

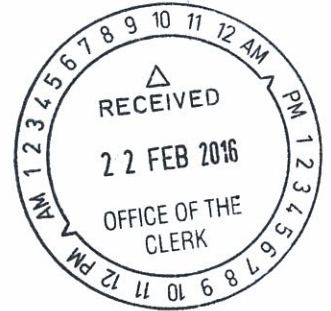


Premier of New South Wales
Minister for Western Sydney

Reference: A1492549

18 FEB 2016

Mr David Blunt
Clerk of the Parliaments
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Mr Blunt *David*

I am pleased to provide you with the enclosed NSW Government response to the Report of the inquiry into *The Progress of the Ombudsman's investigation "Operation Prospect"* by the General Purpose Standing Committee No. 4, which includes the Government's response to the Report of the Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect".

Yours sincerely

MIKE BAIRD MP
Premier

*Received at 10:00am on
Monday 22 February 2016*
[Signature]

**General Purpose Committee No. 4
Progress of the Ombudsman's investigation "Operation Prospect"**

Recommendation	Government response
<p>1. That the NSW Government implement the recommendations of the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect".</p>	<p>See the Government response to the six recommendations of the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect" (below).</p>
<p>2. That the NSW Government provide the Acting Ombudsman with the resources necessary to ensure the timely finalisation of Operation Prospect.</p>	<p>The Department of Premier and Cabinet (DPC) has funded the Ombudsman's Office for the conduct of Operation Prospect and ancillary costs, including legal representation for witnesses and persons of interest, since its commencement. All requests from the Ombudsman for additional funding for the inquiry have been met.</p>
<p>3. That the Acting Ombudsman provide a written report to General Purpose Standing Committee No. 4 by 1 November 2015 outlining the progress of Operation Prospect, including an anticipated timeframe for the completion of the investigation.</p>	<p>The Acting Ombudsman provided a written report on the progress of the inquiry to the Committee and to the Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission on 4 November 2015.</p> <p>The report addresses issues about the scope and conduct of Operation Prospect, including the current procedural fairness phase, and indicates that Operation Prospect can be finalised in the first half of 2016.</p>
<p>4. That the NSW Government repeal the provisions under which Operation Prospect and associated matters are being conducted by the Ombudsman's office.</p>	<p>The Government has committed to implementing the recommendations of the Tink Review of Police Oversight (August 2015) to establish a single agency responsible for police oversight (the Law Enforcement Conduct Commission (LECC)).</p> <p>After Operation Prospect is finalised in the first half of 2016, and the Tink reforms are implemented in the second half of 2016, the Ombudsman's oversight role in relation to NSW Police and the Crime Commission will be limited. However, the Ombudsman may maintain oversight in relation to:</p> <ul style="list-style-type: none"> • complaints concerning maladministration that do not relate to conduct that could be the subject of a complaint to the LECC; and • the oversight of preventative detention orders (PDOs) under the

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		<p>Terrorism (Police Powers) Act 2002.</p> <p>The relationships between the NSW Police Force, the Crime Commission, the LECC, the Inspector of the LECC and the Ombudsman will be addressed in the legislation implementing the Tink Review recommendations.</p>
5.	<p>That the NSW Government proactively develop a strategy about how it will act to resolve the issues involved in Operation Prospect, should the Ombudsman's inquiry into the police bugging matter miscarry.</p>	<p>The Government expects the Acting Ombudsman to complete the inquiry as outlined in his report to the Committee on 4 November 2015.</p>
6.	<p>That, should the inquiry into the leaking of confidential material miscarry, that aspect ought properly be the matter of an ordinary police investigation rather than any special form of inquiry.</p>	<p>The Government expects the Acting Ombudsman to complete the inquiry as outlined in his report to the Committee on 4 November 2015.</p>

Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect"

Recommendation	Government response
<p>1. That the NSW Government establish an open and independent inquiry to review the current system for granting surveillance device warrants, to:</p> <ul style="list-style-type: none"> • ensure legislative compliance • promote the integrity of the system • consider the establishment of an Office of Independent Counsel to provide independent legal representatives to test the veracity of surveillance device warrant applications by law enforcement agencies. 	<p>The Government notes that, in response to Recommendation 5 of Report No 7/55 of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, it agreed to review the current system for granting surveillance device warrants with the aim of strengthening integrity checks on affidavits submitted in support of warrants, after finalising the Department of Justice's statutory review of the <i>Surveillance Devices Act 2007</i>.</p> <p>The review will need to take into account the findings and recommendations of the Ombudsman's Report on Operation Prospect. Accordingly, the Department of Justice will conduct this review in the second half of 2016.</p>
<p>2. That the Premier of New South Wales and the Commissioner of Police publicly apologise to any persons who are found by the Ombudsman to have been inappropriately named on listening device and/or telephone intercept warrants obtained by Special Crimes and Internal Affairs.</p>	<p>The Government's response to any findings made by the Ombudsman in relation to Operation Prospect will be determined after the Government has received and considered the findings and recommendations contained in the Ombudsman's report.</p>
<p>3. That the NSW Government amend secrecy provisions to provide for an automatic exemption to non-disclosure directions for publication to a medical practitioner, psychologist, or counsellor for the purposes of medical or welfare assistance, in the following statutes:</p> <ul style="list-style-type: none"> • Ombudsman Act 1974 • Crime Commission Act 2012 • Police Integrity Commission Act 1996 • Independent Commission Against Corruption Act 1988. 	<p>The Government proposes to amend the non-disclosure provisions in the relevant legislation to permit witnesses to disclose information to a medical professional to the extent necessary for the provision of medical, psychiatric or psychological care, treatment or counselling.</p> <p>Similar provisions will also be included in the legislation establishing the new Law Enforcement Conduct Commission.</p>
<p>4. That the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission conduct an inquiry into the Ombudsman Act 1974, with particular emphasis on Part 3 regarding investigations and conciliations.</p>	<p>This recommendation is directed to the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission.</p>

Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect"

<p>5.</p>	<p>That the Premier of New South Wales and the Deputy Premier demonstrate to the community that Deputy Commissioners Kaldas and Burn can maintain a professional relationship, pending the Ombudsman's report expected in June 2015.</p>	<p>The Premier and the Deputy Premier have confidence in Deputy Commissioners Burn and Kaldas to serve the State of NSW in a professional manner pending the finalisation of the Ombudsman's report.</p>
<p>6.</p>	<p>That the NSW Government establish a single, well-resourced police oversight body that deals with complaints quickly, fairly and independently. That the Legislative Council Standing Committee on Law and Justice inquire into and report on the most appropriate structure to achieve this.</p>	<p>The Government has committed to implementing the recommendations of the Tink Review of Police Oversight (August 2015) to establish a single agency responsible for police oversight.</p>