

Operation Prospect – Second Progress Report by the Acting NSW Ombudsman 15 June 2016

Background

The Committee on the Office of the Ombudsman, the Police Integrity Commission and the Crime Commission has requested that I provide a progress report on the Ombudsman's investigation, Operation Prospect. At a meeting with the Committee on 3 March 2016, I undertook to provide the Committee with a report in June 2016.

This is the second progress report that I have provided to the NSW Parliament. The earlier progress report was provided on 4 November 2015 to the General Purpose Standing Committee No 4 of the Legislative Council ('the first progress report').

This progress report explains the work that has been undertaken by the Ombudsman's office in Operation Prospect since the first progress report, the work required to complete this investigation and the projected date of completion.

I earlier advised that my intention was to conclude this investigation with a special report to the Presiding Officer of each House of Parliament under section 31 of the *Ombudsman Act 1974* and section 161 of the *Police Act 1990*. I propose to recommend that the special report be made public, pursuant to section 31 of the Ombudsman Act. My firm expectation, as explained later in this report, is that the report to the Parliament will be provided in 2016, though I had earlier worked towards a completion date in the first half of 2016.

Additional reporting procedures in the Ombudsman Act and the Police Act must also be followed to complete this investigation, as explained in my first progress report. These include providing a report or the results of an investigation to agencies and individuals whose conduct has been investigated and to persons whose complaints were examined as part of the investigation.

Consultation with affected parties in the procedural fairness process

The first progress report explained that a procedural fairness process was underway in which 33 affected parties were being given an opportunity to comment on the relevant portions of the statements of provisional adverse findings, comment and recommendations. The provisional statements comprise 977 pages in total. At the date of the first progress report, 25 parties had made written submissions totalling 746 pages; and for that purpose the parties had inspected documents held by the Ombudsman's office over 49 days totalling 278 hours.

The first progress report anticipated that the procedural fairness phase would extend into December 2015. In fact it has extended into May 2016. The factors contributing to this extension are that document inspection by parties took longer than expected, some key witnesses provided supplemental submissions over some months, and some witnesses were granted an extension to provide their submissions as they had reasonable and significant grounds which prevented them from responding earlier.

Since the first progress report, the following has occurred:

- A further 11 written submissions have been received, totalling 403 pages. The last submission was received on 19 May 2016.
- Document inspection has been undertaken over 34 days totalling 200 hours. The last inspection day occurred on 6 May 2016.

This phase of Operation Prospect has now finished. There is no further document inspection scheduled in relation to matters arising from Operation Prospect's provisional statements issued between April and June 2015. I have not granted any further extension of time to any party to make a written submission in relation to those provisional statements. As noted in the first progress report, some parties framed their submission as an interim submission that may be supplemented by a further submission. I have not given any undertaking to accept further submissions or to facilitate consultation, apart from acknowledging that the analysis of submissions may result in new or additional issues arising in connection to those matters that require additional procedural fairness steps.

The Ombudsman's office continues to receive and to respond to letters and emails from interested parties concerning Operation Prospect. These have not raised any issues that need to be brought to the attention of the Committee in this report.

Additional hearings as part of Operation Prospect

The analysis of evidence and submissions (including those from affected parties) which has been conducted in preparing the report to Parliament on Operation Prospect has identified some issues that were either not sufficiently addressed or required further evidence and responses from witnesses. Accordingly, I determined it was necessary to conduct hearings on those issues. In my first progress report, I anticipated that it may be necessary to conduct further hearings or invite further evidence before finalising my views on the matters under investigation.

As a result, the following activity has taken place since the first progress report:

- *Hearings*: 19 formal hearings have been conducted in private under section 19 of the Ombudsman Act over 9 non-continuous days.¹ Counsel Assisting was appointed for each of the hearings, including a Senior Counsel from the private bar for some of the hearings. The last hearing was held on 3 June 2016. No further hearings are currently scheduled.
- *Interviews*: two persons were interviewed under section 18 of the Ombudsman Act, totalling approximately four hours.
- *Witnesses*: 21 persons appeared as witnesses (either at hearings or in interviews). Nine of the witnesses were represented by counsel, including Senior Counsel in some instances.
- *Provisional findings*: Counsel Assisting are preparing submissions that may include provisional findings of fact, findings and recommendations. Two of three submissions

¹ Based on a standard court day of 5 hours.

have been received and will soon be provided to affected parties as part of procedural fairness. The total number of affected parties is expected to be less than the number of persons who were witnesses in those additional hearings.

It is probable that many and perhaps all of the parties who are invited to participate in a procedural fairness process as a result of the additional hearings will do so by inspecting documents referred to in the Counsel Assisting submissions, and will make a written submission. This is an important process which affords those parties natural justice, and allows me to consider their submissions before reaching a final view on the matters under investigation.

Report preparation

The preparation of the report to Parliament on Operation Prospect is well underway. Considerable work has been undertaken since the earlier report to the Parliament, and all chapters of the report are at an advanced stage. I have indicated informally that it will be a lengthy report and anticipate it may comprise as many as 1,000 pages.

The preparation of the report has involved substantial revision of the provisional statements that were provided to affected parties. This is due to the inclusion of additional context to detail relevant events, as well as my consideration of the parties' submissions, where those submissions have raised additional considerations or express views counter to those in the provisional statements. As explained in the first progress report, two of the three objectives guiding Operation Prospect are that the investigation results must be thorough and comprehensive, and that fairness to the parties requires that all issues they raise are considered carefully.

The submissions refer extensively to documents that were inspected by the parties and to the transcripts of evidence. In preparing the report to Parliament on Operation Prospect, it has been frequently necessary for Ombudsman staff to conduct a detailed review of evidence among the source documents. As that evidence comprises more than 1 million pages and transcripts of hearings and interviews held over 87 days, this can be a time-consuming but necessary process.

Completion date

The Ombudsman's office is committed to completing this investigation and providing a report to the Parliament in 2016. This is likely to occur towards the end of this year (as late as November) because of the steps that must still be undertaken. As noted above, lengthy and detailed submissions from parties are currently being analysed; and fresh submissions are likely to be received following the hearings conducted in May-June 2016. Extensive reference is made throughout the draft report to source documents that are checked and re-checked to ensure accuracy and balance. The production stage of preparing the report for publication may also take as long as four weeks following its completion.

The Ombudsman's office is keenly aware that interested parties, Government, and sections of the media and the community anxiously await the finalisation of Operation Prospect. We will continue striving to meet that expectation, consistently with the investigation being thorough, fair and impartial.