that the first of those conversations could have been the week after publication. By that time, however, a further article by Ken Pederson under the headline "NOT PIRATES OR POACHERS SAY INNISFAIL MEN" had been published in an Innisfail newspaper (on 30 November 1993) and David Barbagallo was specifically identified as being associated with his brother Paul and others in their journey to the Starcke - Cape Melville area.

According to Pederson, his story was based on a joint interview with Paul Barbagallo and Uechtritz, who had contacted Pederson requesting that they be given the opportunity to present their version of events.

Ricketts acknowledges that after publication of *The Sunday Mail* article on 28 November 1993, he had been contacted by numerous journalists, including "someone" from an Innisfail paper. But again, according to Ricketts, he was:

...careful to stick to the facts of the matter to the extent of pointing out that there is no evidence whatever of any interference with foxtail palms by (Paul Barbagallo) ... and never alleged (David Barbagallo's) involvement.

Ricketts claims that it was journalists who constantly put to him the identities of those involved.

On the other hand, Fletcher testified that he and Ricketts had discussed with Pat Gillespie of *The Sunday Mail* their suspicions of a possible conspiracy between senior public servants within DEH to influence court proceedings.

On 25 February 1994, in response to a Question Without Notice from the Leader of the Opposition concerning the confiscation of a vehicle in Cape Melville National Park, the Minister for Environment and Heritage stated:

As the Honourable Leader of the Opposition knows, that is a matter which is currently under police investigation. At the request of the Member for Burnett, I have supplied this House with a variety of responses in relation to the issues. It is highly improper for the Member to raise this issue when he knows that it is the subject of a police investigation. The approach that he is taking in terms of subjective statements taken from that investigation is totally improper and I have no intention of adding further to the information that I have supplied.

That same day, the Minister released the following statement by way of press release:

In relation to a series of questions asked of me in Parliament by members of the Opposition during the past few days:

I have fully and frankly answered all questions.

Issues surrounding the matter in question are sub-judice and it is inappropriate to comment further.

I have no reason to doubt that both my Director-General and Regional Director (Far Northern) have acted properly at all times in this matter.

Barton Green, Media Adviser to the Minister for Environment and Heritage, gave evidence before the Commission and acknowledged that he prepared the press statement released by The Honourable Molly Robson on 25 February 1994.

Subsequently, on 12 April 1994, the Minister for Environment and Heritage made a Ministerial Statement to the Parliament regarding the Cape Melville incident, taking care to avoid reference to any matter which may prejudice the then pending prosecution of Paul Barbagallo, which had, by that time been listed for hearing in the Innisfail Magistrates Court on 13 May 1994.

Green acknowledges that as a result of that Ministerial Statement, he was approached by a number of journalists, including Cathy Job of the ABC's *7.30 Report*, for comment on a number of issues. According to Green, this was not an uncommon occurrence, nor was it uncommon for him to respond to such requests as part of his duty in liaising with the media on issues relevant to the Environment and Heritage portfolio.

Following his initial discussion with Job, Green says he consulted the Minister and explained his intention to meet with Job and show to her documentation that would answer the questions she had posed following from the Minister's Statement. Although Green says he cannot recall if he specifically showed the Minister all the documents he intended releasing to Job, he testified nonetheless that he did outline to the Minister what he intended to show Job and that the Minister gave her imprimatur to what he proposed. Green claims that in the majority of cases it would, in the normal course of his duties be left to his judgement whether or not to release departmental documents to journalists, that is, he would not necessarily seek or be required to seek specific authority from the Minister.

Green met with Job on 12 April 1994 and, in the course of that meeting, he produced to Job departmental documents, comprising a briefing note prepared by himself on the basis of information obtained from various sources, together with the following six attachments:

1. Copy of Ministerial Briefing dated 9 February 1994 prepared by Wellard.
2. Copy of Extract from Shears' diary tabled in Parliament by Mr Slack MLA on 25 February 1994.
3. Copy of statement of Army Sergeant B A Charles.
4. Copy of report of Senior Constable M A Meadows dated 13 November 1993 to the Officer-in-Charge, Cairns Drug Squad.
5. Copy of memorandum from Kelly dated 11 April 1994 to Wellard.
6. Copy of memorandum from Kelly dated 23 November 1993 to Wellard.

Green testified that his purpose in releasing this information was:

...to show Cathy Job that there were other sides to the story, that, as I said earlier, while we have never questioned the ranger's, you know, integrity in carrying out his duties, we had concerns about the methods that he had employed or had been brought to our attention that he had employed to carry out those duties, and I considered it appropriate and proper that if I was to show or prove to the journalists that we had these concerns, that I had to give them documentary evidence of those concerns...

Although aware at the time, of the Minister's statement of 25 February 1994 concerning the inappropriateness of comments on the facts of the matter, Green testified that the pending prosecution against Paul Barbagallo "didn't ever come into mind when I was giving the briefing to Cathy Job". In particular, Green says he did not at the relevant time consider that the report of Senior Constable Meadows, which contained an account of his conversation with Shears on 11 November 1993, together with comments critical of Shears, may have any relevance to the prosecution of the charges against Paul Barbagallo.

Green also concedes that on 22 April 1994, some ten days after his release of material to Job, he furnished to Gillespie, a copy of the same briefing note prepared by him together with, he assumed, copies of some of the attachments previously shown to Job. The following day, 23 April 1994, Green participated in a telephone interview

with Gillespie. Once again, Green acknowledges that he provided the briefing "in the public interest to show that there were other sides to the story" and any relevance to the pending court proceedings did not cross his mind at the time.

Green emphasised in testimony that it was never his intention to impugn Shears' integrity, although he acknowledges, in retrospect, that Shears' account of the incident, given to Senior Constable Meadows soon after the incident, should not have been published prior to that evidence being given in court.

9.3 THE *FOUR CORNERS* PROGRAMME

On 12 April 1994 the *Four Corners* programme on ABC television focussed on the Cape Melville Incident. A copy of one of the photographs developed from film obtained in the seized vehicle was featured as part of the production. That photograph depicted a group of persons around the seized vehicle, which appeared to be bogged.

Ricketts says that he was responsible for having the film developed and claims that the photograph was placed on file with the rest of the prosecution material.

Ricketts said in evidence he was unaware of how the photograph came to be published on the *Four Corners* program. He says the file remained at the Moggill headquarters of the Fauna Squad until just before the court hearing at Innisfail.

Ricketts alleged however, that although he was on leave at the time, he believed Shears had advised Fletcher that he was going to be interviewed by the Criminal Justice Commission and requested the photograph and other material to assist him with that interview. Ricketts believes therefore, that Fletcher handed all the material to Shears. As far as Ricketts is aware, that material was posted back to Fletcher some days later. Ricketts explains that as far as he is aware, this was the only time that the photographs were out of the possession of the Police Service.

Fletcher confirms this account.

9.4 DISCLOSURE OF INFORMATION IN PARLIAMENT

During Question Time on 25 February 1994, Mr Lingard MLA, Member for Fassifern tabled a photocopy of Sergeant Ricketts' report of 22 November 1993, containing a summary of the investigation surrounding the seizure of the vehicle.

In testimony before the Commission, Ricketts acknowledged that the report contained a misleading statement to the effect that when interviewed, Paul Barbagallo had taken responsibility for a quantity of cannabis and a pipe used for smoking cannabis, which items had been located in the seized vehicle.

Ricketts denies that he or Fletcher furnished that report to any person other than Harris and Wellard, although he concedes that he may have sent a copy of the report to his senior officer in the Police Service. Ricketts specifically denies giving Shears a copy of the report.

Also tabled in Parliament during Question Time on 25 February 1994, by Mr Slack MLA, Member for Burnett, was a photocopy of an extract (pages 10 to 12 inclusive) from a log of events prepared by Shears on 13 or 14 November 1993, detailing the events which had occurred on 11 November 1993.

Ricketts denies that the Fauna Squad forwarded the extract of Shears' log to either the media or any politician.

The tabling of those documents in Parliament made them part of the public record and freely available to anyone.

The documents contained false information adverse to Paul Barbagallo and accounts of events which if true indicated he had committed criminal offences. These documents were published when Paul Barbagallo was awaiting the trial of charges arising from the events referred to in the documents.

During cross examination of Shears in the trial of those charges in the Innisfail Magistrates Court on 13 May 1994, counsel representing Paul Barbagallo made reference to the document tabled by Mr Slack.

In a letter dated 17 May 1994, Mr Slack complained to the Commission that a statement prepared by Shears on 17 November 1993 concerning the events surrounding the seizure of the vehicle, may have by some improper means been disclosed to Paul Barbagallo's counsel who, in turn, had used it to cross-examine

Shears. Mr Slack sought an explanation from the Commission of how that and other documents came to be in the possession of Paul Barbagallo's counsel. Moreover, on the basis of the alleged improper disclosure of that and other documents to Paul Barbagallo's counsel, Mr Slack contended that the credibility of the Commission's investigation may have been compromised. He continued that if the documents had been improperly communicated, a fresh investigation, independent of the Commission, should be convened.

Five days later, and before the Commission had had an opportunity to investigate the substance of Mr Slack's complaint relating to the improper disclosure of documents, Mr Slack aired his concerns publicly, in an article which appeared in *The Sunday Mail* on 22 May 1994.

Ultimately, the Commission's investigation of that matter confirmed that the document from which Paul Barbagallo's counsel quoted during cross-examination of Shears on 13 May 1994, was a photocopy of the extract of Shears' log of events tabled by Mr Slack himself in Parliament on 25 February 1994.

On 12 April 1994 the Minister for Environment and Heritage made a Ministerial Statement in the House during which she said that Shears' role in Cape Melville was part of a large intelligence gathering exercise in and around Cape Melville and the Cairns region. This statement was based on a briefing note prepared by Wellard dated 9 February 1994.

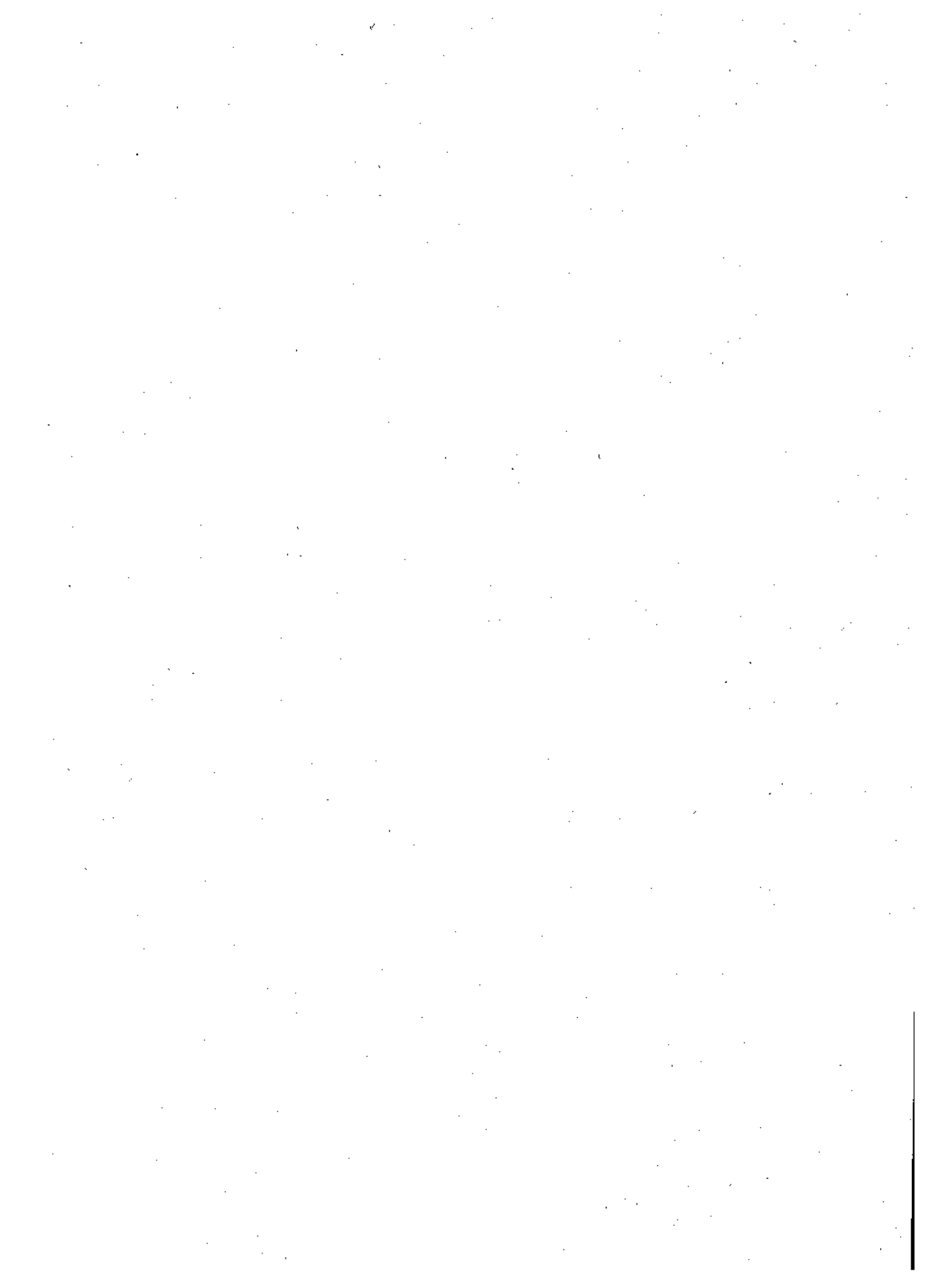
In evidence before the Commission, Wellard agreed that his description of the fairly loose and fluid arrangements being discussed in Regional Operations Planning Advisory Committee meetings as "the first co-ordinated and multi-organisation intelligence gathering operation" was an exaggeration.

He also agreed that another statement in the briefing paper that:

The major impact of the action was to effectively terminate the intelligence gathering operation mentioned above and compromise the ability of the Department to respond in a co-ordinated way in the future.

was incorrect and based on what he anticipated may have been the effect of Shears' action rather than anything that had happened to that point or since.

Wellard said that it was not his intention to mislead the Minister and that the errors occurred through lack of care on his part.



CHAPTER 10

THE COCHRAN ALLEGATIONS

10.1 THE WITHDRAWAL OF A SEIZURE NOTICE SERVED UPON DAVID COCHRAN

On 27 April 1994, the Commission received information from Gillespie, the journalist with *The Sunday Mail*, alleging that in 1992, David Cochran, the proprietor and operator of a palm nursery "Sheldon Palms" in Brisbane, was investigated by the Fauna Squad in respect of his possession of foxtail palms. It was further alleged that Cochran is known to have subsequently claimed that he contacted David Barbagallo, and threatened to identify Paul Barbagallo's foxtail palm poaching activities if the investigation of his own circumstances was not terminated, and that David Barbagallo's telephone numbers appeared in Cochran's private telephone directory.

Ricketts says that in 1992 he was informed that Cochran had about 20,000 foxtail palms on his nursery in the Brisbane suburb of Sheldon, and that Cochran had visited Cape Melville on several occasions to collect palm seeds.

As a result of this information, Ricketts visited Cochran's nursery and seized approximately 18,000 plants. This seizure was conducted under the authority of section 57 of the *National Parks and Wildlife Act 1975*, which provides that any Field Officer who has reason to believe that any forest products have been obtained contrary to the provisions of the *National Parks and Wildlife Act 1975*, may enter upon a property and seize such forest products. The seizure was a legal procedure and did not involve the palms being transported away from the nursery.

Ricketts explains that he attempted to interview Cochran but that Cochran refused to answer questions. Ricketts also attempted to gather evidence that the foxtail palms or seeds had come illegally from Cape Melville National Park, but that he ultimately failed so to do. As a result of his inability to obtain admissions from Cochran, or any other evidence, Ricketts considered that the seizure could not be justified. He claims that he therefore made a submission to the Director of National Parks and Wildlife Service, Bruce Gall, indicating that there was no evidence to prosecute Cochran. Ricketts says he also raised with Gall the question of what action should be taken about the "other 20,000 nurseries that have foxtail palms across the State". Ricketts

Ricketts says he also raised with Gall the question of what action should be taken about the "other 20,000 nurseries that have foxtail palms across the State". Ricketts claims that he feared a big compensation payout would result if the seizure order in respect of Cochran was maintained.

Ricketts testified that his submission was initially rejected by the Gall, but after Crown Law advice was obtained, the seizure notice was lifted. In evidence, Ricketts was examined as follows:

PEARCE: I understand that in the end result the seizure notice ... was lifted as well?
--- That's correct, yes.

How did that come about? --- Well, we - there was a lot of soul searching and, I suppose, a lot of sweat over that whole issue at Head Office of National Parks and Wildlife, because the problem we had was that we had no - no evidence. I tried to get statements out of people up there that - some of the pickers that we prosecuted up there in '92. They told us that Cochran had been up there and had tried to take over the whole caboose, and - you know - we tried to get evidence against him that he'd taken seeds from up there, or had received seeds from up there, but they weren't prepared to give us that, so we had no evidence. So we had 18,000 plants, and that was acres and acres of them, and I initially put a submission to the Director of National Parks and Wildlife Service that under the circumstances there was no evidence to prosecute him. People kept talking about a fictitious - oh, some plantation in the Northern Territory; and secondly, that what were we going to do about the other 20,000 nurseries that have got the foxtail palms across the state? So - also the fact that I didn't believe that - I believed it was too risky to go ahead with it, because if we lost we'd have a hell of a big compensation pay-out because we had them under seizure for about two months or three months. So they - originally he disagreed with what I said, and said that we could - we should go ahead and take action, but they eventually came round, realised that he - the gravity of the situation, and the seizure was lifted.

...

Was there ever, to your mind, any pressure brought to bear to influence your decision in respect of Cochran? --- Not at all.

...

BARNES: You are saying the Department, in that case, was inclined to try and tough it out? --- Yes. And then they realised - they sort of changed like that, basically. It - they were sort of against us a few days there. The Director was quite firm and then, I can remember, I went into his office one day there and he was just a nervous

wreck, you know, and he sort of - you could see he just wanted to back out of it as quickly as possible. So - so that was that.

PEARCE: So, there was a sudden - so far as you were concerned - a sudden and unexplained change in his attitude? --- Yes, that's correct. Yes.

...
Did Mr Gall indicate to you what had prompted his change of heart? --- Oh, discussions with Crown Law and, well - which had already gone anyway - but basically I think my submissions and discussions with Crown Law about the whole situation."

In light of Ricketts' testimony on the subject, the Commission interviewed Gall, whose account of the incident is that although he cannot recall Ricketts recommending that the matter should not proceed, he does recall Ricketts highlighting that there were other nursery people in the same position as Cochran.

Gall claims that he had reservations about the seizure when he was first advised of it. He subsequently received submissions from Cochran's wife seeking to have the seizure lifted. She raised a number of issues and, in particular, advised that the nursery had purchased the seeds legally and had receipts to prove it. She also claimed to have received advice from the Department of Primary Industries that it was legal to grow foxtail palms and that a large sum of money had been invested in the business.

As a result of these submissions, Gall says that he sought the advice from the Crown Law Office. On 8 January 1993, a detailed advice from the Crown Solicitor was furnished to Gall. That advice concluded:

Since after a consideration of all the presently available evidence, it appears likely that Cochran's application for the return of the palms will succeed, you are advised that it would be reasonable that the matter be settled without proceeding to a full hearing.

According to Gall, as a result of this advice, he ordered the seizure order be lifted. Gall states that other than the submissions from Mary Cochran, no person had approached him to lift the seizure.

Gall was specifically asked whether he knew of David Barbagallo, or had spoken to David Barbagallo about Cochran's seizure. Gall says that he had never met or spoken to David Barbagallo.

To Gall's knowledge, there had been no correspondence between the Premier's Office and his office concerning the matter, although his Minister was kept abreast of the matter.

Gall says that Emerson had no role in the matter and denies that he received any directive in respect of his decision to lift the seizure order. Gall is adamant that he had not spoken to Emerson about the issues during the entire period of the incident.

Gall asserts that he acted solely on the advice of the Crown Solicitor in withdrawing the seizure notice against David Cochran.

Emerson testified that it was the circumstances of the imposition and lifting of this seizure notice that first brought the *Wodyetia bifurcata* issue to his attention - in late 1992 or early 1993. Although he claims not to have been centrally involved, Emerson is aware that Ricketts claims to have been primarily responsible for the decision to lift the Cochran seizure notice because of the difficulty in prosecuting all other nurseries. Emerson is also aware that other officers of DEH, in conjunction with the Queensland Nurserymen's Association, were responsible for development of a strategy to deal with the problem of nurseries possessing foxtail palms. Emerson has no knowledge of any improper interference in the decision to withdraw the seizure notice against Cochran, and argues that if there had been any such interference, "I reckon Gavin Ricketts would have told the world...".

David Cochran acknowledges that he spoke to David Barbagallo over the telephone on at least one occasion. Cochran explains that he had mentioned his problems concerning his foxtail palms to his local Member of Parliament, who suggested that he might ring David Barbagallo. Cochran describes the conversation he had with Barbagallo in the following terms:

Well, naturally I would have mentioned that - who I was and that I had a drama that I didn't need, particularly over a palm tree. Could he suggest or help to do anything about it. That would have been what I would have been after, would have been nothing else. I definitely didn't know that - that he was Paul Barbagallo's brother, definitely didn't know that. Made no mention of that. The only thing I was annoyed about was I thought, oh, here's a go. We are into - because we had been sending Goss' office a lot of faxes and that sort of thing and I sort of thought, well, here's a go, I might be able to get someone that can do something. I mentioned the foxtail saga and that was it. He just said he didn't know what he could do.

Cochran says that he telephoned David Barbagallo on later occasions but David Barbagallo would not return his calls, so he "gave up".

The allegation that Cochran threatened David Barbagallo that he would identify Paul Barbagallo's poaching activities to police if the investigation was not stopped, was put to Cochran for his comment. His response was:

Hans Christian Andersen wrote that one ... that's like I got caught up the palm tree. You know, that would be totally furtherest from the truth. I'd go on a lie detector test for that, thank you.

Cochran also denied that David Barbagallo's name had ever been in his teledex or that he had ever told anybody he had telephoned David Barbagallo.

Cochran was examined as to his knowledge of Paul Barbagallo.

BARNES: When did you first hear of Paul Barbagallo's name? --- Probably three years ago. It might have been four, but would have been three.

And who told you the name? --- A fellow by the name of Glen Budd.

And what did Mr Budd tell you? --- Just they had some seed for sale.

Right? --- But I don't know if that was - I had - I just heard that, that was all. ... I bought nothing.

But you were speaking to Glen Budd at his nursery in - - - ? --- No, he phoned me.

And he told you that they had foxtail palm seeds for sale? --- Yes.

That he and Barbagallo had got them from Cape Melville National Park? --- That's what I heard, yes.

...

PEARCE: Apart from this conversation you had with Mr Budd where Mr Budd mentioned Mr Barbagallo's name, have you heard Mr Barbagallo's name from any other sources? --- Yes.

From whom? --- Just various people within the industry.

And in what context is his name mentioned? --- Just the banana farmer was in the game. That was all.

Within the game? --- Yes.

What game? --- foptails.

Well, is he known as a person from whom you can purchase foptail palms? --- No.

...

Is he known within the industry, to your knowledge, as someone who collects foptail palm seeds from Cape Melville National Park? --- I've been told that, yes.

...

What do you understand within the industry about Paul Barbagallo? --- That he would've been ... involved as one of the smaller crews that had been to the place.

Paul Barbagallo testified that David Barbagallo telephoned him around November 1992 and indicated that the Premier had tasked him to look into the question of foptail palms. It was at this time, according to Paul Barbagallo, that he told his brother that he had some palms on his property and that he had taken some seeds from Cape Melville National Park. Paul Barbagallo recalls that David mentioned a person by the name of "David or John Cochran", although he denies the suggestion that David told him that Cochran had made allegations against him. Paul Barbagallo believes however, that Cochran has made accusations against him in the past, although he does not know why Cochran has done that.

Paul Barbagallo recalls his brother telling him that he had informed the Premier that his brother, Paul, had foptail palms and seeds, however he denies that David ever warned him that Cochran might make allegations against him.

The following passage is from the evidence of Paul Barbagallo:

PEARCE: Did you ever tell your brother, David, that you had taken seeds from the Park? --- I don't recall. I may have; I may not have. I don't really remember. I don't - I don't imagine I did. I don't know.

Do you recall ever discussing with David the fact that it was illegal to take foptail palm seeds from Cape Melville National Park? --- We had a discussion on the illegal taking of foptail palm seeds after November 1992, when it was publicised in *The Sunday Mail* - the raid that happened; and he rang me and told me that he told the Premier that I'd taken some at some stage. That's about the only recollection I have of us talking about foptail palms or seeds.

...

There had been publication of details of some raids conducted where foxtail palms had been seized by authorities, is that correct? --- Yes, I think our conversation was due - because he was asked to check out the - find information out for the - for the Premier.

And he - he telephoned you, did he? --- Either he telephoned me or I telephoned him, I don't remember. It was - it could have been another matter and it just carried on to that, but I don't recall.

And what was - what did he ask of you, can you tell me that? --- He didn't ask anything of me. He said there might be some charges laid if - if I've had - had palms. And I said, 'That's fine.' I said, 'As long as they get everyone else that's ever taken palms I'm quite happy with that.' He said he didn't know what would happen and he said I'd have to go along with everyone else if it happened. I said, 'That's fine.'

Well, he was warning you, in effect, that you might be charged? --- No, he wasn't warning me that I might be charged at all, he just - - -

Well, how do you describe what you have just told me? That is what it sounded like. He - he was telling you that you might be charged? --- Yes. How will I put it?

Well, he was advising you then that you might be charged? There was going to be some activity - - - ? --- No, he was advising me that there was going to be some activity towards - some legislation made out about the palms, that they cut legislation, not - not warning me, or not anything else, but - - -

There might be some legislation? --- Yes, about foxtail palms, yes.

You appreciated at that time, did you, that it was already illegal to take foxtail palms or seeds from the Park? --- Yes, I would have known by then, yes.

What did you imagine the new legislation was going to do? --- I couldn't imagine it doing much, because you drive anywhere in any town in Queensland and there's foxtail palms. What were they going to do, arrest 10,000 people or whatever? I - I'd no idea what the legislation would be. ... I'd heard talk, reading in the paper, that nurserymen had been asking for an amnesty and that's what I imagined would happen.

...

BARNES: Did you brother, David, tell you on that occasion that he had been contacted by someone who had their palms seized? --- Yes, I think he mentioned someone, David or John Cochran.

He told you that Cochran had contacted him? --- Yes, I think so.

Did he tell you that Cochran had made allegation about your involvement in the foxtail palms? --- He's made quite a few accusations about me; I've heard quite a few that were outrageous, to be honest.

Now, try and focus your mind to the telephone conversation with your brother, David, that we are talking about. Did you brother David, in that conversation, tell you Cochran had alleged that you had been unlawfully dealing in foxtail palms, or had some involvement in the taking of foxtail palm seeds? --- No, I don't recall David said anything like that at all.

You are confident about that, are you? --- I just said it, yes, I must have felt confident, I just said it. I - as far as I remember, yes, totally confident.

PEARCE: It was not the purpose of your brother's telephone call then, to, in effect, warn you that Mr Cochran may be about to say things about you? --- No, not at all.

You do not recall that being the context of the conversation? --- No, not at all.

Have you ever discussed what Cochran has said about you with your brother, David? --- I don't recall that either, I don't - - -

Well, from whom have you heard the allegations that Cochran has made? --- Various nurserymen that I've spoken to. I've had anonymous phone calls to say that he's in them raids that happened in 1992; that I'd organised foxtail palm picking and its totally outrageous; I don't know any one of those persons that were - were up there.

Why do you think Mr Cochran would be concerned about you? Why would he bother making allegations about you? --- I really got no idea, I've never met the man.

David Barbagallo acknowledges receiving a telephone call from David Cochran. He states that Cochran:

Basically complained about the whole inadequacy of, you know, of the law and the fact that he was just one of hundreds of people that was doing this and why did they pick on him, and all the rest of it; general source of complaints you get.

According to David Barbagallo, he spoke to officers of the Department of Environment and Heritage, including the Director-General, one of the Minister's advisers, and the Minister, but these discussions centred around the policy

considerations of the trade in foxtail palms. He denies making any representations on behalf of Cochran in respect of the seizure order.

David Barbagallo believes that there was no mention of his brother, Paul, during the conversation with Cochran and he specifically denies that Cochran raised the issue of his brother being liable if the law was fairly enforced. He also denies the suggestion that Cochran threatened to bring Paul Barbagallo's name into the foxtail palm controversy unless he assisted Cochran.

Significantly, during the course of his testimony in respect of this allegation, it became apparent that David Barbagallo had deliberately misled the Commission in respect of his knowledge of Paul Barbagallo's activities. The following passage of David Barbagallo's evidence is significant in that regard:

PEARCE: Did (Cochran) make any mention of your brother to you during that conversation? --- I don't recall, no, no. I mean, you know, there's such a passage of time and there's so many things overlaying, but I don't recall that specifically, no. You see - I mean, as I said to you in the last interview, I was aware of what - you know, my brother having foxtail palms. I mean, anyone with reasonable intelligence understands where they come from, you know. I made it quite clear to my brother that when we came into government, that if he ever did anything that was remotely embarrassing to me, then - then, you know, I would deal with him appropriately. And - and as far as I'm aware, he basically abided by that. You know, I mean because he - he'd had a drug conviction and the way the Opposition works, I mean, they use those sorts of things to get at the Premier. I mean, I was very concerned about, you know, ensuring that he didn't get dragged through the mud as well and all the rest of it. So I was aware, you know, that he had - he'd got some seeds, you know, in the past, so - so, you know, with that knowledge I was very careful of anyone, you know, who would suddenly contact me in the Premier's Office about making representations on their behalf, and basically I'm not stupid.

So you reject the suggestion that Cochran called you and threatened to bring you brother's name into the foxtail controversy unless you did something to assist him? -
--- Yes, I - yes, I certainly reject that suggestion.

What do you know about your brother previously obtaining foxtail seeds? --- Look, I mean, some years ago he got some seeds out of Cape Melville National Park; I think he also purchased some seeds from someone. I mean, basically I took the view that the less I knew the better, right, except for the general sort of admonishment of him to just say, you know, you basically got to understand how politics works, you know. It doesn't matter that I've had nothing to do with this and all the rest of it, the

fact that you're my brother, you know, will be used, and as it's been - I've been proved correct in this matter.

Counsel assisting pursued the issue of David Barbagallo's knowledge of his brother's activities in relation to the collection of foxtail palm seeds:

You indicated just a short time ago that you are aware that your brother, Paul, has in fact taken seeds from Cape Melville National Park on prior occasions. When did you become aware of that? ---- It - it was some years ago basically, in the - - -

Do you know how many seeds he took from the park? ---- Oh, not many. Like a couple of hundred, I think.

Do you know what he did in respect of those seeds? ---- No, not - not really. I mean, I know he struck them and - and they were growing and, I mean, he has got quite a few growing on his property; he's got about, you know, 50 or 60 on - lining the - the drive in; they're quite substantial and they've been there quite a while. It - - -

Were they trees that were grown from seeds propagated after he took the seeds from Cape Melville National Park? ---- I don't know, I know he bought some seeds from someone at some stage as well, but - I presume they're either from the one he bought or from the ones he took from the - from Cape Melville National Park.

David Barbagallo had been interviewed by Counsel assisting and Detective Inspector Gough, of the Commission, on 31 March 1994. During that interview he was asked:

PEARCE: Do you know whether Paul Barbagallo has ever taken or had possession of foxtail palm seeds from Cape Melville?

His answer was:

No I don't know.

David Barbagallo was reminded of that response by Counsel Assisting:

"PEARCE: Do you recall that you were asked this question: 'Do you know whether Paul Barbagallo has ever taken or had possession of foxtail palm seeds from Cape Melville?' ? ---- Yes, I recall that.

Do you recall the answer you gave? ---- Oh, yes, I think I hedged on it and - because I wasn't under oath, I didn't - I wasn't entirely truthful.

You said, 'No, I don't know.' --- What did I say?

'No, I don't know.' --- What was the question?

'Do you know whether Paul Barbagallo has ever taken or had possession of foxtail palm seeds from Cape Melville?' Your response was, 'No, I don't know.' --- Yes. That's right. That was my response. It was untruthful.

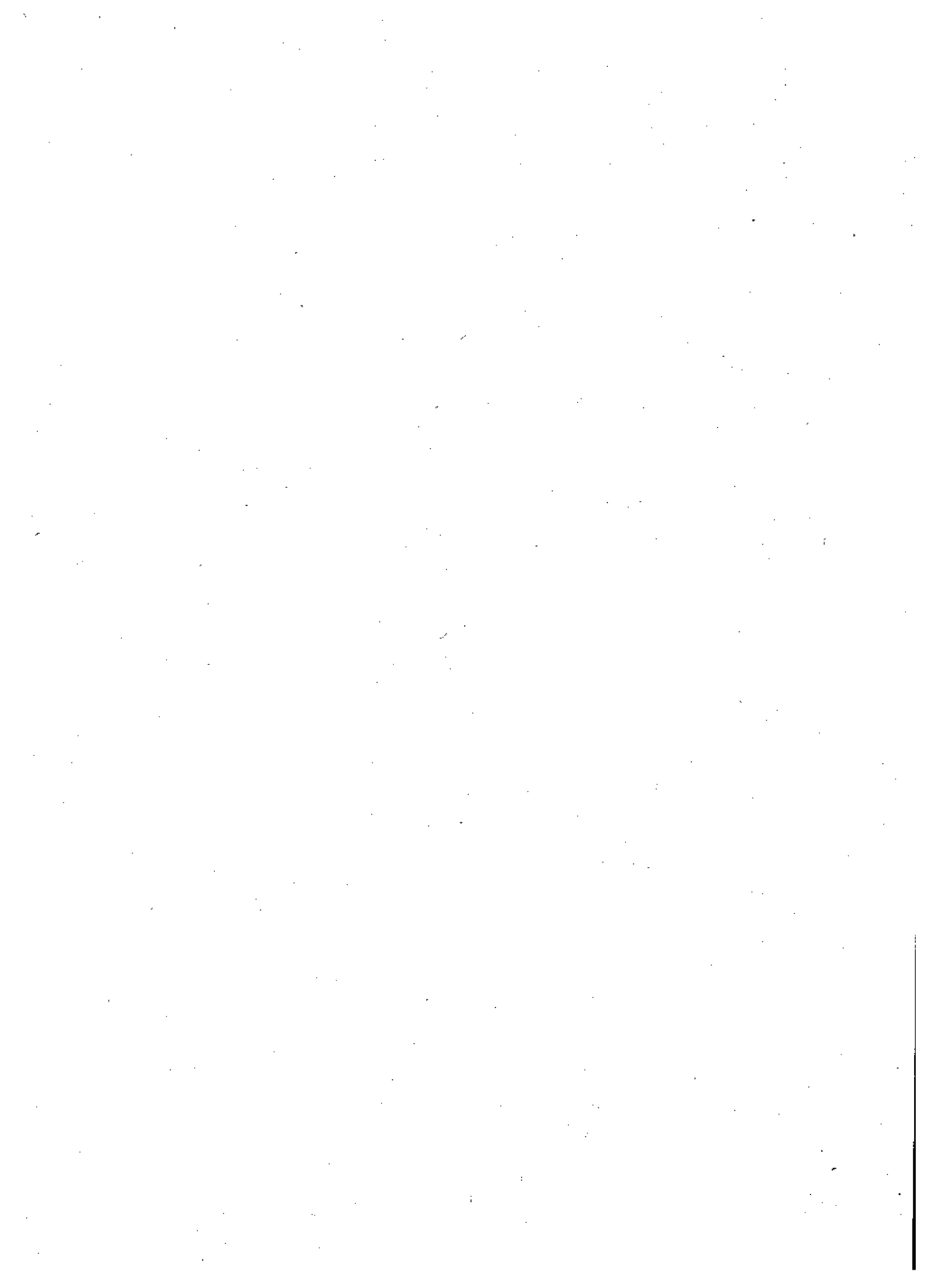
...It was untruthful? --- Yes.

You were asked this question: 'Have you ever had any reason to suspect that he has had possession of foxtail palm seeds from Cape Melville?' You said: 'Insofar as I know that he's had - he's got foxtail palms and I know that that's a unique habitat, I guess I'd have to say - I have asked him on occasions where he's got them from and he says they are available all over North Queensland; you can buy them, and he has bought them, so.' --- That's right, and that is correct; he has said that to me.

Were you trying to be - were you trying to avoid the issue in that response? --- I was trying to protect my brother. I mean, is that not obvious to you. ...

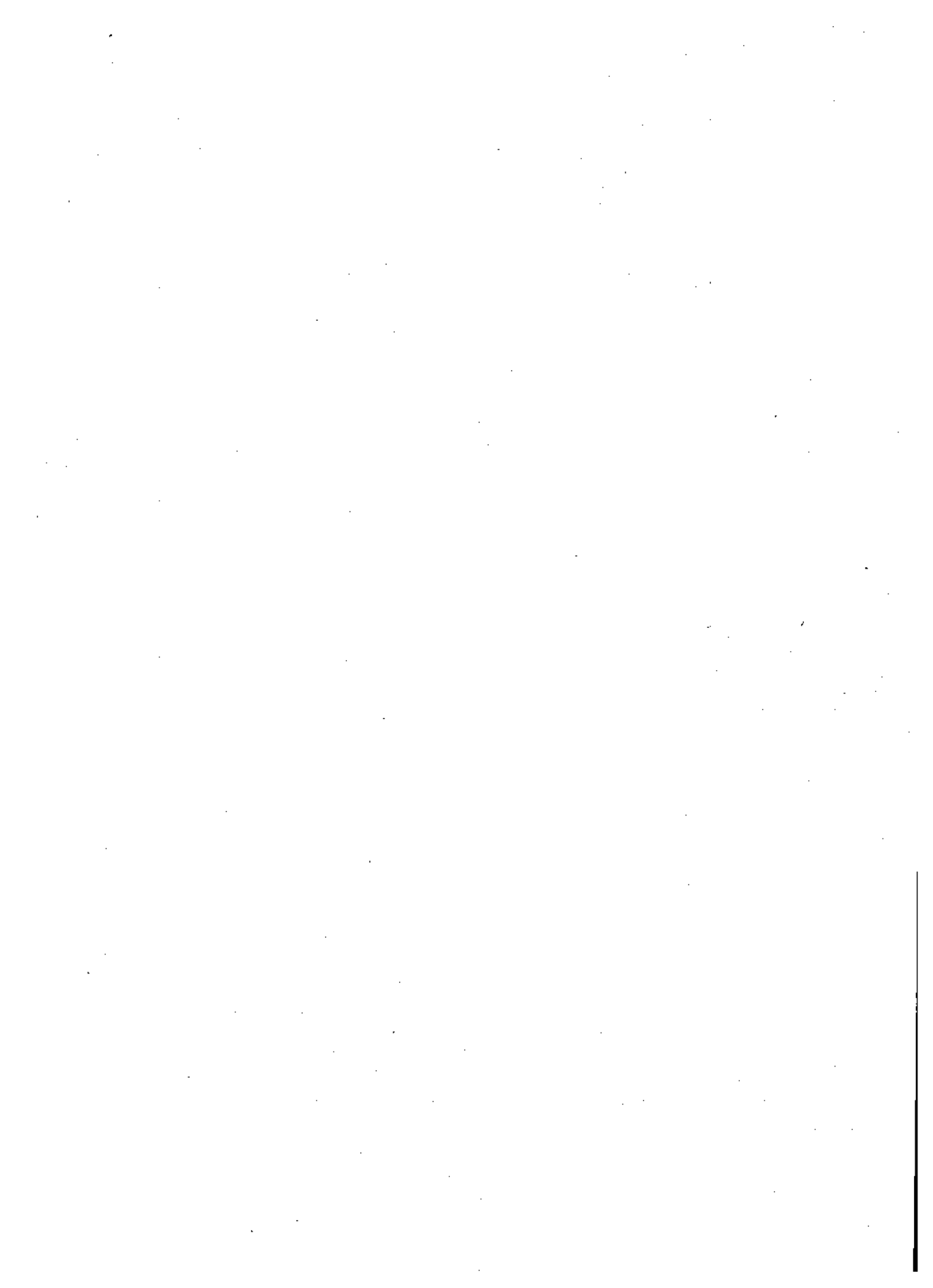
David Barbagallo added that as he was now under oath, he was telling the truth.

The Commission could find no other evidence bearing on the allegation that David Barbagallo had interfered in the Fauna Squad's action against Cochran.



PART III

**CONCLUSIONS AND
RECOMMENDATIONS**



CHAPTER 11

CONCLUSIONS AND RECOMMENDATIONS

11.1 INTRODUCTION

11.1.1 Jurisdiction

This chapter contains the Commission's conclusions and recommendations in relation to matters falling within its jurisdiction which is described in detail in chapter 1 at section 1.3. Generally, the Commission has jurisdiction to investigate and make recommendations only about the conduct of people who hold positions within units of public administration or the conduct of people who seek to influence the discharge of powers or responsibilities by people who hold such positions.

Obviously in some instances however, in order to reach conclusions about the conduct of people who hold positions within units of public administration, it is necessary to reach conclusions about the conduct of people who are beyond the jurisdiction of the Commission.

11.1.2 Standard of Proof

When reaching conclusions the Commission has applied the standard of proof applicable to the various issues to be determined. The rationale of this approach is set out in some detail in chapter 2 at section 2.3. Briefly, its effect is that if the Commission is to refer a matter to the Director of Prosecutions for consideration of whether criminal charges should be preferred, it needs to be satisfied that each of the elements which would have to be proven for a conviction to result can, on the available evidence, be proven beyond reasonable doubt.

If the Commission considers a matter should be referred to the principal officer of a unit of public administration to enable the taking of disciplinary action, it needs to be satisfied that each of the matters needed to be established to make out a disciplinary charge can be proven on the available evidence to the civil standard as laid down by the High Court in Briggenshaw's case.

11.1.3 Procedural Fairness

Each of the people in relation to whom the Commission has reached an adverse conclusion was, prior to the Commission reaching its conclusions advised of the likelihood of an adverse conclusion and where necessary provided with copies of the evidence on which such a conclusion might be based. They were invited to make submissions in relation to such possible conclusions and those submissions have been taken into account by the Commission in reaching the conclusions set out in this chapter.

The Commission followed this course for the purpose of ensuring that procedural fairness was afforded to people who were at risk of being the subject of adverse conclusions. This step was probably unnecessary as each of those people gave evidence at investigative hearings of the Commission during which they were given the opportunity to respond to the allegations on which the conclusions adverse to them might be based.

While the adoption of this procedure has delayed the publication of this report, the Commission accepts the obligation of ensuring that no unfairness or perception of unfairness taints its conclusions.

11.2 PUBLICATION OF THE LODGING OF COMPLAINTS FOR POLITICAL PURPOSES

On 21 February 1994, the Commission received a letter from the Director-General of the Department of Environment and Heritage, Dr Craig Emerson. The letter commenced:

Yesterday's edition of the Sunday Mail carried a major article (pp. 13) concerning alleged behaviour on the part of myself and two other persons in relation to an incident said to have occurred in Cape Melville National Park. The article claims I am being investigated by the Criminal Justice Commission (CJC). Today's edition of The Australian newspaper reports that the complaint to the CJC was made by the opposition spokesman on environment and heritage, Mr Doug Slack.

I have not been informed by the CJC of any such investigation. The public announcement of a CJC investigation is highly damaging to my reputation.

After seeking advice as to whether he was under investigation by the Commission and denying any misconduct, impropriety or wrong-doing, the letter continued:

This is the third matter in the past three months on which a complaint against me has been made to the CJC by Mr Slack. In each case the complaint has been announced publicly and given prominent media coverage. The CJC has advised me that on the first two matters - Ace Waste and 2020 Vision - there was no evidence of official misconduct.

I am distressed at the process whereby Mr Slack can announce publicly that he has made a complaint against me to the CJC and obtain prominent media coverage, regardless of whether or not the complaint has any basis in fact.

At the time, the Commission was not investigating the matter but was undertaking preliminary enquiries to enable it to assess whether the allegations reasonably raised a suspicion of official misconduct by any person holding a position in a unit of public administration. The newspaper articles to which Dr Emerson referred, therefore, incorrectly stated the Commission's position. The Commission was not responsible for the public disclosure of this matter and regrettably was not even asked for a response by the newspapers which carried the articles referred to by Dr Emerson.

Subsequently both Mr Slack and the Honourable Molly Robson, Minister for Environment and Heritage made statements in Parliament about the Commission's handling of the matter whilst it was on-going. Mrs Robson also apparently authorised her press secretary to brief journalists on background matters concerning the Cape Melville Incident.

The Commission is unable to exercise any control over public statements made by others. These public statements did, however, highlight a problem of which the Commission has been aware for some time. In a submission made to the Parliamentary Criminal Justice Committee in 1991, the Commission recommended an amendment to the *Criminal Justice Act 1989* to prevent a person disclosing both the fact that they had complained to the Commission against any person and the details of that complaint. This was intended to prevent a situation where a complaint was forwarded or allegedly forwarded to the Commission and then publicised to cause embarrassment. The proposal, if adopted, would not inhibit public discussion and comment on the subject of the complaint; only publication of the fact that a complaint had been lodged or was being investigated by the Commission would be disallowed.

In response to the Commission's 1991 submission, the Parliamentary Criminal Justice Committee of the day acknowledged the problem and recommended that it be the

subject of further examination by the Commission and the Committee. The Parliamentary Criminal Justice Committee, in addition to making recommendations in relation to other issues, outlined some matters of principle which it considered to be of importance. Principle 10 stated:

Where practical, all information from Parliamentarians and local Councillors and candidates should be forwarded to the Commission in confidence so that a complaint procedure cannot be used for political purposes.

In seeking the amendment to the Criminal Justice Act referred to above, the Commission was conscious that because of its powers and functions, significant stigma may attach to people publicly identified as being under investigation by it. The proposed amendment was never intended to prevent and in the Commission's opinion would not prevent debate in Parliament or the community on matters under investigation by the Commission or the manner in which the Commission conducted investigations. It would, however, afford natural justice to persons against whom complaints were made and act as a deterrent against the making of complaints to besmirch the reputation of the individual and the broadcasting of this fact.

It is, therefore, unfortunate that public discussion of the amendment proposed by the Commission proceeded upon the fundamental misconception that the Commission's purpose was the prevention of public debate on matters under investigation by it. This perception is incorrect. The Commission is an accountable body which does not object to being the subject of public debate. It is, however, anxious to ensure that the debate proceeds on an accurate and factual basis and that the Commission is not used by complainants seeking political advantage over those about whom they complain.

Of relevance to this issue are comments made by the Privileges Committee of the Legislative Assembly in its report "*A matter of Privilege - Alleged Intimidation of a Member*" tabled on 12 November 1993. At paragraph 5.10 of the report the following appears:

The powers and responsibilities of Members of Parliament under the Law of Parliamentary Privilege include a duty not to abuse the privileges which parliamentary office accords. While it is not necessary for a Member in raising matters under parliamentary privilege to be satisfied that the truth of his or her statement could be proved in a court of law, it is appropriate that the Member at least have a reasonable belief that the concerns he raises deserve investigation.

Mr Slack may have reasonably believed that the allegations contained in the anonymous letter which he referred to the Commission warranted investigation and

accordingly he, quite properly referred the matter to the Commission. What is of concern is the persistent raising of the matter in the House by Mr Slack and others in a manner which resulted in Dr Emerson suffering damage to his reputation on the published assumption that he was being investigated by the Commission.

The investigation of the allegations dealt with in this report was not assisted by public comment on it. People who have now been shown to be innocent of any misconduct have nonetheless, had their integrity impugned publicly.

In view of the other complaints lodged against Dr Emerson by Mr Slack and the publicity afforded them it is easy to understand Dr Emerson's distress.

The Commission does not have control over what complainants say about matters they have referred to the Commission. While it is regrettable that the Commission has found it necessary to seek an amendment to the Criminal Justice Act to prevent publication of the lodging of complaints, it was compelled to do so in the light of its experiences. The publicity given to the complaint against Dr Emerson illustrates the need for such an amendment.

The Commission understands the proposed amendment is still before an inter-departmental working committee considering various amendments to the *Criminal Justice Act 1989*. The Commission will continue to seek such an amendment as a matter of priority.

11.3 WHAT ALLEGATIONS AND ISSUES ARE ADDRESSED?

Set out in chapter 1 are the allegations which were referred to the Commission by Mr Slack which caused the Commission to undertake the investigation the subject of this report. Also referred to in chapter 1 and throughout the report are other allegations which were referred to the Commission by Mr Slack and others during the course of the investigation.

Those allegations may be succinctly stated as follows:

- David Barbagallo and Dennis Atkins improperly involved themselves in the investigation and prosecution of Paul Barbagallo by:
 - (i) seeking to have the Director-General of the Department of Environment and Heritage, Dr Craig Emerson, intervene in the matter; and
 - (ii) seeking to intimidate ranger Pat Shears on the occasion of an interview between Pat Shears and Paul Barbagallo at the Cooktown Police Station on 13 November 1993.
- A consequence of these attempts to interfere in the prosecution of Paul Barbagallo was that David Barbagallo resigned from his position as Principal Private Secretary to the Premier.
- Because of David Barbagallo's position in the Premier's Office, the Director-General of the Department of Environment and Heritage, Dr Craig Emerson, and the Regional Director, Far Northern Region of the Department of Environment and Heritage, Greg Wellard, sought to afford Paul Barbagallo favourable treatment by making arrangements to fly him and his party back to his vehicle after it was seized by Pat Shears and offering to hire a vehicle for their use.
- Because of David Barbagallo's position in the Premier's Office, the Director-General of the Department of Environment and Heritage, Dr Craig Emerson, and the Regional Director, Far Northern Region of the Department of Environment and Heritage, Greg Wellard, sought to afford Paul Barbagallo favourable treatment by seeking to interfere in the prosecution of Paul Barbagallo and Gordon Uechtritz.
- Because of David Barbagallo's position in the Office of the Premier, Wellard sought to vindictively disadvantage Pat Shears by declining to renew his employment with the Department of Environment and Heritage because he had seized Paul Barbagallo's vehicle.
- In 1991 David Barbagallo intervened in the prosecution of David Cochran because he threatened to publicise Paul Barbagallo's illegal dealing with foxtail palm seeds.

- **Barton Green, media adviser, to the Minister for Environment and Heritage acted inappropriately in publishing to journalists documents and other information containing statements critical of Pat Shears.**

During the course of its investigation other issues within the Commission's jurisdiction were also raised. By section 29(1) of the *Criminal Justice Act 1989* the Commission is obliged not only to investigate complaints but also to operate of its own initiative in response to information received concerning misconduct.

This chapter therefore also includes the Commission's conclusions and recommendations in relation to those other issues which enlivened its jurisdiction.

Those issues are:

- **Were all appropriate steps taken by officers of DEH prior to Pat Shears being sent to Cape Melville?**
- **Was Pat Shears' conduct at Cape Melville in accordance with his duties and responsibilities?**
- **Was Peter Stanton's conduct upon becoming aware of the seizure of Paul Barbagallo's vehicle in accordance with his duties and responsibilities?**
- **Was the conduct of Peter Harris and Geoffrey Kelly upon becoming aware of Patrick Shears' actions in accordance with their duties and responsibilities?**
- **Was David Barbagallo's and Dennis Atkins' trip to Starcke Station approved in accordance with the relevant guidelines and were the expenses thus incurred acquitted in accordance with the relevant guidelines?**
- **Should any disciplinary action be taken against the rumour mongers who precipitated the complaint leading to the Commission's investigation?**
- **Did Greg Wellard's Ministerial briefing note of 9 February 1994 to the Minister for Environment and Heritage contain exaggerated, erroneous or misleading information?**

To enable readers of this chapter to better understand the progress of the Commission's investigation and to avoid the necessity of repeating passages of evidence, the Commission's recommendations and conclusions in relation to all of the

above allegations and issues are dealt with in chronological order and grouped with reference to subject matter.

11.3.1 Were all appropriate steps taken by DEH officers prior to Shears being sent to Cape Melville?

11.3.1.1 Did Harris submit an inaccurate and inadequate Proposal for Engagement and an inaccurate and inadequate Project Brief relative to Shears' employment?

In July 1993 Peter Stanton, senior conservation officer, employed with DEH, made a field trip to Cape Melville National Park to review management issues which would need to be addressed, particularly if the traditional Aboriginal owners were successful with a claim to acquire land pursuant to the *Aboriginal Lands Act 1993*.

When he returned to Cairns from that field trip Stanton had discussions with Harris, District Manager, Cape York, about a plan he had formulated to restrict the unlawful taking of foxtail palm seeds.

Stanton's plan involved the barricading of tracks the seed stealers had made through the bush to the foxtail palm stands. Stanton and Harris knew from previous experience that palm seed smugglers were frequently armed and they suspected that the same people engaged in other unlawful activities such as the cultivation of marijuana. It was even rumoured that these people engaged in assisting aliens to gain unlawful access to Australia and the smuggling of rifles out of Australia to the perpetrators of civil unrest in Pacific nations.

Harris and Stanton considered that the danger to those employees of DEH who were to implement Stanton's plan would be minimised if they scrupulously avoided taking any direct enforcement action against suspected offenders. Their role in preventing seed stealing was to be limited to building barricades and surveilling suspected offenders.

Stanton and Harris considered Shears, who had worked as a ranger for the Department on and off over a period of seven or eight years at Cape Tribulation, to be suited to the task proposed. Both Stanton and Harris knew that Shears was something of an individualist who held very strong views

about enforcement of wildlife protection legislation. He was known to be resistant to bureaucratic control.

In a submission dated 10 September 1993 addressed to Wellard, the Regional Director of the Far Northern Region, Harris recommended the appointment of Shears for a three month period to undertake the project proposed by Stanton. At the suggestion of others within the Department the submission also recommended that two Aboriginal elders from Hopevale, who were associated with the claimant of the land under the *Aboriginal Lands Act 1993*, should accompany Shears to enable him to familiarise them with some of the features of the park's management problems.

The proposal set out in general terms the duties to be performed by Shears and the two Aboriginal rangers. It did not stipulate that Shears was to take no direct enforcement action nor did it make clear that the preventative action referred to in general terms was to be limited to the building of barricades and the surveillance of suspects.

These deficiencies were repeated in the Project Brief which was in effect Shears' duty statement. It stated the aims of the project to be to "deter, control and prevent the occurrence of unlawful activities within the park particularly the poaching of the seeds of the foxtail palm". These general directions to prevent seed stealing were not anywhere in the document qualified by directions that no direct enforcement action be taken.

Before Shears went into the field he did, however, receive a briefing from Harris and the Regional Manager DEH, Geoff Kelly, to the effect that he should not engage in any direct enforcement action and should avoid confronting any offenders.

Conclusion

In presenting the Proposal and the Project Brief with these deficiencies, Harris failed to efficiently discharge the duties of his position. This failure was largely redressed in oral briefings Harris and Kelly gave Shears prior to Shears going into the field. However, the deficiencies contributed to the project being commenced and executed without any precise documentary underpinning. It enabled Shears to later justify his unreasonable action of seizing the vehicle.

Recommendation

While the shortcomings in these documents may seem relatively minor they relate directly to the unfortunate events that later brought this project to public notice. More importantly, they may have been central to the safety of Shears and his party.

Therefore the Commission recommends that the deficiencies in the Proposal and the Project Brief be drawn to Harris' attention to ensure they are not repeated. The Commission does not consider that such a recommendation is inappropriate because at the heart of the matter is the safety of employees and others.

11.3.1.2 Did Wellard act inappropriately in endorsing Harris' Project Brief relative to Shears' employment?

Shears could not be engaged until Regional Director Wellard gave his approval. He did that by endorsing the proposal submitted by Harris dated 10 September 1993. When signifying that endorsement Wellard failed to draw attention to the deficiencies referred to in paragraph 11.2.1.1 above and thereby compounded them.

Conclusion

Wellard failed to diligently and/or efficiently discharge the duties incumbent upon him of his position.

Recommendation

Wellard has acknowledged his failure in this regard and therefore, in the Commission's view, there is little chance it will recur. Consequently, no further action is necessary or warranted.

11.3.1.3 Did Harris, fail to adequately plan and supervise the surveillance operation conducted by Shears by failing to ensure that a proper, sufficient or adequate briefing was delivered to the Queensland Police Service in regard to Shears' proposed activities with a view to ensuring that back-up assistance would be available from those agencies should Shears request such assistance?

In anticipation of the possibility of the rangers meeting up with dangerous offenders, the proposal of 10 September 1993 in respect of Shears' engagement and the letters of appointment to the Aboriginal rangers indicated that arrangements had been made with Cairns and Cooktown police to support the rangers in the field if necessary. Indeed the proposal to engage Shears indicated that police from both Cairns and Cooktown had visits to the area scheduled.

Harris says he instructed another departmental officer, Michael Chep, to arrange such support and that Chep and Shears met with Cairns Police. Chep denies receiving any such instructions or undertaking any such liaison.

Shears says that of his own initiative he made contact with Cairns Police in an effort to interest members of the drug squad in visiting Cape Melville National Park during Shears' operation. He also called in at the Cooktown Police Station on his way through to Cape Melville.

The Police Service denies receiving any official contact from DEH about Shears operation at Cape Melville and accordingly no contingency plans were prepared which could have been implemented in the event that Shears needed urgent assistance.

Conclusions

Harris failed to ensure that arrangements were made with the Queensland Police Service to provide Shears and his associates with urgent police back-up if it became necessary. Chep denies that he was tasked to arrange that back-up and in any event the Commission considers it was ultimately Harris' responsibility to see that it was done. In view of the information Harris had about the possibility of Shears meeting armed and dangerous offenders and considering the remoteness of the locality in which Shears was operating, the failure on Harris' part increased the risk posed to Shears and the Aboriginal rangers when carrying out their duties.

In the Commission's view, as Shears immediate supervisor it was incumbent upon Harris to make formal official contact with the Queensland Police Service to ensure

that if he required it assistance would be available for Shears. In failing to do so Harris did not discharge his duties diligently and efficiently.

Recommendation

The Commission recommends that Harris be counselled about the need to ensure that all necessary arrangements to provide assistance to officers in the field are attended to prior to officers being sent into the field. Once again the issue of safety is at the heart of the matter.

11.3.2 Did Shears conduct himself at Cape Melville in accordance with his duties and responsibilities?

The conduct of Shears does not raise a suspicion of any criminal offences.

As Shears no longer holds a position in a unit of public administration the question of disciplinary action does not arise for consideration. However, in order to assess the response of other departmental officers to his conduct, it is necessary for the Commission to make an assessment of the conduct of Shears.

11.3.2.1 Was the setting of "booby traps" in the form of blocks of timber with protruding nails, in accordance with Shears' duties and responsibilities?

Shears admitted placing booby traps on the "smugglers' tracks" within Cape Melville National Park. He was aware that sightseers not engaged in any illegal activity used those tracks. The booby traps posed a significant danger to users of the track in that pedestrians would risk personal injury and motorists would risk their vehicles becoming incapacitated.

Conclusion

Shears had no lawful authority to set these traps. He was not instructed or authorised by his superiors to do so. In setting them he was acting contrary to his duties and responsibilities.

11.3.2.2 Did Shears arm himself with explosives, and if so, was such conduct outside the scope of his authority?

Monaghan and Flinders, the two Aboriginal rangers who accompanied Shears to Cape Melville National Park say Shears had dynamite with him in the park. They say they saw him transferring it from one bag to another and that he told them he had it to frighten away criminals if the party was attacked. Flinders says he has worked with dynamite on numerous occasions and is familiar with its appearance.

Shears admits telling Flinders and Monaghan that he had dynamite but denies that this was the case. He says he told them that so as to re-assure them. He says that what Flinders and Monaghan saw was peperoni wrapped up to look like dynamite.

Shears told Sergeant Charles, whom he met at Lakefield National Park on 11 November that he had explosives with him.

Prior to going to Cape Melville in October 1993, Shears told Stanton that explosives would be useful for blowing up seed smugglers' vehicles.

Conclusion

Having regard to the eye witness evidence of Flinders and Monaghan and the absence of any logical reason for Shears to lie to Sergeant Charles about his possession of explosives, the Commission considers that it was more probable than not that Shears had dynamite in his possession in Cape Melville National Park, in November 1993. He was not instructed or authorised by his superiors to do so. His possession of dynamite was contrary to his duties and responsibilities as a park ranger.

11.3.2.3 Did Shears arm himself with a rifle whilst patrolling Cape Melville National Park in October/November 1993

Flinders and Monaghan say Shears carried a rifle with him when patrolling the park. Shears claims that he did not take the rifle into the National Park but rather hid it behind a tree near the park boundary. Shears claims he adopted this practice even when he was walking down "smugglers' track no. 3" on 11 November 1993 expecting, he says, to come upon foxtail palm seed smugglers.

The possession of firearms in a National Park is an offence unless the express consent of an authorised DEH officer is obtained.

Shears had been instructed by his superiors not to carry firearms in the National Park.

Conclusions

Having regard to the evidence of Flinders and Monaghan and the inherent unlikelihood that Shears would abandon his rifle when expecting to confront seed smugglers, the Commission considers it more probable than not that Shears did carry a firearm into the National Park contrary to his instructions.

11.3.2.4 In seizing the motor vehicle in Cape Melville National Park on 11 November 1993, did Shears act contrary to express instructions?

Prior to going into the field, Shears was directed that he was not to confront or engage people suspected of committing offences in the National Park. He was to limit his enforcement role to surveillance of suspects and the building of barricades. This direction was based on the recognition of the lack of capacity of Shears and his colleagues to safely engage in enforcement activity in such a remote place.

Shears acknowledge receiving those instructions.

Shears says he seized Paul Barbagallo's vehicle on 11 November 1993 for the following reasons:-

- The vehicle had driven around barricades and a sign he had erected thereby demonstrating a willingness to breach National Park regulations.
- There were numerous firearms in the vehicle and Shears concluded that the occupants may have been responsible for firing at some other park visitors some days previously. (He subsequently contradicted this justification by claiming to have observed Paul Barbagallo's party arrive at the park the previous day.)
- The vehicle was parked in close proximity to a stand of foxtail palms

- Having regard to all of the above Shears concluded that the occupants of the vehicle were likely to be engaged in foxtail palm seed stealing.
- As the Aboriginal rangers had indicated to Shears that they wished to leave the park forthwith Shears was unable merely to surveil the occupants of the vehicle. (In any event Shears indicated that even if he had been alone he would have still seized the vehicle.)

Shears acknowledged that in seizing the vehicle he was acting contrary to the express instructions given to him by Kelly and Harris prior to him going into the field. He explained:

That's a funny thing you cannot - in the brief it says to prevent the smuggling of the seeds and even though it was surveillance and hiding out I still had to prevent the smuggling of the seeds so that's how I had to work round it.

He expressed the view that the people who gave him the instruction did not understand the situation and in the circumstances he felt entitled to overrule or disregard their directions.

Conclusions

Shears had insufficient evidence upon which to reasonably conclude that the occupants of the vehicle were engaged in the stealing of foxtail palms. In any event, by taking the vehicle he prevented his suspicions from being effectively investigated as they could have been if he had simply noted the details of the vehicle and relayed those to police in Cooktown or rangers at Lakefield National Park. If he had done this, police could have come to his aid or the vehicle could have been searched when it was leaving the park.

The other offences of which he had strong evidence, i.e. "traversing a National Park without a permit" and "possessing a firearm in a National Park" and "possessing a chainsaw in a National Park" were relatively minor and did not justify the seizure of the vehicle.

Removing the vehicle and leaving its occupants without transport could have placed them in very real danger. Shears' evidence as to his knowledge about their access to alternative transport is contradictory.

The Commission has no reason to doubt that Shears did what he thought was the best thing to do at the time and that he was motivated solely by his desire to take positive

action to prevent the smuggling of foxtail palm seeds. Nevertheless, the Commission considers it likely that his precipitous action was connected with his being required to leave the park on that morning, cutting short the operation by some days and it is of the opinion that it was unreasonable and unwarranted.

The Commission is of the view Shears without reasonable excuse breached the explicit instructions given to him by his superiors to the effect that he was not to engage in direct enforcement action.

11.3.3 Were the actions of Shears subsequent to his seizure of the motor vehicle in Cape Melville National Park on 11 November 1993, conducted in accordance with his duties and responsibilities?

11.3.3.1 Did Shears deliberately refrain from immediately reporting his actions?

Shears reported the seizure of the vehicle to Cooktown Police on the afternoon that he took it. The police officer he spoke to says he advised Shears to return the vehicle to its owner. Shears' contends that although this advice was given the officer later concurred with his proposal to lock the vehicle in a shed at Lakefield National Park. At no stage until Shears was contacted by Harris on the Friday afternoon some 30 hours after he seized the vehicle, did he attempt to report the incident to Harris or Wellard. In his defence it is appropriate to mention that he expressed an intention to do so but was advised against following that course by Stanton. Stanton was not Shears' supervisor, however having regard to his previously having held the position of Regional Director it was not unreasonable for Shears to be influenced by Stanton's advice.

Conclusion

Although Shears failed to report the seizure of the vehicle to his superiors his conduct was understandable in the light of Stanton's advice and in the circumstances not unreasonable. It is equally understandable that until his superiors learnt that he had acted on advice from Stanton they considered this omission as further evidence of his irresponsibility.

11.3.3.2 Did Shears provide an exaggerated and misleading account of the events of 11 November 1993 in his roadside briefing to Sergeant Charles of the Australian Army?

Sergeant Charles says that Shears told him that he had been engaged in an armed confrontation with criminals, that Shears indicated that he was aware of the location of a number of marijuana plantations and that he intended to go back and confront the offenders. He sought the assistance of the Army to do this.

Shears does not challenge that he sought the assistance of the Army but he contends that Sergeant Charles confused things he described as happening in 1992 with things Shears told him happened in the days proceeding their meeting. That, however, does not explain why he told Charles that he had been engaged in an armed confrontation. So far as the Commission is aware, Shears was never involved in an exchange of fire with drug offenders in any of his patrols in Cape Melville National Park. Nor, does Shears' account explain why he would have required the assistance of the Army.

Conclusion

The Commission is of the view that Shears gave an exaggerated and misleading account of events of 11 November 1993 to Sergeant Charles. The Commission is unable to determine with certainty what Shears said, but for the purpose of assessing DEH's response this is unnecessary. It is clear that as a result of Charles' account the DEH's officers could reasonably come to the view that Shears had acted contrary to his duties and responsibilities. The Police Service commenced preparations to send the Special Emergency Response Team to the area and DEH made similar plans.

11.3.4 Upon becoming aware of Shears' actions did Stanton conduct himself in accordance with his duties and responsibilities?

Having been told by Shears of the circumstances of the seizure of the vehicle Stanton acknowledges that he advised Shears not to report the seizure of the vehicle to Harris, Shears' direct superior. Stanton testified that he did this because:

I didn't trust the people that might be concerned in the matter. In relation to what I said before, in my experience and the Department's It was safer to leave the matter in the hands of the police, let them prosecute under their powers rather than to place

the matter in the hands of the Department and run the risk of interference and political interference at that.

Stanton also told ranger Teece not to tell anybody anything about the vehicle.

Stanton did not report the seizure of the vehicle until some 36 hours after becoming aware of it.

Conclusions

Having regard to Stanton's long service in the Department and his previously having held the position of Regional Director, it is reasonable to assume that he would have realised the significance of Shears' action in seizing the vehicle and the need for the current Regional Director to be apprised of it.

Stanton in effect acknowledges this by indicating he deliberately withheld the information to prevent his superiors from taking the action which he considered they might take and with which he did not agree.

Upon becoming aware of this sensitive information relating to the discharge of another officer's duty it was Stanton's responsibility to report that information to his superiors.

His explanation for failing to do so is not in the Commission's view a sufficient excuse. The Commission considers that his superiors could reasonably conclude that in so acting Stanton failed to efficiently and competently discharge his duties.

The Commission also considers that his superiors could conclude that his conduct did not satisfy the standard of behaviour generally expected of officers of the Public Service and could therefore be "misconduct" within the terms of the *Public Service Employment and Management Act 1988*.

That Act by section 29 provides that an officer is liable to disciplinary action if the Chief Executive Officer of the Department is satisfied that the officer has failed to efficiently and competently discharge the duties of his office or is guilty of misconduct.

The Commission considers that on the available evidence the Chief Executive Officer could reasonably be so satisfied.

Recommendation

The Commission therefore recommends that disciplinary action be taken against Stanton pursuant to the provisions of the said Act.

11.3.5 Upon becoming aware of Shears' actions did Harris and Kelly conduct themselves in accordance with their duties and responsibilities?

11.3.5.1 Did Harris wrongfully fail to communicate to the Regional Director, Far Northern Region, Department of Environment and Heritage information communicated to him by Shears?

First Phone Call

Harris says that on the afternoon of Friday 12 November 1993, Shears telephoned him in the Cairns office of DEH. He says that Shears told him that he was in Cooktown and that the vehicle he had seized was at Lakefield National Park.

Harris knew at that time that Wellard wished to speak with Shears as soon as he could. Harris says that he either transferred the call to Wellard's office or instructed Shears to immediately call Wellard back. Shears and Wellard both deny that Shears spoke with Wellard on that day.

Wellard denies learning at any stage on that day the whereabouts of Shears and the vehicle. Kelly indicates that he was in a similar state of ignorance and had no reason to believe that Wellard knew the whereabouts of Shears.

However, Acting Inspector Hartwell says that later on the Friday afternoon or Friday evening, Wellard told him that Shears was in Cooktown. Hartwell at that stage cancelled the instructions for the mobilisation of SERT.

In a filenote drafted on Monday 15 November 1993, Wellard records that Harris made contact with Shears on Friday afternoon during a pre-arranged radio contact.

Conclusions

The evidence of Wellard and Kelly conflicts with that of Harris. Hartwell says he was advised on Friday of Shears' whereabouts by Wellard.

On balance, the Commission does not consider that it could be proven to the required standard that Harris failed to give this information to Wellard.

Second Phone Call

Later the same evening Shears again contacted Harris by telephone. Shears says that at that stage he told Harris that the owners of the vehicle were not stranded in the Cape Melville National Park as they had possession of another vehicle. Harris did not convey to Wellard any further information he had learnt during this call.

During that second phone call between Shears and Harris, Harris learned further information which was relevant to the decisions Wellard needed to make concerning the Department's response to Shears' confiscation of the vehicle. Harris had an obligation to pass that information to Wellard. In his response to advice of a possible adverse conclusion concerning this aspect of the matter, Harris says he had no knowledge of what actions or decisions Wellard was contemplating and that Harris therefore had no reason to advise Wellard of any further information he may have learned.

The evidence of Harris, Wellard and Kelly is that on Friday afternoon, Wellard was concerned about the possibility of Shears becoming involved in an armed confrontation with offenders in the National Park and about the safety of the people who may have been left stranded by Shears having seized their vehicle.

Shears says that in the first phone call with Harris he told him that he was in Cooktown. For the reasons set out above the Commission has concluded that this information may have been passed onto Wellard.

Even if it was, Wellard's concern about the safety of the stranded party would remain. That it did is supported by Kelly's evidence that on the Friday night, Wellard called him to discuss the hiring of a plane to locate the people. This is corroborated by Acting Inspector Hartwell who says that after he learned that an armed confrontation was unlikely he cancelled plans to send SERT officers into the area and determined to instruct Cooktown Police to go to Cape Melville on Saturday morning to look for the people.

This corroborates Wellard's claim that Harris failed to pass on to him the information given in the second phone call only, that the people whose vehicle he had taken had access to another vehicle. This was information relevant to the discharge of Wellard's duties.

If this analysis of Harris' conduct is accurate it demonstrates that Harris' explanation for his failure is unpersuasive. In acting as he did Harris failed to efficiently and competently discharge his duties and could therefore be liable for disciplinary action.

However, the Commission considers that his conduct is a symptom of a more deep-seated problem in the Cairns office of DEH, i.e. the breakdown in the relationship between Wellard and Harris any action designed to address this would in the Commission's view be more appropriate than formal disciplinary action.

11.3.5.2 Was Harris' report dated 15 November 1993, titled "Interim Incident Report - Cape Melville National Park", inaccurate and misleading?

On 19 November 1993, in accordance with an instruction from Wellard, Harris provided to him a memorandum dated 15 November 1993, headed "Interim Incident Report - Cape Melville National Park".

That report, purports to be an assessment of Shears' conduct in seizing Paul Barbagallo's vehicle. It says in part:

I would assess that ranger Shears and his assistants, Flinders and Monaghan, have conducted themselves lawfully and correctly as departmental officers at all times during their current period of employment....

All aspects of the designated project have been complied with fully.

The report fails to mention that Shears was given explicit instructions to avoid confrontation or engagement with people suspected to be breaking the law in Cape Melville National Park. That information was clearly relevant to an assessment of Shears' conduct. When giving evidence before the Commission, Harris sought to justify his memorandum by saying that he was annoyed by what he considered to be an over reaction on the part of Wellard in immediately criticising Shears without being fully aware of all of the circumstances.

In a written submission to the Commission, Harris claims that as it was an interim report it was intended to relate only to the sequence of events and some personal observations and was not intended to be a comprehensive account and therefore the inclusion of details of instructions given to Shears would have been superfluous.

While this may be so it is clear from the passage of the report quoted above that Harris gave an unqualified assurance that Shears had acted in accordance with his brief when Harris knew this to be incorrect. His evidence to the Commission acknowledges as much and ascribes a reason to it. The Commission considers that reason to be insufficient to justify a deliberate omission.

Conclusion

Having regard to Harris' long service with the Department and his relatively senior position it is reasonable to assume that he would have realised the significance of Shears' failure to comply with his express instructions not to take direct enforcement action and the need to advise the Regional Director of this when briefing him on the conduct of Shears. In the Commission's view neither of his explanations for this failure excuses his omission.

The Commission considers his superiors could reasonably conclude that in so acting Harris failed to competently and efficiently discharge his duties.

The Commission also considers that his superiors could conclude that his conduct did not satisfy the standard of behaviour generally expected of officers of the public service and could therefore be misconduct within the terms of the *Public Service Management and Employment Act 1988*.

That Act by section 29 provides that an officer is liable to disciplinary action if the Chief Executive Officer of the Department is satisfied that the officer has failed to efficiently and competently discharged the duties of his office or is guilty of misconduct.

The Commission considers that on the available evidence the Chief Executive Officer could reasonably be so satisfied.

Recommendation

The Commission therefore recommends that disciplinary action be taken against Harris pursuant to the provisions of the said Act.

11.3.53 Did Kelly fail to bring to the attention of the Wellard, the fact that Harris' report dated 15 November 1993, titled "Interim Incident Report - Cape Melville National Park", was inaccurate and misleading?

The memorandum by Harris to Wellard dated 15 November 1993 was provided in draft form to Acting Regional Manager, Kelly, who made a number of comments to Harris about alterations to the document. Kelly did not recommend to Harris that he include the information that Shears, when seizing the vehicle, was acting in contravention of the direct instruction given to him by Harris and Kelly prior to his trip to the National Park. On 19 November 1993, Harris submitted the report to Wellard through Kelly who "noted" the document. Kelly did not bring to Wellard's attention the deficiency in the document.

Kelly says that by "noting" the document, rather than "endorsing" it, he indicated that he did not necessarily agree with its contents. It was, some four days later, in a memorandum dated 23 November 1993, that Kelly drew to Wellard's attention the direction which Shears had breached.

Conclusion

Accepting the apparent practice within DEH to attach significance to the distinction between "noting" and "endorsing" a document, the Commission considers nonetheless that had Kelly been diligently and efficiently discharging his duties he would have immediately drawn to Wellard's attention the deficiency in Harris' memorandum. It was information vital to an accurate assessment of Shears conduct particularly in light of the deficiencies in Shears' duty statement. The Commission further acknowledges, however, that a few days later, Kelly remedied the deficiency and that no adverse consequences flowed from his failure to act earlier.

Recommendation

In the circumstances, the Commission does not consider that any form of disciplinary action is warranted. However, the Commission recommends that Kelly be reminded of his duties to inform fully his superiors when transmitting the report of subordinate officers to them.

11.3.6 Did David Barbagallo or Dennis Atkins commit any act of official misconduct or otherwise act contrary to their duties and responsibilities?

11.3.6.1 Was David Barbagallo's and Atkins' travel to Starcke Station approved in accordance with the relevant guidelines?

David Barbagallo and Atkins say they travelled to Starcke Station in order to assess the desirability and logistics of a trip to the property by the Premier and representatives of the media. Both say they had the Premier's approval to undertake the trip. The Premier confirms this to be the case.

David Barbagallo says that it was essential that he undertake the trip rather than simply rely on the advice of others because all of the various steps had to be planned and assessed in precise detail.

Atkins says it was essential he go there to assess any special requirements the media might have had and to locate scenery which would best demonstrate the rationale of the Government's decision to acquire the Starcke Pastoral Holding.

The Premier confirmed that he considered it necessary and appropriate for both officers to undertake the trip.

Conclusion

For the trip to be lawfully undertaken at public expense David Barbagallo and Atkins would need to be undertaking official business. No statutory or generally accepted definition of this term exists particularly in relation to the conduct of the personal staff of Ministers. While this trip may be near the margins of the conduct which can properly be encompassed within what is termed "official business" it is clear that the Premier believed it to be properly so categorised.

In the absence of evidence of official misconduct it is not within the jurisdiction of the Commission to assess how Ministers of the Crown choose to discharge their functions and responsibilities. Whilst it is open to debate whether the trip was an appropriate purpose on which to spend public funds, no question of official misconduct arises.

11.3.6.2 Were the expenses incurred by David Barbagallo and Atkins in relation to their travel to Starcke Station acquitted in accordance with the relevant guidelines?

The acquittal of expenses incurred on the trip undertaken by David Barbagallo and Atkins has been audited by the Auditor-General. He has concluded that procedures relating to the authorisation and acquittal of those expenses have been complied with. The written approval of the travel expenses by the Premier after they had been incurred is in accordance with procedures approved by the Ministerial Service Branch of Treasury in 1992.

Clearly no question of official misconduct arises in respect to this aspect of the matter.

After returning from Starcke Station and dropping Atkins off in Cairns, David Barbagallo went on to Innisfail to visit his parents before returning later that evening to Cairns. David Barbagallo conceded in evidence that this trip was not strictly official business but that in addition to visiting his parents he gave a lift to Uechtriz who had been left stranded by the seizure of Paul Barbagallo's vehicle by Shears.

The Auditor-General concludes that in view of the singular and minor nature of the benefit obtained by David Barbagallo even though it was funded by the Premier's Office, it is unlikely that any fringe benefit tax liability would arise. He suggests Treasury confirm the position with the Australian Tax Office.

The Auditor-General also concludes that the Ministerial Services Branch should determine whether any additional cost incurred at public expense should be recovered from David Barbagallo. The Commission agrees that that is the appropriate body to determine the matter.

Conclusion

Having regard to the small amount involved and David Barbagallo's then entitlement to the full private use of a government supplied and maintained motor vehicle, the Commission considers no other action is warranted.

11.3.6.3 Did David Barbagallo and Atkins properly discharge their duties and responsibilities whilst on Starcke Station?

David Barbagallo and Atkins gave evidence that they intended spending some three hours on Starcke Station. As a result of becoming involved in Paul Barbagallo's problem, their time at the Starcke Station was limited to between 30 and 45 minutes. Both testified, however, that despite the limited time available to them, they accomplished the purpose of their trip.

Conclusion

Whilst doubts may arise as to the value to the Premier of such a cursory and hurried examination, an assessment of the trip's worth is highly subjective and can only be made in these circumstances by the Premier. The Commission is therefore unable to contradict the assertion of Barbagallo and Atkins that they satisfactorily discharged their duties in the time available to them.

11.3.6.4 Did David Barbagallo or Atkins become improperly involved in the investigation and prosecution of Paul Barbagallo or Gordon Uechtritz?

Contact with Emerson

On 13 November 1993, David Barbagallo and Atkins were advised by Paul Barbagallo that his vehicle had been seized. Both then accompanied Paul Barbagallo and Uechtritz to the Cooktown Police Station where arrangements were made to meet with

Shears later on in the morning. In the intervening period, David Barbagallo telephoned his wife, who is a solicitor, to seek advice about the power of rangers to seize motor vehicles. She was unable to give that advice. Atkins then telephoned Emerson seeking the same advice. He is corroborated in this regard by Emerson. Atkins and Emerson deny that Atkins sought to have Emerson interfere in the prosecution of Paul Barbagallo or Uechtritz. There is no evidence to contradict these claims and no evidence of any conduct by Emerson which could lead to the conclusion that their evidence should be rejected.

Conclusion

The Commission therefore concludes that the allegation that Atkins or David Barbagallo sought to have Emerson intervene in the investigation and prosecution of Barbagallo is without substance.

Conduct during the interview at the Cooktown Police Station on 13 November 1993

David Barbagallo and Atkins attended the Cooktown Police Station when Paul Barbagallo and Uechtritz met with Shears. There is a conflict in the evidence as to whether Atkins was present at that meeting. He says he stood in the doorway of the office where it took place for some of the meeting and outside of the office for other parts of it. He is corroborated by Paul Barbagallo and David Barbagallo. He is contradicted by Shears, Sergeant Murphy and Uechtritz. There are numerous conflicts in the versions of all witnesses who give evidence about the details of what occurred at the Cooktown Police Station on the morning in question. The Commission is of the view that the state of the evidence is such that the matter cannot be proven either way even to the civil standard, and therefore declines to reach a conclusion about this aspect of the matter.

Shears alleges that during the meeting in Sergeant Murphy's office, David Barbagallo acted in an antagonistic and overbearing manner towards him. No other person who was present at that meeting corroborates Shears' evidence in that regard. Sergeant Murphy, who could be thought to be the most independent of those present, does not accept that David Barbagallo was antagonistic or threatening towards Shears. Sergeant Murphy thought the meeting was cordial and friendly.

Shears says he did not want to be at the meeting and felt that Sergeant Murphy should have been handling the matter. Shears says that he felt threatened by all of the people

who were at the meeting other than Sergeant Murphy. Shears accepts that for him not to feel threatened, the other participants of the meeting would have needed to be particularly disarming.

Neither David Barbagallo nor Atkins identified themselves or their official positions. Indeed, Shears says it was not until some months after the meeting that he identified David Barbagallo as having attended the meeting.

Conclusions

There was no evidence that Atkins acted in an overbearing or antagonistic way during the meeting. Indeed, as mentioned above it cannot be established with any degree of certainty that he was present.

The only person who says that David Barbagallo acted in an aggressive or threatening manner is Shears and he was unable, initially, to identify David Barbagallo. Further, during his evidence, he attributed comments to David Barbagallo which could, logically, only have come from a person who had been with the vehicle when it was seized.

The Commission is therefore of the view that the allegation that David Barbagallo acted in an antagonistic or overbearing manner towards Shears cannot be established. As neither Atkins nor David Barbagallo identified themselves or the positions they held it is, in any event, unlikely that any action would be warranted were the evidence to the contrary.

11.3.7 Did Emerson or Wellard seek to afford Paul Barbagallo favourable treatment, or otherwise act improperly in respect to the investigation and prosecution of Paul Barbagallo and Uechtritz?

11.3.7.1 Did Emerson or Wellard, seek to afford Paul Barbagallo favourable treatment by making arrangements to reunite him and his party with the seized vehicle or by offering to make arrangements for the hire of a motor vehicle for the use of Paul Barbagallo?

Advice of the seizure of Paul Barbagallo's vehicle by Shears first came to Wellard from the Queensland Police Service who relayed information provided by the Army. That information was to the effect that there had been an exchange of gun fire between Shears and suspected criminals, Shears had confiscated a vehicle and some guns and was proposing to return to Cape Melville to confront the offenders. The whereabouts of Shears and the identity of the owners of the vehicle was unknown. Wellard says his reaction to this information was motivated by his concern for:

- the safety of Shears, Flinders and Monaghan
- the safety of the people whose vehicle Shears had confiscated
- possible embarrassment or civil liability accruing to the Department as a result of Shears' action.

To address the first of these concerns, Wellard instructed Kelly to make enquiries as to the feasibility of using a helicopter to fly to Cape Melville to locate Shears and the owners of the vehicle. This proposal was not proceeded with because Wellard and Kelly realised that they did not know where to start looking. This proposal was discussed on Friday afternoon and evening. The evidence of Harris, Kelly and Wellard is that Wellard was very concerned and agitated. Harris described him as frantic and in a panic. There is no evidence indicating that Wellard was aware at that stage of the identity of the owner of the vehicle which had been seized.

The response by Wellard was similar to that of Acting Inspector Hartwell, who had sought and obtained permission to mobilise a Special Emergency Response Team. He proposed flying SERT officers into the region in the Bureau of Emergency Services helicopter. The similarity of his to Wellard's proposal demonstrates the reasonableness of Wellard's planning.

The Queensland Police Service did not proceed with the idea of flying SERT officers to Cape Melville because, according to Hartwell, later on Friday afternoon or evening, he became aware that Shears was in Cooktown. At that stage there was no likelihood of armed confrontation between the ranger and any offenders.

At this time, Hartwell says he intended instructing Cooktown Police to drive to Cape Melville to search for the owners of the vehicle on the following day.

For the reasons set out in chapter 6, it seems likely, although Wellard does not recall it, that Wellard became aware of Shears arrival in Cooktown at sometime on Friday afternoon or evening. The following morning, when Emerson contacted him about the matter, he was still intending to take steps to have the vehicle returned to its owner. This was still prior to his becoming aware of the identity of the vehicle's owner. Wellard says his motivation at this stage was the second and third of the concerns outlined above.

Wellard was given further impetus for such action when erroneously advised by Emerson that the seizure of the vehicle was hindering members of the staff of the Premier's office from discharging their official duties. At this stage he proposed that DEH hire a vehicle for the Premier's staff to use. When Wellard was subsequently advised by Emerson that the seized vehicle was not needed to convey the Premier's men to Starcke Station, neither of them took any further steps to provide assistance to David Barbagallo, Atkins or Paul Barbagallo.

Wellard has testified that his concerns about the Department's liability to the owners of the vehicle were based on his belief that Shears did not have authority to seize the vehicle. This issue has not been finally determined and the Commission has no need to now resolve it. The Solicitor-General is also of the view that the seizure of the vehicle may have been unlawful and Wellard's concern was not therefore unreasonable.

Emerson became involved in the matter when telephoned by Atkins. Emerson testified that he misconstrued what Atkins told him with the result that Emerson believed that the duties Atkins and David Barbagallo were discharging in Far North Queensland were being hindered as a result of the seizure of a vehicle by a park ranger. His concerns were heightened when he spoke to Wellard and was informed that Wellard considered the seizure to be unlawful.

In those circumstances, Emerson instructed Wellard to continue to explore means by which the vehicle's owner could be reunited with the vehicle. On becoming aware

that the seized vehicle was not being used for official purposes he instructed Wellard that no further action than was required. From that point on Wellard ceased seeking to reunite Paul Barbagallo and the seized vehicle.

Conclusion

There is no reason to doubt the evidence of the witnesses who testified that Wellard engaged in active planning to locate the vehicle and its owners by means of a helicopter or fixed wing plane prior to him having any knowledge of their identity.

The next morning he was told that the conduct of his ranger was hindering the discharge of the duties of the Premier's staff. At that time he considered that the seizure of the vehicle may have been unlawful. In those circumstances he sought to reunite the party with the seized vehicle and offered to hire a vehicle for their use.

The Commission has no reason to reject Emerson's assertion that he mistakenly believed the seized vehicle was to be used by David Barbagallo and Atkins to discharge their official duties. There is no evidence to indicate that on becoming aware that this was not the case, Emerson took any further steps to interfere in the handling of the matter by Wellard or officers of the Fauna Squad.

The Commission is of the view that the allegation that Wellard or Emerson sought to exert the authority of their office to benefit Paul Barbagallo is without substance.

11.3.7.2 Did Wellard fail to take appropriate steps in relation to the suspicion that Paul Barbagallo was to return to Cape Melville to meet with another brother on a trawler?

The evidence about when Wellard became aware of any possible meeting at Cape Melville between Paul Barbagallo and the occupants of a trawler is unclear.

Harris knew of the suggestion on the morning of Saturday 13 November 1993 and with the assistance of Chep made inquiries which failed to give any support to the suspicion.

For the reasons set out in chapter 4 at section 4.11, the Commission is satisfied that the vague plans for Paul Barbagallo to meet with his brother, Mario, who was aboard the vessel the "*Sagitta*" had no sinister connotations.

Conclusion

There is no evidence that Wellard or any other officer of DEH failed to take appropriate steps in relation to this aspect of the matter.

11.3.7.3 Did Emerson or Wellard seek to afford Paul Barbagallo favourable treatment by seeking to interfere in the investigation or prosecution of Paul Barbagallo or Uechtritz?

There is no evidence that Emerson sought to take any action in relation to the investigation or prosecution of Paul Barbagallo or other members of his party. To the contrary, he counselled Wellard to ensure that the matter was allowed to run its normal course.

Wellard remained concerned about the lawfulness of the seizure of the vehicle by Shears. He also questioned whether the offences which could be proved against members of Paul Barbagallo's party were sufficiently serious to warrant prosecution. He took no other steps in relation to the prosecution other than to have Michael Chep, an enforcement officer employed by the Department, review steps taken by the Fauna Squad.

Detective Sergeant Ricketts has suggested that attempts by departmental officers to have the firearms found in the vehicle returned is evidence of an attempt to interfere in the prosecution. It is ironic that Sergeant Ricketts has recently written a report recommending that the firearm owned by Uechtritz be returned to him. Other police officers have made similar recommendations about the other firearms and the chainsaw.

Conclusion

The Commission is satisfied that there is no evidence on which it could be concluded that Wellard or Emerson sought to interfere in the investigation or prosecution of Paul Barbagallo or Uechtritz.

11.3.8 Was David Barbagallo's resignation as Principal Private Secretary to the Premier of Queensland related to the seizure of Paul Barbagallo's vehicle, or any related event?

On or about 29 October 1993, David Barbagallo received informal notification that, subject to ratification by the Board of Directors, his application for the position of Chief Executive Officer of Distributed Systems Technology Centre Pty Ltd had been successful.

That company confirms that David Barbagallo was formally offered the position of Chief Executive Officer on 5 November 1993. He accepted that offer on 8 November 1993.

David Barbagallo testified that on 9 November 1993 he formally notified the Premier of his intention to resign. He also offers a reasonable explanation as to why his letter of resignation, which is now on the office file, bears a date in late December 1993.

Conclusion

David Barbagallo's resignation was in no way related to the seizure of Paul Barbagallo's motor vehicle, or any related event.

11.3.9 Did any person act improperly in relation to the termination of Shears' contract of employment?

11.3.9.1 Did Emerson or Wellard discriminate against Shears in his employment because Shears seized Paul Barbagallo's motor vehicle?

Upon learning of the events at Cape Melville on 11 November 1993 and prior to learning of the identity of Paul Barbagallo, Wellard directed that Shears be recalled to Cairns. Wellard subsequently directed that Shears was not to return to Cape Melville National Park unless accompanied by a team of experts, such as officers of the Fauna Squad.

This is precisely what occurred following the telephone request of Wellard by Ricketts on 13 November 1993, when Wellard approved of Shears accompanying Ricketts and Fletcher to Cape Melville National Park to assist the Fauna Squad in its investigation of alleged offences.

Wellard directed Kelly that Shears should serve out the balance of his temporary employment at Cape Tribulation, which had been specifically provided for in the Project Brief signed by Shears on 13 September 1993. Wellard's decision in this regard was influenced by the following factors:

- The fact that Shears had acted outside the scope of his duties and responsibilities.
- Wellard's belief that Shears' actions in seizing the vehicle was unlawful.
- Wellard's belief that, by his actions, Shears had disregarded the safety and well-being of the occupants of the vehicle.
- Wellard's understanding that the Fauna Squad would continue in the enforcement role in Cape Melville National Park at whatever level it considered necessary.

Shears has not worked for DEH since being returned to his residence at Cape Tribulation on 19 November 1993, at the completion of the Fauna Squad's investigation at Cape Melville.

Harris testified that Shears visited his Cairns office on 24 November 1993. Harris says that they discussed the option of Shears returning to work out his contract at Cape Tribulation but that Shears ultimately expressed the view that if he was not able to further his commitment to protecting the foxtail palms he would prefer to undertake worthwhile employment elsewhere. Harris therefore calculated what hours were owed to Shears on account of the extra time he had worked while in the field, and this resulted in Shears being paid up to 3 December 1993, although he did not, in fact, perform duties beyond 24 November 1993.

In evidence before the Commission, Shears himself agreed that the above is an accurate account of how he came to cease employment with the DEH.

Shears' engagement by the DEH on 13 September 1993 was, as on all previous occasions, a temporary appointment. In various departmental documents the duration

of his appointment is variously described as twelve weeks, three months, or from 13 September 1993 to 17 December 1993.

When it commenced in September, neither Wellard nor Kelly gave any indication that Shears' engagement would be renewed after it expired. Harris envisaged that consideration would be given to re-engaging Shears for a further temporary term and, according to Harris, he would in normal circumstances, have forwarded a proposal to that end. Harris concedes that any further temporary employment at Cape Melville National Park would have been dependent upon prevailing weather conditions and the availability of funding.

Wellard's assertion that, even before the events of 11 November 1993, he had no intention to send Shears back to Cape Melville beyond the initial period of employment, is supported by Wellard's endorsement on the submission made to him by Harris when proposing Shears' engagement. On that submission, Wellard noted:

This employment period should reflect the minimum time necessary to advise and impart knowledge to the traditional owners.

Harris who had administrative responsibility for Cape Melville National Park made no formal submission seeking the re-appointment of Shears or anyone else to continue patrols in Cape Melville National Park for the balance of the foxtail palm seeding season. Wellard asserts that even if a formal request for approval to undertake additional patrols to Cape Melville had been made, he "would have been extremely cautious when deciding to support" such a request. Apart from his obvious apprehension at returning Shears to Cape Melville, Wellard was also constrained by budgetary considerations although these were not paramount.

Conclusion

There is no evidence that Wellard acted vindictively towards Shears in respect of his employment with DEH. Given the concerns he reasonably held at the time, Wellard cannot be said to have acted improperly or inappropriately in directing that Shears not be permitted to return to Cape Melville National Park.

Further, the Commission discovered no evidence indicating that the DEH had, consequent upon the seizure of Paul Barbagallo's vehicle or for any other reason, reversed any pre-existing intention to send Shears back to Cape Melville after his initial period of employment.

The Commission found no evidence to suggest that Emerson played any part in the termination of Shears' employment, much less the question of the non-renewal of his contract, which never in fact arose.

11.3.9.2 Did Harris provide inaccurate and misleading advice to Wellard on 9 February 1994, when requested, through Symonds, to advise of the circumstances of Shears' termination?

11.3.9.3 Was Harris' memorandum dated 10 February 1994, titled "TERMINATION OF EMPLOYMENT P.J. SHEARS, Temp. Ranger Gr. 3, Cape Melville N.P (until 3.12.93), inaccurate and misleading?

A number of accounts have been proffered by Harris as to how Shears' employment with DEH was terminated.

Harris testified that Shears visited his Cairns office on 24 November 1993. In accordance with Wellard's direction, Harris canvassed the option of Shears working out his contract at Cape Tribulation.

Shears expressed the view that if he was not able to further his commitment to protecting the foxtail palms he would prefer to undertake worthwhile employment elsewhere. Harris therefore calculated what hours were owed to Shears on account of the extra time he had worked while in the field, and this resulted in Shears being paid-up to 3 December 1993, although he did not in fact perform duties beyond 24 November 1993.

In evidence before the Commission, Shears agreed with this version of how he came to finish working for DEH.

On 9 February 1994, Wellard was seeking information about the termination of Shears' employment so that he might inform the Minister for Environment and Heritage who was to respond to a question in the House. Wellard telephoned the Regional Manager, Symonds, who was then with Harris in a hotel at Coen. Symonds conferred with Harris and then told Wellard that Shears had worked out his contract subject only to having a few days off in lieu of overtime accrued while he was in the field.

On 10 February 1994, Harris prepared a handwritten note to Wellard which stated, in part:

Subsequent to an internal review of events which had involved (Shears) at Cape Melville N.P on 11.11.93, a verbal instruction was relayed through then Acting Regional Manager (NPWS/CS) G. Kelly to myself that Mr Shears was not to return to his duties at C. Melville, as prescribed in his project brief dated 13.9.93.

As Mr Shears had no other duties than the above, the termination of his employment was then obviously required as soon as possible.

This last sentence is obviously inaccurate as Shears' notice of engagement expressly provided that when not required at Cape Melville he would work at Cape Tribulation National Park.

Based on what he had been told over the telephone by Symonds and Harris the previous day, on 10 February 1994, Wellard prepared a briefing note for the Minister for Environment and Heritage. Wellard is unable to recall whether he had access at that time to Harris' handwritten memorandum of 10 February 1994, but it is noted that his Ministerial Briefing Note contains many similar features and it is therefore likely that Wellard did refer to it.

The issue of the non-renewal of Shears' employment was the subject of Parliamentary debate.

On 18 February 1994, the Minister for Environment and Heritage, The Honourable Molly Robson, was asked the following Question on Notice:

Is the park ranger involved in the incident still employed by the Department of Environment and Heritage?

By way of response, and on the basis of a Ministerial Briefing Note prepared by Wellard, the Minister explained the nature of Shears' three month temporary engagement and its expiration after twelve weeks.

Subsequently, in a Ministerial Statement to the Parliament on 12 April 1994, the Minister repeated her statements about the termination of Shears' employment and said:

His period of temporary employment expired on 3 December 1993, twelve weeks after it commenced.

The fact is that Shears' employment was terminated two weeks prematurely, albeit at his instigation. To that extent, Wellard had unintentionally misled the Minister who, in turn, unintentionally misled the Parliament.

Conclusion

Harris explained in a submission to the Commission that his advice over the telephone was given at very short notice. The handwritten advice was also prepared in haste. Harris asserts that his advice "was certainly not intentionally inaccurate nor misleading, and arguably not a matter of negligence on my part."

The fact remains that Harris' advice was inaccurate and misleading. His advice, in that form, caused the Parliament to be misled.

Harris has acknowledged his error and in the circumstances the Commission does not recommend any disciplinary action be taken against him.

It is, of course, a matter for Parliament to determine whether it wishes to take any action on the matter of its being misled.

11.3.10 Is disciplinary or other action warranted against the rumour mongers who precipitated the complaint leading to the Commission's investigation?

The Commission's investigation has established that there was no attempt by Emerson, Wellard or anyone else to improperly interfere in the investigation or prosecution of offences committed by Paul Barbagallo, Uechtritz and others in their party in Cape Melville National Park on 11 November 1993.

Nor did Emerson or Wellard seek to provide favourable treatment to Paul Barbagallo on the days following the seizure of his vehicle by Shears on account of the position held at the time by his brother David or for any other reason.

The Commission's investigation has established that speculation surmising about such impropriety commenced almost as soon as news of Shears' action reached Cairns. It sprang from mistrust and animosity held by some officers within DEH for the Regional Director of the Far Northern Region, Wellard.

It was fed by the animosity and distrust held by Sergeant Ricketts for Wellard and was not laid to rest when it should have been because of an absence of leadership from other senior officers in the Cairns office of the DEH who may have been expected to react more positively in support of Wellard.

In view of the damage that has been done to the reputations of various people and the amount of money that has been expended by the Commission in pursuing this matter, the question arises as to whether disciplinary action should be taken against any public sector employees involved in propagating or circulating these rumours.

11.3.10.1 Did Detective Sergeant Ricketts act improperly in his communication with Harris on 20 November 1993?

On the day that Sergeant Ricketts interviewed Paul Barbagallo in Innisfail, 20 November 1993, he telephoned Harris. He admits that during the course of that conversation he told Harris that Paul Barbagallo had a brother David who worked in the Office of the Premier and that he reflected along the lines that might explain why there was so much interest by Wellard and others in the prosecution of Paul Barbagallo. He also concedes that he may have told Harris that there had been interference or undue influence brought to bear on his investigation.

Ricketts also acknowledges having told Harris that David Barbagallo had resigned from his position in the Premier's office and that Wellard may have had pressure placed on him by David Barbagallo to have Shears recalled to Cairns. The Commission was unable to ascertain whether Ricketts presented this information to Harris as fact or merely raised it as speculation in the course of their discussion.

Clearly some of this information was true, some of it was pure speculation and some of it was completely false. The difficulty in determining what action, if any, should be taken against Ricketts in relation to the conduct arises from the nature of his relationship with Harris. Members of the Fauna Squad are seconded to the Department of Environment and Heritage. To that extent, Harris could be seen as further up the chain of command in the Department. The conversation was part of ongoing discussions between the two of a mixed private and professional nature during which they speculated about matters of common interest relating to their work.

While there can be no doubt that the speculation was foolish and unfounded, it is of a nature that occurs in many offices around the country on a daily basis. The conversation in itself had no tangible effect. Ricketts had no reason to think that

Harris would pass the information on to anyone. Its negative effect on innocent people began to unfold only when the information was placed in the political arena and was widely published.

Police investigators deal in rumour, speculation and innuendo on a daily basis. Provided that such material is kept confidential it causes no harm and may frequently assist in resolving outstanding matters. The concern in this case is that there is reason to suspect that personal animosities blurred the ability of Sergeant Ricketts to objectively assess the information that came to him when acting in his official capacity and clouded his judgment in deciding what to do with that information.

Recommendation

Because the Commission is unable to determine the context in which the false information was relayed by Ricketts it does not consider that it should recommend that disciplinary action be taken against him.

It is essential that officers of the Fauna Squad are capable of interacting in an objective and productive manner with officers of the DEH, Far Northern Region. The Commission considers that the deterioration of the relationship between Ricketts and some officers of the Far Northern Region was the catalyst for the suspicion, rumour, and speculation that occurred in relation to this matter.

The Commission recommends as a matter of urgency that the Queensland Police Service and the DEH take steps to address the deficiencies in the relationships referred to above so as to ensure a professional and effective interface between the two bodies can be established.

11.3.10.2 Did Harris act improperly in his communication with Shears on 20 November 1993?

Soon after Ricketts spoke to Harris, Harris telephoned Shears and passed on all that he had been told, possibly with further embellishment. He added his own speculation that Paul Barbagallo must have had a radio in his other vehicle and called Brisbane to arrange for David Barbagallo and Atkins to fly to North Queensland. He concluded that pressure must have been brought to bear on the police in Cooktown to do nothing and on Wellard to have Shears recalled to Cairns.

As the Commission's investigation has shown, these suggestions are utter nonsense. That Harris was prepared to give them currency demonstrates a weakness of judgement on his part and calls into question his ability to fairly and objectively assess information if it involves the performance of duties by Wellard in a manner with which Harris does not agree.

For the reasons set out in relation to its assessment of the conduct of Ricketts, the Commission considers that no useful purpose would be served by taking formal disciplinary action against Harris. Again it is the case that his spiteful gossip would have had no effect had it not been given wide currency by others.

It is also clearly the case that numerous other officers within the DEH, Far Northern Region, engaged in baseless rumour mongering and speculation. It would seem inappropriate therefore to single out Harris for formal disciplinary action.

Recommendation

The Commission however recommends that Harris be counselled about the need to ensure that he does not engage in rumour mongering likely to adversely reflect on officers of his department or the proper functioning of the Department.

11.3.11 Did Wellard's ministerial briefing note of 9 February 1994, to the Honourable The Minister for Environment and Heritage, contain exaggerated, erroneous or misleading information?

On 12 April 1994, the Minister for Environment and Heritage made a Ministerial Statement in the House during which she described Shears' role in Cape Melville as being part of a large intelligence gathering exercise. The Minister's statement was based on a briefing note dated 9 February 1994 prepared by Wellard.

The briefing note contained, in paragraph 3, an account of the efforts of the Far Northern Region, DEH, to deal with the problems of the foxtail palm and included the statement:

These attempts have not been successful and following consideration of possible reasons for this a new approach was initiated by regional staff. In May 1993 the first co-ordinated and multi-organisation intelligence gathering operation was commenced by staff of the Far Northern Region, DEH.

This statement is an exaggeration of what had actually occurred and is misleading.

In a written submission to the Commission Wellard explained the following:

Paragraph 3 of the Briefing Note sought to convey to the Honourable the Minister the fact that an intelligence gathering operation had begun, that it was a 'first' for the Department, that the operation was coordinated, and that it was multi-organisational.

With hindsight, the contents of this paragraph could now be seen to imply a greater level of sophistication and coordination to the intelligence gathering operation than actually existed. The paragraph should have been worded in a different way which more clearly indicated the developing nature of the operation. However, the paragraph was not drafted with the intention to deliberately mislead the Honourable the Minister.

In paragraph 12 of the briefing note, Wellard asserted:

The major impact of (Shears') action was to effectively terminate the intelligence gather operation mentioned above and compromise the ability of the Department to respond in a coordinated way in future.

This statement is erroneous and misleading.

Wellard submitted to the Commission in respect of this statement:

The particular statement referred to in paragraph 12 of the Briefing Note was prepared on the basis of my opinions, understanding of events, and consideration of the likely impacts of the Ranger's actions on relationships with other organisations. With hindsight, my analysis was proven incorrect. This statement was not incorporated in the Briefing Note to deliberately mislead the Honourable the Minister.

Conclusion

It is established that Wellard produced to the Minister a briefing note which was, in parts, exaggerated, erroneous and misleading.

Recommendation

Wellard has acknowledged his error which he claims was not intended to mislead. There is no evidence on which to conclude to the contrary and in the circumstances the Commission does not intend to recommend any disciplinary action be taken

against him. It is a matter for Parliament to determine whether it wishes to take any action on the matter of it being misled.

11.3.12 Did Barton Green, as Media Adviser to the Honourable The Minister for Environment and Heritage act inappropriately in publishing to journalists, documents and other information containing statements critical of Shears?

During the course of its inquiry, the Commission received a complaint from Shears' legal representatives to the effect that the Minister for Environment and Heritage had published to the media documentation in which there were statements critical of Shears. It was contended that this had been done to unfairly influence public opinion against Shears at a time when Shears was to be a witness in criminal proceedings against Paul Barbagallo.

On 12 April 1994, Barton Green, Media Adviser to the Minister for Environment and Heritage, met with Cathy Job, presenter of the ABC's *7.30 Report*. During the course of that meeting, Green provided Job with a copy of a number of documents pertaining to matters relevant to the Commission's inquiry. Some of those documents contained allegations and statements of opinion critical of Shears.

It is apparent that Job referred to some of the material given to her by Green in an interview she conducted with Shears which was aired that same evening.

Green concedes that on 22 April 1994, some ten days after his release of material to Job, he released a copy of substantially the same material to Pat Gillespie, a journalist with *The Sunday Mail*. On 23 April 1994, Green participated in an interview with Gillespie.

There is little doubt that the publication by Green of the material in question was such as to be likely to bring discredit to or embarrassment upon Shears. Moreover, the material was published at a time when criminal proceedings against Paul Barbagallo were then pending, and in which the conduct and credibility of Shears was likely to be crucial to the prosecution case.

The irony in Green's conduct is revealed when one looks at statements made by the Minister in the House on 25 February 1994 where the Minister declined to answer questions relating to the matter stating that it was *sub-judice*.

Green submitted that to single him out for criticism would be fundamentally unjust in view of the widespread public comment from many others including Parliamentarians which was occurring at the time.

Green argues that his actions occurred in the context of a far-reaching public debate about the various issues about including a *Four Corners* programme which widely featured the views of Patrick Shears and Mr Doug Slack MLA.

As Green points out:

For several weeks, the Cape Melville issue had been broadly canvassed in the media, primarily from the point of view of Mr Shears or members of the Opposition. In my role as a Ministerial Media Adviser I am constantly asked to comment upon issues, more often than not statements made by other persons. In responding to these requests for information, I would provide information which contradicts information or comment which had been referred to me. I provide 'another side to the story'. This is a necessary and normal part of my duties.

At no time in my discussions with Ms Job, or subsequently with Ms Pat Gillespie ... was I critical of Mr Shears. It was not in my interests nor the Minister's to do so. To the contrary, I went to great lengths with both reporters to state the Minister did not question Mr Shears' integrity nor his dedication to his temporary job. There were concerns, however, which had been previously expressed and reported in the media, about his methods of operation. The documents I supplied to the media evidenced those concerns.

Green argues that the role of a Ministerial Media Adviser was examined by the Electoral and Administrative Review Commission, which noted in its Report of April, 1993, that such persons are not employed under the *Public Service Management and Employment Act 1988* and are not therefore subject to the Code of Conduct for Public Officials published under that Act. The Electoral and Administrative Review Commission recommended the adoption of a Code of Conduct for Ministerial Media Advisers and recognised that in exercising the role of Ministerial Media Adviser "some partisan activity on their part should be expected". No such Code of Conduct is yet in place.

The Commission acknowledges the uncertainty of Green's position, but contends that this does not exempt Green from a duty not to conduct himself so as to potentially interfere in matters before the courts. His statement could clearly have amounted to contempt of the court hearing the charges brought against Paul Barbagallo.

Conclusion

Only the court in question can take action against Green for contempt. The Commission does not propose recommending any other action against him. If he is bound by no Code of Conduct and subject to no disciplinary regime there is no effective action the Commission can take unless his conduct amounted to a criminal offence which it clearly does not in this instance.

Green's conduct and the difficulty faced by this Commission in assessing whether the trip taken by Barbagallo and Atkins was official business emphasises the need for the work being done by the Public Service Management Commission on the proper role and function of personal staff of parliamentarians to proceed to fruition.

11.3.13 Did David Barbagallo and/or any other person improperly interfere in the investigation or prosecution of David Cochran?

During the course of the investigation, the Commission received information from Ms Pat Gillespie, journalist with *The Sunday Mail*, alleging that in 1992, David Cochran, the proprietor and operator of a palm nursery, "Sheldon Palms", was investigated by the Fauna Squad in respect of his possession of foxtail palms.

The Fauna Squad had placed a seizure notice on Cochran's nursery in respect of some 18,000 foxtail palms. The seizure notice was subsequently withdrawn.

It was alleged that Cochran had telephoned David Barbagallo threatening to identify Paul Barbagallo's foxtail palm poaching activities if the investigation of his own circumstances was not terminated.

Ricketts gave evidence to the Commission that he tendered a submission to the Director of the NPWS, Bruce Gall, to the effect that there was insufficient evidence to prosecute Cochran. Ricketts says his submission was initially rejected by Gall, but that after Crown Law advice was obtained, Gall directed that the seizure notice be

lifted. Ricketts denies that any pressure was placed upon him in respect of his investigation of Cochran.

Gall says that although he cannot recall Ricketts recommending that the matter not proceed, he does recall that Ricketts highlighted that there were other nurserymen in the same position as Cochran. He claims that it was as a result of submissions from Mrs Cochran and legal opinion from the Crown Solicitor that the determination was made to withdraw the seizure notice. According to Gall, no other person approached him to make representations on behalf of Cochran, and he denies receiving any directive in respect of the matter.

Gall says that he has never met or spoken to David Barbagallo. He says that Emerson had no input in the matter.

Cochran testified that he spoke by telephone with David Barbagallo on at least one occasion regarding his foxtail palm problem, and inquired whether David Barbagallo could "suggest or help do anything about it." Although aware that Paul Barbagallo's name was linked to the unlawful removal of foxtail palm seeds from Cape Melville National Park, Cochran did not know that Paul was David Barbagallo's brother. Cochran denies threatening to identify Paul Barbagallo's activities if the investigation was not stopped.

David Barbagallo acknowledges receiving a telephone call from David Cochran, who:

...basically complained about the whole inadequacy of ... the law and the fact that he was just one of hundreds of people that was doing this...

According to David Barbagallo, he spoke to officers of DEH, including the Director-General, one of the Minister's advisers, and the Minister, but these discussions centred around policy considerations. He denies making any representations on behalf of Cochran.

David Barbagallo also denies that Cochran made any mention of Paul Barbagallo.

It was in the course of giving evidence concerning this allegation that David Barbagallo admitted knowledge of Paul Barbagallo's previous activities in respect of the removal of foxtail palm seeds from Cape Melville National Park. In making that admission, David Barbagallo acknowledged that he had made untruthful statements when previously interviewed by officers of the Commission. He said he did so to

protect his brother but that he was not prepared to do that to the extent of lying on oath.

Paul Barbagallo recalls a telephone conversation with his brother in which David Barbagallo mentioned a person by the name of "David or John Cochran", although he denies that his brother told him that Cochran had made allegations against him. Paul Barbagallo says that during the discussion with his brother, David Barbagallo indicated that "there might be charges laid" if Paul Barbagallo had foxtail palms, and that there might be legislation passed providing an amnesty in respect of the possession of foxtail palms.

Paul Barbagallo recalls David telling him that he had informed the Premier that Paul Barbagallo had possessed foxtail palms and seeds in the past.

Conclusion

Notwithstanding the suspicion that is aroused by the evidence of Paul Barbagallo as to the telephone conversation between him and David Barbagallo, there is no evidence that Cochran threatened David Barbagallo in the manner alleged. All the evidence indicates that the decision to withdraw the seizure notice against Cochran was one properly made after due consideration and in light of legal advice. Neither the decision-maker, Gall, nor the investigating officer, Ricketts, claim that there was impropriety in the determination to withdraw proceedings against Cochran.

The Commission concludes that the allegation of improper interference in the investigation and prosecution of Cochran is unsubstantiated.

The Commission is concerned that David Barbagallo would lie to its officers while they were conducting an official investigation into serious allegations which involved him and others.

Such conduct could amount to official misconduct within the terms of the Criminal Justice Act and were he still the holder of a position in a unit of public administration the Commission would need to consider whether he should be disciplined. As he no longer holds such a position no disciplinary action arises for consideration.

It is very likely that other witnesses in this inquiry also lied to the Commission. Some of them seem to have compounded this fault by repeating lies under oath. However, the Commission considers that its suspicions in this regard could not be

proven to the requisite standard to establish criminal or disciplinary charges and accordingly proposes no further action in this regard.

CHAPTER 12

THE DEPARTMENT'S RESPONSE TO THE FOXTAIL PALM PROBLEM

12.1 INTRODUCTION

During the Commission's investigation of the Cape Melville Incident there has been considerable public comment critical of the response of DEH to the smuggling of foxtail palm seeds in particular and wildlife from Far North Queensland in general.

Indeed a number of interested people and groups urged the Commission to conduct an inquiry into the whole issue of wildlife smuggling.

The Commission resisted those urgings because it did not consider the vague allegations which were circulating enlivened its jurisdiction.

The Commission does not have jurisdiction to investigate the setting of priorities by a government department. Unless there is evidence of Official Misconduct, the Commission cannot review decisions taken by a department as to how it will discharge its responsibility to administer legislation which falls within its charter.

However, section 93(2) of the *Criminal Justice Act 1989* authorises the Commission to include in a report any comments it may have on issues upon which it has reported and made recommendations.

An issue central to the investigation here reported on was the response of DEH to offences committed within the Cape Melville National Park.

The investigation of that response drew into sharp focus the conflicting philosophies held by various senior officers of the Department in relation to the means by which wildlife is protected and are National Parks managed.

So rigidly are some views on these issues held, that those who hold them seem willing to conclude that those with different views lack integrity and lack commitment to the conservation of wildlife.

The views of these more zealous officers of the Department and their associates has received wide publicity.

The Commission considers it appropriate therefore, in this report, to attempt to include a more balanced description of the Department's efforts with respect to the conservation of the *Wodyetia bifurcata*.

12.2 ENFORCEMENT ACTION

The unlawful removal of seeds of the *Wodyetia bifurcata* from Cape Melville National Park is not a recent phenomenon. During the 1980's, the presence of foxtail palms and their seeds in markets and nurseries alerted Stanton, then Regional Director, Far Northern Region, NPWS, to the fact that the seeds were being removed from Cape Melville National Park. Cape Melville is a very remote place and the Department has no support facilities there. Patrols of the Park by NPWS officers achieved little in the battle to stem the exploitation of the foxtail palm.

In 1989, the position of Regional Director was re-defined and upgraded. Stanton was unsuccessful in securing the new position and became a senior conservation officer. He has since undertaken extensive field work in Cape York. In September 1993, he produced a report which usefully highlights some of the difficulties facing the Department in relation to this issue.

The report addressed, among a great number of other issues, the effects of the unlawful collection of the seeds of the *Wodyetia bifurcata*. The following is an extract from Stanton's report:

The palm *Wodyetia bifurcata*, is the only representative of its genus, and the only place it is known to occur is within the Cape Melville National Park.

It was first collected in 1975 by Mr B Hyland of the Queensland Forestry Department (now a botanist with the CSIRO Division of Forest Research). It was described in 1983 by Mr A Irvine of CSIRO from collections made in November 1982. Wodyeti was the Aboriginal name of Johnny Flinders, who was, according to Irvine, 'the last surviving male Aboriginal with traditional knowledge of the area, who died in 1978 at about 78 years old. Wodyeti acted as an anthropological and linguistic informant for researchers such as Chase and Sutton.'

Since discovery the palm has attracted the attention of palm fanciers world wide, and there is evidence that a flourishing illegal seed collection business was established

soon after publication of its formal description, and that this activity has continued to the end of the last wet season.

With collectors being able to obtain \$1-00 to \$5-00 per seed within Australia, collection has undoubtedly been a multi-million dollar business to date and there is thus a great incentive for its continuation.

.....

The seed harvest of *Wodyetia* has concentrated on sites that are accessible without the need to carry the harvest far to a vehicle. For that purpose 18 kilometres of track has been pushed illegally within the National Park. It appears that the harvest has escalated sharply for a period of nearly ten years, and that the activity has been totally unhindered by any enforcement activity until the end of 1992. There is, considering the rewards involved, little doubt that it will attempt to re-establish in October of this year. The harvest involves cutting the fruit from the tree and it is estimated that one tree could yield 500 to 1,000 fruit per season, extending from October to March, with peak activity around November and December. Vehicle tracks seen on the Bathurst Bay beach within the park during late March 1993, during a helicopter overflight, and at a time when any road access to the site was impossible, indicated that collecting activities had continued throughout the wet season.

From observations on the regeneration patterns of *Wodyetia*, its ability to colonise new areas, and its adaptability to both shade and full sunlight at the seedling stage, it is, in spite of its extremely restricted range, a robust species, not under threat of either significant decline in range or extinction. It is considered unlikely that the several years during which intensive collecting has occurred to date will have any significant long term effect on populations of the palm, even in the restricted areas in which the intensive collecting has taken place.

The impact of collecting operations, however, is potentially severe when one looks at the effect on other species and other habitats. Within the area of collection, disturbance of the soil surface and its compaction by traffic is likely to affect the survival of associated vine forest species and their patterns of regeneration. Beyond these localities the location and construction of 18 kilometres of access track has had a severe impact on the landscape and other habitats. It has created damage to swamp areas, irreparable damage to creek banks, gully erosion, and has facilitated the spread of exotic weeds. Much of the heath and shrubland on sand through which the longest track has passed, along with adjoining shrubby forest communities, was severely burnt in late winter 1992. It is highly likely that this was a deliberately lit fire to facilitate the re-opening of the access track through heath areas prior to the collecting season.

Management Implications

Continuing seed collection will lead to accelerating damage to park values. The related access tracks are in a bad location both in relation to impact on the country traversed and in terms of the difficulty of supervising their future use.

The long access track to the south-east side of the Melville Range was unusable in late July, and it would take some effort to re-open it even after the then boggy swamp sections have dried out. Thick scrub regeneration, a response to the 1992 wildfire, covered much of it, and would have to be cleared from at least a 4 kilometre section of it. Left untouched for another wet season, it will be difficult, if not impossible, to relocate in that section. It is expected that it will be reopened in September or October for a further season of illegal collection and, as transmitted in verbal advice after the July inspection, it is critical that management initiatives be directed at ensuring this does not occur.

The prevention of further illegal collection requires the closing of access tracks at two points. If this can be done in the near future, and maintained, the prevention of activity before Christmas will be much simpler. There is also a requirement for a supervisory presence during the Christmas-March period. Any activity during that period will be visible on the Bathurst Bay Beach and thus simply monitored.

There is clear evidence that other illegal activities, such as drug activities such as drug harvesting, are associated with the palm seed operation. Given the potentially large fortune to be made in the combined operations, park supervision and regulatory operations could be very dangerous, and should not be carried out by lone staff or without at least the periodic assistance of professional law enforcers.

In September 1992, whilst conducting field work in the Cape Melville area, Stanton discovered numerous bush camps, unauthorised but well-beaten tracks leading into the *Wodyetia bifurcata* habitats, and other matters indicative of large scale unlawful collection of seeds. Stanton asserts that there was an apparent general reluctance within DEH towards policing and enforcement at Cape Melville:

.....in case something was found that nobody wanted to find and I assumed it was more to do with (creating) the impression that there was no problems in the region and to keep the Minister happy rather than anything that I would consider to be interference or corruption.

As previously referred to in this report, in October 1992 the Queensland Police Service Fauna Squad, which had historically served as the main statewide enforcement arm of the legislation administered by DEH, coincidentally issued a seizure notice in

respect of some 18,000 foxtail palms in the possession of David Cochran, proprietor of Sheldon Palms, a nursery in the southern Brisbane suburb of Sheldon. It was intended that the seizure notice should operate pending further investigation designed to establish the origin of the seeds. Three months later, the seizure notice was lifted following Crown Law advice to Gall, Director, NPWS, identifying evidentiary difficulties in disproving claims by Cochran that he had obtained the seeds and/or palms from sources other than Cape Melville National Park.

The seizure notice served upon Sheldon Palms had been initiated without notice to or consultation with the NPWS, (in particular, Bruce Gall, who had taken up the position of Director, NPWS, only six weeks previously.)

The effect of this action by the Fauna Squad was to highlight for Gall the *Wodyetia bifurcata* issue, particularly the problems associated with the enforcement of the law prohibiting its removal from Cape Melville National Park. Gall perceived:

It was an issue that the Fauna Squad tended to deal with on a sort of annual basis. They tended to go up there and do what they could at the time when they perceived the most likelihood of seeds to be then collected, but it was pretty hit and miss. I mean they were based in Brisbane. The local (DEH) staff (based in Cairns) didn't have the resources or the skills to take on these types of investigations.

To address that deficiency, whilst at the same time acknowledging the finite resources of the DEH and the Fauna Squad, and the fact that the *Wodyetia bifurcata* issue was one of myriad issues faced by the Far Northern Region, Gall, in consultation with wildlife officers and the Queensland Nursery Industry Association, formulated a new policy and action strategy directed at maximising the enforcement effort by preventing seeds from leaving Cape Melville National Park. Removal of the *Wodyetia bifurcata* seeds from the National Park was identified as the enforcement priority because it was futile to pursue the matter after the seeds had entered the trade.

Accordingly, in late 1992 Gall issued a fresh Policy Directive which subsequently received Ministerial endorsement. Pursuant to the terms of the Action Strategy issued under that policy, the Minister directed immediate implementation of the following measures:

1. The focus for enforcement action should be primarily directed towards possession of fresh seed. Departmental officers should exercise their powers and functions under section 57 of the *National Parks and Wildlife Act 1975*.

2. Maximum field effort, within the resources available to this Department, should be directed towards the apprehension and prosecution of persons unlawfully collecting seed or seedlings of the palm from Cape Melville National Park - in these situations Departmental Officers should exercise their powers and functions under sections 34 and 54 of the *National Parks and Wildlife Act 1975*.
3. Because of the provisions of section 25 of the *National Parks and Wildlife Act 1975* ("the Cardinal Principle of Management"), this Department will not allow the collection of seed from Cape Melville National Park for commercial purposes.

In December 1992, acting on the information provided by Stanton as a result of his visit to the area in September 1992, the Fauna Squad conducted a number of co-ordinated raids on campsites in the Cape Melville area. These raids resulted in several arrests and successful prosecutions. One of the persons selected to assist Fauna Squad officers during that operation was Shears, who was at the time employed as a ranger in a relieving capacity at Cape Tribulation National Park.

Concerned that no further enforcement action was taken during the remainder of the 1992/1993 *Wodyetia bifurcata* seeding season (which continues from October until April), Stanton conceived the idea of placing somebody at Cape Melville prior the start of the 1993/1994 seeding season. Stanton proposed that this person should be tasked to barricade and thus prevent the re-opening of the unauthorised access tracks. The only person Stanton considered suited for this task was Shears.

It is Stanton's view that had it not been for his forceful lobbying, Shears would never have been engaged and sent to Cape Melville.

It is clear, however, that Stanton was not alone in his concern about how wildlife law enforcement should proceed in Far North Queensland.

Regional Director, Greg Wellard, had become aware of the limitations on the ability of the Far Northern Region, acting alone, to effectively enforce the *National Parks and Wildlife Act 1975* and the *Fauna Conservation Act 1974* in respect of the poaching and smuggling of wildlife from National Parks within the Far Northern Region. The location in Brisbane of the Department's main enforcement arm, the Police Fauna Squad and its demonstrably limited ability to undertake enforcement activities in Far North Queensland, was of particular concern.

Therefore, in early 1993, the Far Northern Region moved to commence what Wellard, has since, somewhat extravagantly, described as "the first co-ordinated multi-organisation intelligence gathering and enforcement capability".

To this end, Dennis Devine, District Manager, DEH Coastal Management Program, became involved in the Regional Operations Planning Advisory Committee (ROPAC) co-ordinated by Coastwatch in Cairns. It is the aim of ROPAC to provide a mechanism for co-ordination and assistance between the State and Commonwealth law enforcement and surveillance agencies. Such agencies include Coastwatch, the Royal Australian Navy, the Australian Army, the Queensland Police Service, the Australian Customs Service, Queensland Boating and Fisheries Patrol (QBFP), and the Australian Quarantine and Inspection Service.

In March 1993, Coastwatch introduced Regional Strategic Planning Group (RSPG) meetings to facilitate detailed operational planning for confirmation at ROPAC meetings. At the first such meeting of the RSPG, in March 1993, Devine raised the problems involving the smuggling of *Wodyetia bifurcata* seeds from Cape Melville National Park, and sought assistance from the other agencies for the next seeding season. It was suggested that a co-ordinated programme of surveillance be organised in the latter part of the year, closer to the seeding season.

According to Devine, a short time after that meeting he, in turn, informed Harris of the potential assistance ROPAC might offer in respect of the problems associated with the *Wodyetia bifurcata*.

At that time, Harris' responsibilities included the supervision and management of all National Parks in the Cape York area.

In May 1993, Michael Chep, a former member of the Queensland Police Service with substantial investigative experience, took up an appointment as Law Enforcement Co-ordinator, Coastal Management Program, in the Cairns office of DEH. His duties were initially confined to the Marine Park side of DEH and included the taking over of Devine's role in ROPAC. Devine explained Chep's role to Harris in the event that ROPAC's assistance was required at Cape Melville.

Devine claims that when he learned of "Operation Walkabout", he approached Harris to ascertain if Harris wanted to initiate a joint operation through ROPAC, along the lines proposed by Devine earlier in the year. According to Devine, Harris instructed him not to commence anything at that stage, as Shears would provide a ground presence at Cape Melville at least until the wet season started. Devine says that he

again invited Harris to contact him should he wish to commence any action through ROPAC, but that such request never eventuated.

Harris confirmed in his testimony that ROPAC never became involved in this operation.

Indeed, it was not until the completion of Stage I of "Operation Walkabout" - in October 1993 - that limited action was taken by DEH to include other agencies as part of the "intended professional investigation and enforcement capability in the region to effectively handle unlawful dealing of flora and fauna".

At that stage DEH arranged for the Army to conduct a surveillance exercise in the region.

Departmental correspondence reveals that Devine has been highly critical of the lost opportunity to plan in advance, and mobilise, a professional, multi-agency surveillance and enforcement operation through ROPAC. He claims he had recommended this to Harris. Devine asserts that the appropriate way to address the *Wodyetia bifurcata* issue was by means of such an operation, thereby ensuring the most efficient and constructive use of resources, including deployment of the Marine Parks' vessel, the *MV Floreat*.

On the other hand, and contrary to claims variously reported within the media and made directly to the Commission, Wellard asserts that although no further patrols of Cape Melville National Park were conducted after Shears' employment was terminated, the Department's enforcement and activity with respect to the *Wodyetia bifurcata* issue did not end.

For example, over the course of the ensuing months, acting upon information received by both DEH and the Australian Customs Service, investigations led to the lawful searching of premises, the seizure of records and foxtail palms, the seizure of seeds at the Cairns Post Office, and the interrogation of numerous persons in the Cairns area concerning allegations of unlawful taking of foxtail palm seeds from Cape Melville National Park. As a result of those activities some prosecution action was commenced.

Wellard says that from the time of his first briefing on Cape Melville National Park and the related *Wodyetia bifurcata* issue, shortly after his appointment as Regional Director in 1989, and on the basis of official file material, he viewed the *Wodyetia*

bifurcata issue as primarily one of enforcing the provisions of the *National Parks and Wildlife Act 1975* - rather than a more-immediate and urgent conservation issue.

Wellard is not alone in this view. It is shared by some of the senior officers of the Far Northern Region who claim that the *Wodyetia bifurcata* issue is but one of a myriad of problems facing the Far Northern Region on a daily basis. Wellard argues:

...in many respects when compared to the urgent imperatives involved in research and management for the conservation of (endangered) species ... (the *Wodyetia bifurcata*) is a relatively low priority ... (and) ... from the statements of Regional experts, is best considered as an enforcement, not a conservation issue.

...As an enforcement issue, it necessarily gains a lower priority over other issues which related to the survivability of the species and ecosystems. This is particularly so given advice from various sources that the then-NPWS acted too late to prevent the development of a widespread public interest in the palm as a nursery item.

Wellard's view is consistent with the official DEH policy directive "ACTION STRATEGY - FOXTAIL PALM" introduced in 1992, which acknowledged:

The seed and seedlings of the *Wodyetia Palm* are now to be found in a number of commercial nurseries throughout Queensland, other Australian states and the United States of America. Mature and semi-mature trees have been used for landscaping purposes for some years.

The action strategy directed:

Maximum field effort, within the resources available to this Department, should be directed towards the apprehension and prosecutions of persons unlawfully collecting seed or seedlings of the palm from Cape Melville National Park . . . Departmental officers should exercise their powers and functions under sections 34 and 54 of the *National Parks and Wildlife Act 1975*.

As Regional Director, and with overall responsibility for implementation of such strategy, Wellard interpreted that strategy as containing:

...no policy direction requiring a major shift in resource allocation within the Department or Region to address this issue.

Wellard was questioned during the course of his evidence as to the Department's efforts in respect of the *Wodyetia bifurcata*:

BARNES: Would you accept that the Department's efforts to limit the poaching of foxtail palm seeds has been, well, ineffectual? --- I think the problem we're faced with is the lack of resources than we can address to it. It's one of a very large number of issues we face. Because we have to channel our resources to the most -- to what we believe is the greatest effect for conservation, then we haven't channelled large resources to the foxtail palm issue. It's been my preference to leave it for the Police Fauna Squad which I've understood was the sort of enforcement they got involved in and I think you've got various documents about how they feel there is an undertone of drug dealing and other sorts of activities which made it unwise for us to be up there with rangers by ourself. The -- you're looking back with hindsight now, you can say, yes, there's an enforcement issue; it was not done very well. But on the other side of it, we have two reports by the principal botanists who are involved with the species, that what is occurring is not harming the conservation potential, the long term survival of the species. So what I don't have is a critical conservation issue. I have those, I have those with Golden Shouldered Parrots where, if we hadn't have done something urgently we would have lost a whole species. ... I don't have a critical conservation issue with *Wodyetia bifurcata* and in fact what we have is probably a situation where there are more in south-east Queensland than there are in the Park, and I'd draw your attention to a report by Gavin Ricketts from the Police Fauna Squad back in, I think it was 1989, where he said the National Parks and Wildlife Service lost it in 1988. They didn't do the right things when it was first discovered. They lost the issue; it was gone. So I would strongly object to any suggestion that we should then turn around in 1994, or 1993 and put enormous public resources into an issue which we'd already lost and which was, in some quarters, a laughing stock because we hadn't tackled it right in the '80's when it was first discovered, and which was not in any way impacting on the survivability of the species.

Emerson himself, concedes in retrospect, that the Department's efforts to prevent the unlawful removal of *Wodyetia bifurcata* seeds were not very effective. However, he rejects the suggestion that the failure was a result of any departmental attitude that discouraged officers from taking enforcement action. Rather, according to the Director General, it was a question of balancing finite resources with diverse priorities, the net effect being:

...We would not have been able to achieve the other results that have been achieved if we had put that effort into the foxtail palm business.

Stanton, a former Regional Director, also endorses the view that the enforcement approach is the only appropriate manner in which to address the *Wodyetia bifurcata*

issue. However, according to Stanton, enforcement need not be complicated or expensive:

...I really feel that half a dozen people on the whole of Cape York who were prepared to get out on the ground and look around could very quickly learn everything that was going on, and could very quickly with some back-up put a stop to most illegal activities.

...I feel that all it requires is a commitment to field staff who are prepared to actually be on the parks... To talk about enforcement of a place like Cape Melville from Cairns, or with permits clerks, to me is nothing short of ludicrous. I'm pretty sure Mr Shears has already put a major dent in the problem there in the short time that he was there. I think that things were heading in the direction that we may have had no problem that wet season if it hadn't been for subsequent events.

Stanton rejects as philosophically unsound and as setting a bad precedent, the suggestion that the NPWS itself collect the seed, propagate and distribute the palms, thus rendering seed poaching unprofitable. That restrictive view of wildlife management was colourfully encapsulated in the comment of another officer who reacted to the suggestion. The DEH market foxtail palms by saying "It's only a short step from there to Koala burgers".

Wellard concedes that over a period of two to three years following his appointment as Regional Director in 1989, a combination of departmental restructuring and staff movements led to an effective downgrading in the region's enforcement capability generally, and not simply with respect to the *Wodyetia bifurcata*. Recognising that enforcement is only one element of a much broader conservation issue involving the Department's operations, Wellard's preference has been to focus regional effort less on enforcement and more on education and community nature conservation. The follow passage from Wellard's evidence is relevant:

PEARCE: Was there a downgrading in the number of enforcement personnel? — The problem we had - in effect, yes - but the problem we had was that enforcement is one element of our operations. We also have a very critical need to look at conservation as a much broader issue. It's very similar to managing National Parks, I suppose. You can manage National Parks and feel you've done your job and sleep well at night. But they're only four percent of Queensland. So while you're managing species in a National Park, they can be becoming extinct outside the National Park. If you don't do a holistic thing, then you really fail in the long term. So enforcement was one aspect of our operations in my mind, and my preference as Regional Director was to concentrate, focus on education and on community nature conservation, getting out to the broader community and saying, look, we want

everybody to want to conserve these animals otherwise we're not going to conserve them. In the process it was my understanding that enforcement was still occurring but, as I've said to you, my involvement in the day to day operations can be variable depending on what's happening and can be very much issue-driven. ... So our thrust was very much into education and community nature conservation and less into enforcement.

There was a shift in emphasis from enforcement to education, is that what you're saying? --- Well, I think there was an increasing emphasis in education and, as a result, enforcement perhaps took a lower profile. There was no conscious decision to take resources out of enforcement and to destroy enforcement to advance anything else. But that is effectively what happened, that resources were refocussed in to doing different jobs.

As a result of his increasing concern about the regression in the Region's enforcement capability, Wellard says that he decided, during 1993, to create a position of Senior Investigations Officer, to facilitate and co-ordinate all of the investigation and enforcement activities across various regional programmes and to thereby maximise the effective use of resources.

The recent successes of "Operation Birdman" (a joint DEH/Customs Service project targeting flora and fauna smugglers in Far North Queensland) and other intelligence gathering activities led to a review of the structure of Department's investigative capacities in the Far Northern Region and has resulted in the creation of a number of investigative positions within the various regional programmes, which are co-ordinated by the new Senior Investigations Officer. This initiative, according to Wellard, will ensure an ongoing co-ordinated and professional response to necessary regional investigations.

12.3 CONCLUSION

It is obvious from this somewhat disjointed account of departmental initiatives relating to foxtail palm preservation that it is completely wrong to say DEH has done nothing about the problem. On the other hand, whilst it is not for the Commission to assess whether the matter could have been handled better it is obvious that the Department has failed to prevent the large scale theft of palm seeds.

In judging the Department's overall performance, however, it is essential to keep in mind Emerson's advice that there are over 1,400 endangered species in Queensland and that the foxtail palm is not one of them.

The conduct uncovered during the Commission's investigation vividly illustrates the negative impact the deterioration of relations between officers of the Fauna Squad and some officers of DEH has had on the operational effectiveness of both bodies.

Fortunately the fallout of this animosity provided an impetus for DEH, in conjunction with the Queensland Police Service, to commence a review of prosecutions management within the conservation programme of DEH with a view to improving structurally and operationally the current interaction between the Department and the Queensland Police Service. According to Emerson, this will translate into a memorandum of understanding which will form a basis for future relations between the Fauna Squad and the Department.

If this eventuates it is reasonable to expect that wildlife conservation will benefit.

APPENDICES

APPENDIX 1

**COPY OF ANONYMOUS LETTER
DATED 28/11/93**

28.11.1993

Mr. Doug SLACK
Environment spokesman

I wish to draw to your attention an occurrence involving corrupt intervention by Dr. Craig EMERSON of the Dept Environment/Heritage.

As an employee of that department I am aware of the facts.

The case was reported in S.H. 28.11.93 involving 2 people charged on National Park offences at Cape Melville concerning Foxtail Palms.

The offender is a Paul BARBAGALLO, banana farmer of Innisfail who is the brother of David BARBAGALLO of the Premier's dep. D.B. was with P.B. & others when 1 of 2 vehicles (1WD) was taken by a Park Ranger on 11.11.93. D.B. was supposedly checking Starcke Stn re govt. purchase of same. St. stn. adjoins C.M. N/Park.

(on 12/11)

When 'certain people' learnt of the matter, EMERSON instructed senior officers of the dept. in Cairns (A Mr. G. KELLY & G. MELLARD) to hire a vehicle out of govt. funds as a result of the offending veh. being seized. Other instructions were that no charges must be laid & the Ranger be sacked. The vehicle was to be supplied to the lawbreakers.

The Wildlife Squad police became involved (thankfully) & pursued a proper investigation. Pressure was even applied to them to not charge P. BARBAGALLO but I believe their intention is to do so.

Because of the police involvement & backing up of what the Ranger did I don't think a vehicle was provided to the offenders, but I'm not sure.

EMERSON is involved with the BARBAGALLO's sister on Vision 2,000 & there was a female on the foxtail palm seed collecting trip with P. BARBAGALLO. Drugs & a pipe found in the 1wd by the police was found in a ladies bag.

Why should anyone who has committed an offence be assisted to escape prosecution just because of contacts in high places? & have a vehicle supplied before a proper investigation.

The Ranger, Fat SHEARS has been told his services are no longer required & is to cease 2 years work with the N.P.W.S. next week following the finish of his current wages arrangements.

The offender, Paul BARBAGALLO was convicted about 5 yrs ago of major drug charges regarding ~~the~~ a Marijuana plantation.

APPENDIX 2

LIST OF WITNESSES INTERVIEWED

INTERVIEWS CONDUCTED

23/03/94	ATKINS, Dennis	Director Media Unit, Office of the Premier of Queensland (OPQ)
18/03/94 31/03/94	BARBAGALLO, David	Principal Private Secretary, OPQ
12/04/94	BARBAGALLO, Mario	Brother of David BARBAGALLO
14/04/94	BARBAGALLO, Paul	
14/04/94	BEAUMONT, Linda	Partner of John DURSO
09/05/94	BREDHAUER, Steven	Member for Cook
08/03/94	CHEP, Michael	Enforcement Co-ordinator, Far Northern Region
10/03/94		
16/04/94	DURSO, John	Owner/Skipper of "Sagitta"
08/03/94	ELLEMANS, Hans	Proprietor, Cairns Four Wheel Drive Hire
17/03/94	EMERSON, Dr Craig	Director-General, Department of Environment and Heritage (DEH)
11/05/94	FLINDERS, Anthony	Aboriginal Ranger
27/04/94	GILLESPIE, Pat	Journalist, Sunday Mail
23/06/94	GALL, Bruce	Director, QNPWS
30/05/94	GUEHO Russell	District Wildlife Officer, Kununurra, WA
26/04/94	GUEST, Stephen	Ministerial Media Advisor, Minister for Lands

09/03/94	HARRIS, Peter	District Manager, Cape York Region, DEH
26/04/94	HARRIS, Peter	Telephone interview (re: tabling in Parliament on 26/04/94 of his confidential letter to CJC, 20/03/94)
19/04/94	HARTWELL, Snr Sgt J D	Far North Regional Crime Co-ordinator, QPS
02/06/94		
29/04/94	IRVINE, William John	Pharmacist, Caloundra
13/04/94	KELLY, Geoff	Acting Regional Manager, Far Northern Region, DEH
02/06/94	KESTEVEN, Tim	Senior Pilot attached to Emergency Services Air Unit (Helicopter Rescue), Cairns
01/06/94	LAVARING, Sergeant	51st Battalion, FNQ-R
18/05/94	McGREEVY, Damien	Policy Advisor, Minister for Environment and Heritage
19/04/94	McKINNON, Michael	Sunday Mail Journalist
11/05/94	MONAGHAN, George	Aboriginal Ranger
29/04/94	MOORE, Bruce Allan	Builder, Caloundra
10/03/94	MURPHY, Robert (Spud)	Sergeant, Cooktown Police
30/05/94	O'DEA, Fr Frank	Catholic Priest - friend of Shears
09/03/94	PEDERSON, Ken	Editor, Innisfail Advocate
11/05/94	QUAID, George	Owner of Starcke Station

08/02/94	RICKETTS, G N	Detective Sergeant, Reg No. 3394 Crime Operations Branch and Wildlife Squad (seconded to DEH)
02/06/94	ROCHE, Tim	Regional Crime Co-ordinator Inspector
02/06/94	SCHAFFERIUS, Brett	Detective Senior Constable involved in raids in Cape Melville area in 1992
10/02/94 24/02/94 31/03/94 06/05/94	SHEARS, Patrick	Presently unemployed Previously employed by DEH as Grade 3 Ranger (casual - 8 years)
11/05/94	SOMERVILLE, Darren	Detective Senior Constable, Cooktown Police
08/03/94	STANTON, Peter	Senior Conservation Officer, DEH
11/05/94	TEECE, Patricia	Wife of Ron TEECE, Ranger in Charge, Lakefield Ranger Base
11/05/94 16/06/94	TEECE, Ron	Ranger in Charge, Lakefield Ranger Base
01/06/94	TINK, L/Colonel	51st Battalian, FNQ-R
20/06/94	TRUELOVE, Cliff	Civilian friend of Shears
08/03/94	WALLACE, Monique	Senior Reservations Supervisor, Ansett
08/03/94 17/04/94	WELLARD, Greg	Regional Director, Far Northern Region, DEH

19/05/94 WONE, Craig Accompanied Paul BARBAGALLO
to Cape Melville National Park

STATEMENTS OBTAINED

22/02/94 STAFFORD, Keith Charles Law Enforcement Co-ordinator,
Marine Parks Section, DEH

RECORDS OF INTERVIEWS FURNISHED

20/11/93 UECHTRITZ, Gordon Charles (I/v by D J Fletcher, Wildlife
Squad)

31/05/94 FENTON, W (Conversation with G Ricketts and
D Fletcher)

APPENDIX 3

**AUDITOR-GENERAL'S REPORT
RE: EXPENSES INCURRED BY THE PREMIER'S
STAFF WHEN TRAVELLING TO
FAR NORTH QUEENSLAND
DATED 17/06/94**



QUEENSLAND AUDIT OFFICE

Your ref: 502/03/37/015 TWR:pat.2

Our ref: 00-1422

17 June 1994

Mr R S O'Regan QC
Chairman
Criminal Justice Commission
577 Coronation Drive
TOOWONG QLD 4066

Dear Mr O'Regan

I refer to your letter of 19 May 1994 referring to my offer to conduct a comprehensive independent audit of expenses incurred by Messrs D Barbagallo and D Atkins during a trip to Far North Queensland between 12 to 14 November 1993, and enclose my report concerning the audit findings.

Your faithfully

A handwritten signature in dark ink, appearing to read 'B M Rollason', is written over a horizontal line.

B M ROLLASON
Auditor-General

**REPORT BY THE AUDITOR-GENERAL
ON A REVIEW OF TRAVEL AND OTHER RELATED EXPENDITURE
BY MESSRS D P BARBAGALLO AND D ATKINS
IN RESPECT OF A TRIP TO FAR NORTH QUEENSLAND
BETWEEN 12 TO 14 NOVEMBER 1993**

1.0 BACKGROUND

- 1.1 Following discussions with an officer of the Criminal Justice Commission (CJC) on 17 May 1994 concerning the examination of expenses associated with a trip to Far North Queensland by Mr D P Barbagallo, former Principal Private Secretary to the Premier, and Mr D Atkins, Director of the Media Unit in the Office of the Premier, I agreed to perform an independent audit of the subject matter. The Chairman of the Criminal Justice Commission formally accepted my offer by letter dated 19 May 1994.
- 1.2 The travel in question was undertaken during the period 12 to 14 November 1993 for the said purpose of determining the feasibility of a visit by the Premier to a property then owned by Starcke Pastoral Holdings which adjoins the Cape Melville National Park. State Cabinet on 6 September 1993 decided that a substantial part of the Starcke Pastoral Holdings would be purchased for use as a national park. The *Starcke Pastoral Holdings Acquisition Act 1994* received assent on 7 March 1994 and the Government announced on 18 April 1994 the purchase of the property. The proposed trip by the Premier did not eventuate due to the difficulty encountered in finding within the Premier's schedule the necessary time to undertake the journey.

2.0 AUDIT OBJECTIVE

- 2.1 The objective of the audit was directed to establishing whether or not the expenditure incurred by Messrs Barbagallo and Atkins substantially complied with prescribed requirements in terms of the *Financial Administration and Audit Act 1977*, the Guidelines for the Financial Management of the Office of the Minister which were tabled in the Legislative Assembly on 25 August 1992 and the Ministerial Procedures Manual issued by the Ministerial Services Branch (MSB), Queensland Treasury. The latter document was produced by MSB to assist Ministerial staff in carrying out their duties in terms of the formal Guidelines of 25 August 1992.
- 2.2 The CJC identified certain issues which were considered within the audit context. These were -
- (i) the extent of supporting documentation and authorisations;
 - (ii) compliance with prescribed requirements for the use of credit cards;
 - (iii) sequencing of order numbers;
 - (iv) justification for changes to the initial vehicle rental arrangements; and
 - (v) the applicability of Fringe Benefits Tax (FBT) to a private component use of the hire vehicle and recoupment of hire costs associated with the unofficial component.

3.0 SCOPE AND AUDIT APPROACH

- 3.1 The audit was limited to reviewing the matters associated with the specific travel of Messrs Barbagallo and Atkins and as such was confined to expenditure ledgered by the Ministerial Services Branch within Treasury Department and related procedures within the Office of the Premier.
- 3.2 In reviewing the particular travel arrangements, related expenditure and procedures generally:

All documentation associated with identified expenditure incurred by the two officers in connection with travel during the period 12 to 14 November 1993 was examined.

Relevant personnel in the Office of the Premier and the Ministerial Services Branch were interviewed.

4.0 CONCLUSION

- 4.1 While audit found that some strengthening of internal control procedures was warranted in relation to the financial management of expenses covered by the Guidelines referred to in section 2 of this Report, there is nothing evident in this particular case to suggest non-compliance with the prescribed procedures. The question of recoupment by Mr Barbagallo of costs associated with an unofficial journey made at public expense on 13 November 1993 could be pursued further by the Ministerial Services Branch, Treasury as detailed in section 5.2.5 of this Report. However, audit believes the matter is somewhat of a minor nature given the likely amount involved.

The areas where audit believes there is scope for improvement in respect of control procedures generally are set out in section 6 of this Report.

- 4.2 As to whether value for money was obtained for the amount (\$2,881) spent on the trip by the two officers is a matter about which opinions will undoubtedly differ. However, I have accepted the Premier's advice to me that at the time he agreed to the trip he believed it was necessary for his staff to obtain information first-hand about how practical it would be for him and his party to visit the Starcke property sometime after the rising of Parliament on 9 December 1993 and prior to Christmas 1993.

5.0 DETAILED AUDIT FINDINGS

5.1 Controls Governing Travel and Related Expenditure

- 5.1.1 Expenditure by Ministers and Ministerial staff is governed by the Guidelines for Financial Management of the Office of the Minister referred to in section 2 of this Report. The guidelines establish a framework for the financial and administrative arrangements to be followed pursuant to the Financial Administration and Audit Act, and include details of minimum levels of internal controls required to ensure proper accountability in relation to the Office of the Minister.

- 5.1.2 More detailed procedures to be followed in respect of travel and travel-related expenditure by Ministers and Ministerial staff are contained in the Ministerial Procedures Manual prepared and issued by the Ministerial Services Branch, Treasury, to assist Ministerial staff in carrying out their duties in accordance with the principal guidelines.
- 5.1.3 The Ministerial Procedures Manual states that all travel bookings are to be made through the American Express Business Travel Service in terms of the American Express Travel Agency Agreement entered into by the Government in June 1992. This service is available for Domestic/Overseas Air Travel, Domestic Accommodation and Car Hire and Air Charter/Train Tickets, etc.
- 5.1.4 This arrangement operates through uniquely identified order numbers and does not involve use of credit cards.
- 5.1.5 An internal control critical to the proper functioning of the system as prescribed, is the requirement for the relevant Minister to authorise proposed travel by signing the applicable travel order. For convenience, the Ministerial Services Branch within Treasury which is responsible for paying the relevant accounts, agreed in 1992 to an alternate procedure whereby Ministers are permitted to signify their approval to relevant travel by certifying the Business Travel Account - Statement received monthly from American Express for each Minister's Office. The authorisation given by the Minister is to the effect that "Approval is given for the expenditure and that it is in accordance with the Approved Ministerial Guidelines".
- This alternate authorising procedure came into effect in 1992 and was adopted by the Office of the Premier and applied in relation to the travel under investigation.
- 5.1.6 The Amex Business Travel Account - Statements provide particulars of expenditures incurred and routing by traveller duly cross-referenced to the unique Amex order numbers for the service requested.
- 5.1.7 Prior to certification for payment, the statements are verified by Ministerial staff against details of orders issued and other substantiating documentation.
- 5.1.8 Further, all statements and supporting documentation are thoroughly scrutinised by the Ministerial Services Branch, Treasury, which applies random checks against order details.
- 5.1.9 Account coding of all travel and travel-related expenditure for data entry to the Queensland Government Financial Management System (QGFMS), the State's principal financial management system, is undertaken by the Ministerial Services Branch, Treasury.

5.2 Substantiation of Expenditure

5.2.1 Audit identified expenditure amounting to \$2,881.20 relating to the travel under scrutiny which comprised -

Payee	\$	Particulars
Amex	2,646.50	Air Fares (\$1,820); Accommodation (\$334); Breakfast and Incidentals (\$47.15); Vehicle Hire (\$445.35)
Barbagallo	202.45	Fuel (\$105.20); Cab Charge (\$18); Ferry Charges (\$5); Meal (\$32.25); Allowances (\$42)
Atkins	32.25	Meal
	<hr/>	
	\$2,881.20	
	<hr/>	

5.2.2 Authorisation of Expenditure

The foregoing expenditure was authorised in the following way -

(a)	By the Premier under the alternate arrangements (refer section 5.1.5 of this Report)	\$2,646.50
(b)	By a duly authorised officer within the Premier's Office	\$ 234.70
		<hr/>
		\$2,881.20
		<hr/>

Travel Order A 000165 which relates to expenditure (a) as approved by the Premier was duly signed by an authorised booking officer within the Office of the Premier.

5.2.3 Documentation of Expenditure

All expenditure was appropriately supported by relevant documentation and correctly charged within QGFMS.

Audit established to its satisfaction that the amounts paid to Amex on account of accommodation provided at the Sovereign Resort Hotel Pty Ltd, Cooktown and the Pacific International Hotel, Cairns were consistent with accommodation arranged as indicated on Amex travel order number A 000165.

5.2.4 Vehicle Hire

In arranging a hire vehicle, the initial booking made by Amex in terms of order No. A 000165 was with National Car Rentals (\$155 per day - unlimited mileage). Due to the unsuitability of the vehicle offered by National Car Rentals for the nature of the trip being undertaken by the two officers, alternative arrangements were made (through Amex) with Northern Rentals Pty Ltd for a different type of vehicle (\$135 per day plus excess mileage over 200 km).

5.2.5 Potential Fringe Benefits Tax Liability and Recoupment for Non-Official Travel

Information provided to audit by the CJC indicated that on 13 November 1993 the hire vehicle was used by Mr Barbagallo to undertake travel from Cairns to Innisfail and return to discuss with his parents his resignation as Principal Private Secretary to the Premier which was to take effect from 4 January 1994. A return journey of this nature would be in the order of 180 km. The CJC raised the issue as to whether such use may be subject to Fringe Benefits Tax and whether the Treasury should have been reimbursed for the value of the excess kilometres incurred at public expense.

From research undertaken by audit it is more than likely given the minor benefit gained by Mr Barbagallo that no tax would attract by virtue of section 58P of the Fringe Benefits Tax Assessment Act due to the infrequency and minor nature of the benefit obtained. The Ministerial Services Branch, Treasury needs to obtain a formal confirmation on this matter from the Australian Taxation Office.

In relation to the additional cost incurred at public expense, audit recommends that the matter be considered by the Ministerial Services Branch, Treasury. From accounting records available to audit, there is nothing which indicates that the unofficial trip occurred. However, in information provided to audit by the CJC there is evidence on Mr Barbagallo's own admission that the private journey took place. Consequently, in so far as the Office of the Premier and the Ministerial Services Branch, Treasury are concerned, they have acted in terms of available information. In monetary terms audit considers the matter as one of little consequence.

5.2.6 Issue of Amex order numbers

The CJC was concerned that the Amex order number (A 000165) relating to the expenditure of \$2,646.50 was issued out of sequence.

In discussing the matter with Ministerial Services Branch, Treasury, audit established that from time to time cases do occur where order numbers are issued out of sequence which is followed up by MSB. In the case under discussion audit is satisfied that the occurrence arose from misunderstanding between officers in the Office of the Premier.

6.0 SCOPE FOR IMPROVEMENT TO CONTROL PROCEDURES

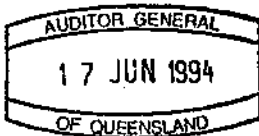
- 6.1 While audit is satisfied that the alternate arrangement for approval of travel as described in section 5.1.5 of this Report provides sufficient authorisation at the Ministerial level for expenditure incurred, occasions arise where the amounts appearing in the Amex Business Travel Account - Remittance Advice differ from those shown on the official voucher due to booking adjustments and timing differences.

Audit recommends that the existing wording of the certification now given by Ministers who use this method should be amended to clearly incorporate the value of expenditure being approved and to include specific reference to the Amex Business Travel Account - Statement supporting that value.

In relation to this matter, audit proposes to discuss the issue further with the Ministerial Services Branch, Treasury.



B M ROLLASON
Auditor-General



APPENDIX 4

**LIST OF PERSONS WHO GAVE EVIDENCE
AT THE HEARINGS**

**LIST OF PERSONS WHO GAVE
EVIDENCE AT THE HEARINGS**

Name	Designation	Date	Place
ADAMS, Dallas	Accompanied Paul BARBAGALLO to Cape Melville	09/05/94 13/05/94	Cairns
ATKINS, Dennis	Director, Media Unit, Office of the Premier of Queensland (OPQ)	25/05/94	Brisbane
BARBAGALLO, David	Former Principal Private Secretary, OPQ	26/05/94	Brisbane
BARBAGALLO, Paul		12/5/94 01/06/94	Cairns
BUDD, Earl Senior		03/06/94	Cairns
CHARLES, Sgt Barry	Army	01/06/94	Cairns
CHEP, Michael	Enforcement Co-Ordinator, Far Northern Region (FNR), Department of Environment and Heritage (DEH) - Cairns	10/05/94 27/05/94	Cairns Brisbane
COCHRANE, David		24/05/94	Brisbane
COPELY, Erol		12/05/94	Cairns
DURSO, John	Owner/Skipper of "Sagitta"	10/05/94	Cairns
EMERSON, Dr Craig	Director-General, DEH	27/05/94	Brisbane
FLETCHER, Sen Const		26/05/94	Brisbane

FLINDERS, Tony	Aboriginal Ranger	11/05/94	Cairns
GREEN, Barton		27/05/94	Brisbane
HANDS, Benjamin	Accompanied Paul BARBAGALLO to Cape Melville	09/05/94 13/05/94	Cairns
HARRIS, Peter	District Manager, FNR, DEH - Cairns	11/05/94 13/05/94 31/05/94	Cairns
HEDGECOCK, Nigel		13/05/94	Cairns
KELLY, Geoffrey	Regional Manager, FNR, DEH - Cairns	10/05/94	Cairns
MEADOWS, Const. Malcolm	Laura Police	09/05/94	Cairns
MONAGHAN, George	Aboriginal Ranger	11/05/94	Cairns
MURPHY, Sgt Robert	Cooktown Police	09/05/94	Cairns
RICKETTS, Sgt	Crime Operations Brance and Wildlife Squad (seconded to DEH)	25/05/94	Brisbane
SHEARS, Patrick Joseph	Previously employed by DEH as Grade 3 Ranger (casual - 8 years)	19/05/94 20/05/94	Cairns
STANTON, Peter	Senior Conservation Officer, FNR, DEH - Cairns	12/05/94	Cairns
UECHTRITZ, Gordon	Accompanied Paul BARBAGALLO to Cape Melville	09/05/94 13/05/94	Cairns

WELLARD, Greg	Regional Director, Far Northern Region (FNR) Department of Environment and Heritage (DEH) - Cairns	13/05/94 31/05/94	Cairns
WILLIAMS, Paul		03/06/94	Cairns

APPENDIX 5

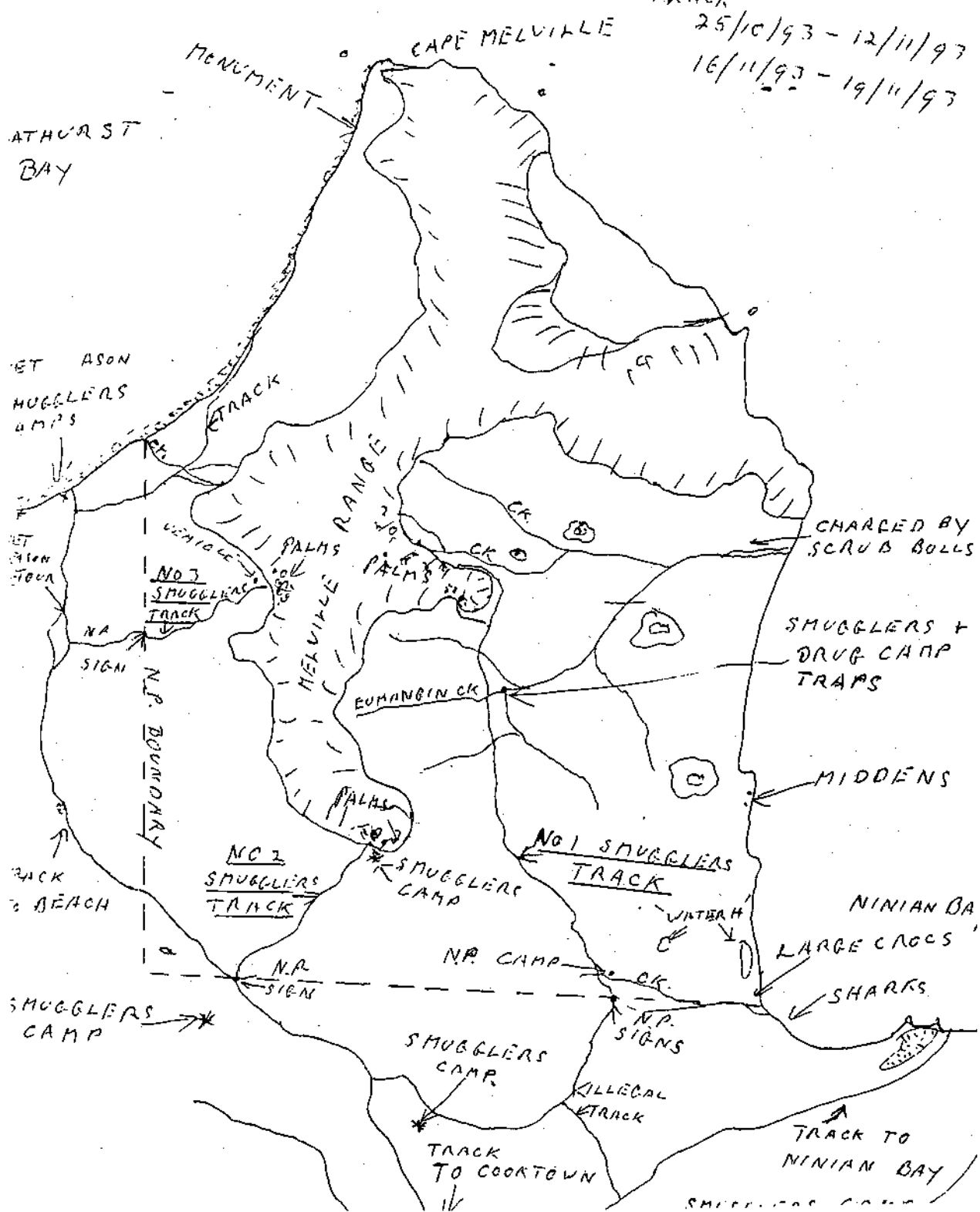
**MAP OF AREA
PREPARED BY SHEARS**

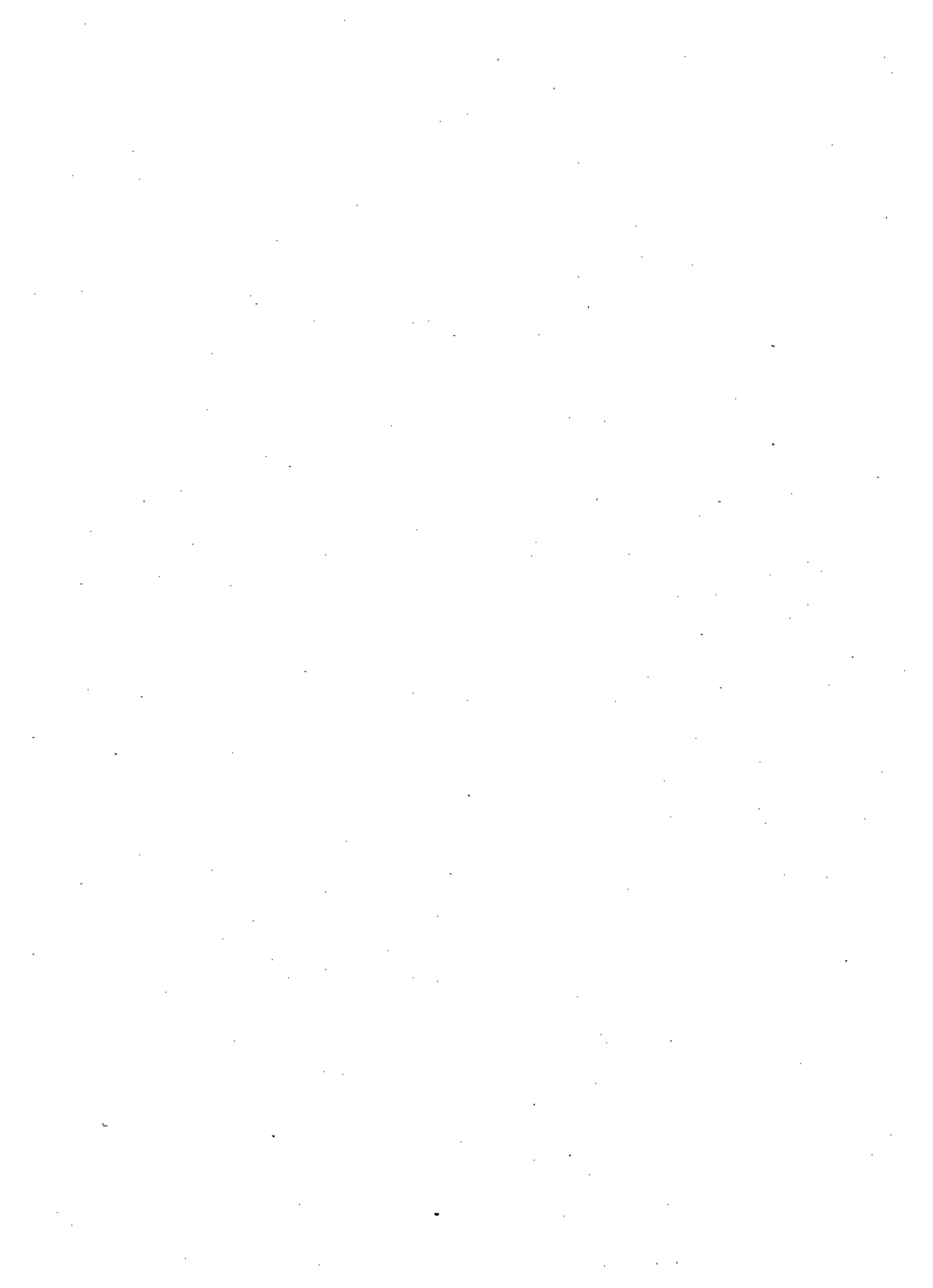
"OPERATION WALKABOUT" 40

PROBE: 17/9/93 - 27/9/93

10/10/93 - 13/10/93

BACKTRACK
25/10/93 - 12/11/93
16/11/93 - 19/11/93





**Published Reports/Papers of the
Criminal Justice Commission**

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>	<u>Price</u>
May 1990	Reforms in Laws Relating to Homosexuality - an Information Paper	Out of Print	-
May 1990	Report on Gaming Machine Concerns and Regulations	In stock as at time of printing of this report	\$12.40
September 1990	Criminal Justice Commission Queensland Annual Report 1989-1990	Out of Print	-
November 1990	SP Bookmaking and Other Aspects of Criminal Activity in the Racing Industry - an Issues Paper	Out of Print	-
February 1991	Directory of Researchers of Crime and Criminal Justice - <i>Prepared in conjunction with the Australian Institute of Criminology</i>	Out of Print	-
March 1991	Review of Prostitution - Related Laws in Queensland - an Information and Issues Paper	Out of Print	-
March 1991	The Jury System in Criminal Trials in Queensland - an Issues Paper	Out of Print	-
April 1991	Submission on Monitoring of the Functions of the Criminal Justice Commission	Out of Print	-
May 1991	Report on the Investigation into the Complaints of James Gerrard Soorley against the Brisbane City Council	Out of Print	-
May 1991	Attitudes Toward Queensland Police Service - A Report (Survey by REARK)	Out of Print	-
June 1991	The Police and the Community, Conference Proceedings - <i>Prepared in conjunction with the Australian Institute of Criminology following the conference held 23-25 October, 1990 in Brisbane</i>	Out of Print	-

(ii)

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>	<u>Price</u>
July 1991	Report on a Public Inquiry into Certain Allegations against Employees of the Queensland Prison Service and its Successor, the Queensland Corrective Services Commission	In stock as at time of printing of this report	\$12.00
July 1991	Complaints against Local Government Authorities in Queensland - Six Case Studies	Out of Print	-
July 1991	Report on the Investigation into the Complaint of Mr T R Cooper, MLA, Leader of the Opposition against the Hon T M Mackenroth, MLA, Minister for Police and Emergency Services	In stock as at time of printing of this report	\$12.00
August 1991	Crime and Justice in Queensland	In stock as at time of printing of this report	\$15.00
September 1991	Regulating Morality? An inquiry into Prostitution in Queensland	In stock as at time of printing of this report	\$20.00
September 1991	Police Powers - an Issues Paper	In stock as at time of printing of this report	No charge
September 1991	Criminal Justice Commission Annual Report 1990/91	In stock as at time of printing of this report	No charge
November 1991	Report on a Public Inquiry into Payments made by Land Developers to Aldermen and Candidates for Election to the Council of the City of Gold Coast	In stock as at time of printing of this report	\$15.00
November 1991	Report on an Inquiry into Allegations of Police Misconduct at Inala in November 1990	Out of Print	-
December 1991	Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986-1989 Queensland Legislative Assembly	Out of Print	-

(iii)

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>	<u>Price</u>
January 1992	Report of the Committee to Review the Queensland Police Service Information Bureau	Out of Print	-
February 1992	Queensland Police Recruit Study, Summary Report #1	In stock as at time of printing of this report	No charge
March 1992	Report on an Inquiry into Allegations made by Terrance Michael Mackenroth MLA the Former Minister for Police and Emergency Services; and Associated Matters	Out of Print	-
March 1992	Youth, Crime and Justice in Queensland - An Information and Issues Paper	Out of Print	-
March 1992	Crime Victims Survey - Queensland 1991 <i>A joint Publication produced by Government Statistician's Office, Queensland and the Criminal Justice Commission</i>	In stock as at time of printing of this report	\$15.00
June 1992	Forensic Science Services Register	Out of Print	-
September 1992	Criminal Justice Commission Annual Report 1991/1992	In stock as at time of printing of this report	No charge
September 1992	Beat Area Patrol - A Proposal for a Community Policing Project in Toowoomba	Out of Print	-
October 1992	Pre-Evaluation Assessment of Police Recruit Certificate Course	In stock as at time of printing of this report	No charge
November 1992	Report on S.P. Bookmaking and Related Criminal Activities in Queensland <i>(Originally produced as a confidential briefing paper to Government in August 1991)</i>	In stock as at time of printing of this report	\$15.00
November 1992	Report on the Investigation into the Complaints of Kelvin Ronald Condren and Others	Out of Print	-

<u>Date of Issue</u>	<u>Title</u>	<u>Availability</u>	<u>Price</u>
August 1994	Implementation of Reform within the Queensland Police Service, the Response of the Queensland Police Service to the Fitzgerald Inquiry Recommendations	In stock as at time of printing of this report	\$10.00

Further copies of this report or previous reports are available at 557 Coronation Drive, Toowong or by sending payment C/O Criminal Justice Commission to PO Box 137, Albert Street, Brisbane 4002. Telephone enquiries should be directed to (07) 360 6060 or 008 061611.

This list does not include confidential reports and advices to Government or similar.

Slack queried how the defence barrister had obtained a copy of that statement. This statement was a log or diary of events compiled by Mr Shears.

During the examination of Paul Barbagallo before the investigative hearing of the Commission in Cairns on 12 May 1994, the two documents given to the Commission by Shears, and referred to in Mr Slack's correspondence, were shown to Paul Barbagallo and copies given to his counsel. This was entirely appropriate and in accordance with the usual practice adopted when examining witnesses in either a court or hearings of this kind. Paul Barbagallo was cross-examined in respect of these documents. As the examination of Paul Barbagallo had not been finalised at the conclusion of his evidence on that day, he was not excused from further attendance but merely stood down. He was required to give further evidence. It was not thought appropriate that his counsel be required to return all documents prior to the examination of his client being concluding. The Commission does not consider that counsel assisting at the hearing acted improperly in this regard.

The Commission wrote to Durward and outlined to him the allegations that had been made. The Commission sought details of any use he may have made of these two documents during the Magistrates Court hearing. He was also asked to assist by furnishing to the Commission the name of the person who provided him with the copy of the statement of Shears which had been handed to Detective Sergeant Gavin Ricketts on 17 November 1993 and from which Durward had apparently quoted during the Magistrates Court hearing.

By facsimile dated 1 June 1994, Durward responded to the Commission. He confirmed that the photocopy of a photograph of a National Park sign and a photocopy of the sketch of the Cape Melville National Park had been furnished to him by counsel assisting during the investigative hearings. He stated that these documents were not used during the Magistrates Court proceedings on 13 May 1994, except for the purpose of comparison, at the bar table, with maps and sketches of the National Park which had been tendered by the police prosecutor during the proceedings.

Durward stated that he had obtained a copy of the statement Shears gave to Detective Sergeant Ricketts from solicitors in Brisbane. Printed on the documents is

Tabled by Mr Slack during question time 25/2/94.

Durward went on to make the point that the document appeared to be a public document.

An examination of the transcript of proceedings in the Innisfail Magistrates Court on 13 May 1994, confirmed that no use was made of the two documents which had been originally furnished by counsel assisting to Durward during the Commission's investigative hearing. In those circumstances, the Commission was satisfied that there had been no breach of the non-publication order nor any improper use of the two documents in question. It was clear that the other document referred to by Mr Slack had been tabled in Parliament by Mr Slack and was obviously a public document. Mr Slack was advised accordingly on 3 June 1994.

On 15 June 1994, the Commission received a further letter dated 10 June 1994 from Mr Slack. In it he stated that it had been claimed to him that:

The photograph tendered by ex-ranger Shears to the closed inquiry and used during the Innisfail court proceeding, was again used after that advised to the Commission by Paul Barbagallo's counsel.

The letter claimed that it was used as a substitute photograph for a photograph (considered to be inadequate) for counsel's presentation to the court and that this could well have constituted a technical breach of the non-publication order of the Commission.

The Commission considered this further claim and concluded that even if the subject document had been used by counsel in the manner asserted and that that constituted a technical breach of the non-publication order, it was inconsequential and did not warrant any remedial action, because the document in question was a photocopy of a photograph published in a newspaper. It was felt that a court asked to take action in relation to a possible breach of the non-publication order would have regarded the matter as risible.

2.3 THE QUESTION OF THE SUFFICIENCY OF EVIDENCE AND THE PURPOSE OF THE REPORT

The very nature of an inquiry under the Act raises the question as to the degree of satisfaction which should be attained before it is safe for the Commission to conclude that any of the allegations the subject of inquiry had been established. The Act is silent on the degree of satisfaction required.

However, assistance can be obtained from a consideration of the statutory purpose of a report such as this. By section 36(5) of the Act all complaints or information concerning misconduct brought to the notice of the Commission are to be communicated to the Complaints Section. The Chief Officer of the Complaints Section is required by internal administrative arrangements to refer the investigation reports of serious and/or sensitive matters to the Director, Official Misconduct Division. The report is required to be made to the Director of the Official Misconduct Division so that, in compliance with section 33 of the Act, he can make a report to the Chairperson. The Act in section 33(2) provides that the Chairperson may take such action in relation to a report received in this way from the Director of the Official Misconduct Division as he considers desirable including, but not limited to, authorising that the report be forwarded to:

- (a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to the prosecution of such criminal charges as the Director of Prosecutions or other authorities considered warranted;
- (b) the Executive Director of the Commission with a view to proceedings before a Misconduct Tribunal in relation to a disciplinary charge or charges of official misconduct; or
- (c) the appropriate principal officer of a unit of public administration with a view to disciplinary action being taken in respect of the matter to which the report relates.

Section 33 of the Act, therefore, requires that regard be had not only to the existence of evidence but also to its sufficiency for certain purposes. It would not be appropriate for a report to be made to any of the abovementioned authorities, if, whatever evidence there may be of the commission of a criminal offence, official misconduct, misconduct or other disciplinary breach, that evidence would be, when considered in light of all of the evidence, insufficient to establish a prima facie

case in a prosecution of criminal charges or, as the case may be, disciplinary proceedings.

Therefore, in considering whether to report to the Director of Prosecutions with a view to the prosecution of criminal charges, the Commission must be mindful of the sufficiency of the evidence and make some assessment of its weight and reliability in light of the standard required to establish guilt in criminal proceedings, namely beyond reasonable doubt.

Similarly, in considering whether to make a report to an authority for the purpose of disciplinary action, the Commission must be mindful of the sufficiency of the evidence and make some assessment of its weight and reliability in light of the standard of proof in disciplinary proceedings, namely, on the balance of probabilities which varies according to the gravity of the finding to be made. This standard is often called the *Briginshaw* principle or the standard of "reasonable satisfaction" and in applying it the Commission adopts the statement of Sir Owen Dixon in *Briginshaw v. Briginshaw* (1938) C.L.R. 336 at pp. 361-362 where he stated:

'Reasonable satisfaction' is not a state of mind that is attained or established independently of the nature and consequence on the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences following from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect references.

Therefore, when concluding that the report should be referred to the principal officers of units of public administration in which certain officers are employed, the Commission considered that it had to be satisfied at least to the *Briginshaw* standard that there was sufficient evidence to warrant the taking of disciplinary action.

Quite apart from the referral of the report to the bodies referred to above the Chairperson is authorised by section 33 to take any action he considers desirable. In this case he has chosen to refer the report to the Commission constituted by himself and three part time Commissioners.

The Commission has determined that pursuant to section 26 of the Act a copy of the report shall be forwarded to the Chairperson of the Parliamentary Criminal

There is evidence that before, during, and after the meeting between Ranger Shears and Paul Barbagallo at Cooktown Police Station, there were various telephone calls to and from officers of the Department of Environment and Heritage and other agencies. Gradually, a picture of the events that had transpired at Cape Melville on 11 November 1993 was pieced together - albeit that an accurate picture would take months to develop.

There is no evidence of any attempt to interfere with or frustrate any efforts by police to investigate offences committed by Paul Barbagallo and members of his group.

Wellard, as Regional Director, expressed concerns about the sufficiency of evidence and the lawfulness of Shears' actions, but took no step to influence the Fauna Squad's investigation or prosecution of Paul Barbagallo and Gordon Uechtriz.

On 24 November 1993, Pat Shears' contract of employment with the Department of Environment and Heritage was terminated prematurely. His termination was, at the very least, indirectly related to his actions on 11 November 1993 but strictly speaking, his early termination was of his own choosing.

From soon after the seizure a theory developed which postulates that the relationship between Paul Barbagallo and his brother, together with David Barbagallo's political connections, were the catalyst for a conspiracy within the Department of Environment and Heritage aimed at protecting Paul and David Barbagallo, which in the process, damned Pat Shears.

All the necessary ingredients for such a theory existed in abundance: information, misinformation, disinformation, and a host of personal animosities and political agendas.

On 12 January 1994, the Criminal Justice Commission received a letter from Mr Doug Slack MLA, Shadow Minister for Environment and Heritage. Mr Slack had attached a copy of an anonymous letter alleging "corrupt intervention" by Dr Emerson in this matter.

On 11 March 1994, after an initial assessment of the matters raised in Mr Slack's correspondence, the Criminal Justice Commission commenced its investigation of the Cape Melville Incident.

The suggestion that there has occurred any conspiracy, or improper interference, or influence, has been conclusively found to be entirely without foundation.

3.2 CHRONOLOGY

- 2 December 1985 Shears is first employed with the NPWS on specific projects.
- November 1989 Paul Barbagallo first visits Cape Melville.
- 20 December 1989 Shears commences continual employment (except for a three-week period between 30 June 1993 and 24 July 1993), as a ranger grade 2 with the NPWS, but not as a permanent employee.
- Late December 1989 Atkins is engaged under contract as the Director of the Media Unit within the Office of the Premier.
- January 1992 David Barbagallo is engaged under contract as Principal Private Secretary to the Premier of Queensland.
- November 1992 Paul Barbagallo visits Cape Melville.
- 1 July 1993 Stanton, who was then Senior Conservation Officer employed by the DEH returns to Cape Melville to further his field work. Shears accompanies him and together they formulate strategies to combat the unlawful removal of seeds of the foxtail palm.
- 3 September 1993 Shears ceases continual (temporary) employment as ranger grade 2 with the NPWS.
- 3 or
5 September 1993 An advertisement appears in *The Financial Review* for the position of Chief Executive Office of Distributed Systems Technology Centre Pty Ltd.
- 10 September 1993 Harris recommends, in writing, the appointment of Shears for a period of no more than three months.

- 13 September 1993 Shears is appointed to conduct surveillance at Cape Melville for a period of 14 weeks. Shears is briefed by Harris and Kelly.
- 17 September 1993 Shears and two Aboriginal rangers commence, 'Operation Probe' at Cape Melville.
- 27 September 1993 'Operation Probe' is completed and Shears returned to Cairns to debrief Harris.
- 10 October 1993 Shears returns to Cape Melville to conduct a quick surveillance of the area.
- 13 October 1993 Shears departs Cape Melville after completing surveillance of the area.
- 25 October 1993 'Operation Backtrack' is commenced. Shears attends at Cooktown police station and requests that police officers travel with him to Cape Melville the following day. The request is denied.
- 26 October 1993 Shears proceeded to Hopevale where he collects the two Aboriginal rangers and continues to Cape Melville.
- 29 October 1993 David Barbagallo is informally advised that, subject to ratification by the Board of Directors, his application for Chief Executive Officer of Distributed Systems Technology Centre Pty Ltd has been successful.
- 31 October 1993 Three visitors at Cape Melville complain to Shears that they heard semi-automatic rifle fire in the area.
- 1 November 1993 The Premier is advised by David Barbagallo of his interest in the position of Chief Executive Officer of Distributed Systems Technology Centre Pty Ltd.
- 3 November 1993 Shears and the two Aboriginal rangers locate an unauthorised track veering from the main track in the

direction of the foxtail palm habitat ("smugglers' track no. 3").

- 4 November 1993 Barricades and signpost are erected by Shears and his two assistants on "smugglers' track no. 3".
- 5 November 1993 David Barbagallo is interviewed by Board of Directors of Distributed Systems Technology Centre Pty Ltd and formally offered the position of Chief Executive Officer.
- 6 November 1993 Mario Barbagallo and acquaintances depart Cairns on the charter launch *Sagitta* bound for the Flinders Group.
- 7 November 1993 Two small Army patrols commence an exercise at Cape Melville for a period of seven days.
- 8 November 1993 David Barbagallo meets with representatives of Distributed Systems Technology Centre Pty Ltd and formally accepts the offer of appointment.
- 9 November 1993 The *Sagitta* arrives at Bathurst Bay late in the day.
- 9 November 1993 Paul Barbagallo and his party depart Innisfail for Cape Melville. They camp overnight at the Annan River, south of Cooktown.
- 9 November 1993 The Premier's personal secretary attends to bookings in relation to a trip to Starcke Station by David Barbagallo and Atkins.
- 10 November 1993 The *Sagitta* departs Bathurst Bay in the morning; not to return.
- 10 November 1993 Paul Barbagallo's party depart their campsite at the Annan River and drive to Cooktown to pick up supplies. They arrive at Bathurst Bay at about 5.00pm.