

Select Committee on the Conduct and Progress of the  
Ombudsman's Inquiry "Operation Prospect"

# **The conduct and progress of the Ombudsman's inquiry "Operation Prospect"**

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## How to contact the committee

Members of the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect" can be contacted through the committee secretariat. Written correspondence and enquiries should be directed to:

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"Operation Prospect"

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## Terms of reference

1. That a select committee be established to inquire into and report on the conduct and progress of the Ombudsman's Inquiry titled Operation Prospect, and in particular:
  - (a) the use by the Ombudsman of secrecy provisions contained in sections 19A, 19B and 19C of the Ombudsman Act 1974
  - (b) the impact on the NSW Police Force of the Ombudsman's Inquiry titled Operation Prospect
  - (c) consideration of Police and NSW Crime Commission Operation Mascot and Police Integrity Commission Operation Florida and Police Strike Force Emblems, and
  - (d) any other related matter.
2. That the House makes clear its understanding that a statutory secrecy provision in statute does not affect the power of the House or of its committees to conduct inquiries and to require answers to lawful questions unless the provision alters the law of parliamentary privilege by express words, and that this view is supported by the following authorities:
  - (a) New South Wales Legislative Council Practice, at pages 512-516
  - (b) Odgers' Australian Senate Practice, 13th edition, at page 66
  - (c) Mr Bret Walker, SC, in two advices from 2000 and 2012 published by General Purpose Standing Committee No. 4 in report No. 26 entitled "Budget Estimates 2012-2013", tabled in the House on 19 February 2013, and
  - (d) the Solicitor General and Ms Mitchelmore of counsel in a legal opinion provided directly to the Government on 9 April 2014 and tabled in the House on 6 May 2014.
3. That the House further indicates that the statutory secrecy provisions in the Ombudsman Act 1974 and other relevant legislation do not affect the powers of the select committee to require answers to lawful questions or impede in any way the conduct of this inquiry.
4. That the committee report by 25 February 2015.

These terms of reference were referred to the Committee by the Legislative Council on 12 November 2014.<sup>1</sup>

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<sup>1</sup> *Minutes*, Legislative Council, 12 November 2014, p 277.

## Committee membership

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<b>The Hon Robert Borsak MLC</b>	Shooters and Fishers Party	<i>Chair</i>
<b>Mr David Shoebridge MLC</b>	The Greens	<i>Deputy Chair</i>
<b>The Hon Niall Blair MLC</b>	The Nationals	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Natasha Maclaren-Jones MLC</b>	Liberal Party	
<b>The Hon Adam Searle MLC</b>	Australian Labor Party	
<b>The Hon Lynda Voltz MLC</b>	Australian Labor Party	

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## Chair's foreword

In 2003, Strike Force Emblems was established in response to allegations that warrants were improperly obtained during Operation Mascot, an investigation into police corruption that commenced in the late 1990's. The warrants authorised a large number of people, mostly police officers, to have their private conversations 'bugged'. This included the controversial 'Bell warrant' containing 114 names. The Emblems investigators believed that false information may have been used to obtain the warrants but their investigation was stonewalled by a lack of co-operation from the NSW Crime Commission. Despite their attempts to uncover the truth, more than a decade later the issues remain unresolved.

It wasn't until 2012, after further complaints and media interest, that these matters were finally referred to the Ombudsman. Although I was personally assured by the government that the Ombudsman would report within six months, it is now February 2015 and his investigation has not concluded. Instead the Ombudsman's inquiry has been criticised by some of its participants for taking too long, being held in 'secret' and for focusing too much on the 'whistle-blowers' who leaked documents and brought these serious concerns to light.

We recognise that the Ombudsman is undertaking a comprehensive investigation, however we believe that he should not have incorporated both the legality of warrants and the leaking of information into a single inquiry. It has meant that some inquiry participants were considered as both complainants and perpetrators and it has also delayed the completion of the investigation.

While the committee eagerly awaits the outcome of the Ombudsman's investigation, our inquiry has made several important findings, including that the controversial 'Bell warrant' issued in September 2000 was improperly obtained. Fundamentally, its supporting affidavit did not justify 46 out of 114 people named on the warrant having their private conversations listened to or recorded. Given the serious concerns this raises about breaches of people's privacy, we have recommended an independent review of the system for granting surveillance device warrants.

We have every reason to believe that other warrants obtained during Operation Mascot were inappropriately obtained, particularly in light of evidence that Deputy Commissioner Kaldas was the subject of 80 listening device warrants over a two year period. Essentially, nothing put before our inquiry has been able to justify such intense covert surveillance of Mr Kaldas. He, along with the journalist Mr Steven Barrett, deserve an apology.

Our inquiry has highlighted deep flaws in the system for investigating police complaints in NSW, where multiple agencies with insufficient independence from the NSW Police Force are responsible for police oversight. We have therefore recommended that a single well-resourced police oversight body be established, and that the Legislative Council Standing Committee on Law and Justice inquire into the most appropriate structure to achieve this in the next Parliament.

The police hierarchy has failed to resolve the serious issues identified in the Emblems report, even though they involve two of the state's top police officers. This inaction has come at a high personal and professional cost to those involved. It has also undermined public confidence in the NSW Police Force. Frankly, letting these matters fester for over a decade has done nothing but make a bad situation worse. While both Deputy Commissioners have assured the committee of their professionalism, it is up to the

Minister for Police and Emergency Services and Premier to ensure that these issues do not negatively affect the NSW Police Force and their duties.

Finally, I would like to thank those individuals who have fought to resolve these issues, including Mr Kaldas and Mr Barrett. Your persistence and courage is admirable. I also thank the Emblems investigators who have stood tall in the face of criticism, only ever wanting to get to the heart of this matter.

I express my gratitude to all inquiry participants and fellow committee members. While we have faced our own challenges, procedurally and in gaining access to critical documents from the NSW Government, this inquiry has been instrumental in publicly airing matters that have been kept in the dark for too long. I also thank the secretariat for their hardwork and professionalism in supporting the committee.



Hon Robert Borsak MLC  
**Committee Chair**

## Findings

- Finding 1** 40  
That almost all of the names on listening device warrant 266/2000 were included because they were suspected of engaging in or knowing about corrupt conduct and not because they were attending a function.
- Finding 2** 41  
That in April 2002 the then Commissioner of Police, Peter Ryan, provided an erroneous explanation to the public through the media as to why such a large number of names were included on listening device warrant 266/2000.
- Finding 3** 41  
That the NSW Police Force never corrected the record by publicly acknowledging the erroneous explanation provided by the then Commissioner of Police, Peter Ryan.
- Finding 4** 45  
That the application and supporting affidavit for listening device warrant 266/2000 did not provide the necessary facts and grounds to justify 46 out of the 114 people having their private conversations listened to or recorded.
- Finding 5** 65  
That on the evidence before this inquiry there is a compelling case to make a specific apology to Mr Kaldas, which we now do, and we call on the NSW Government to do the same.
- Finding 6** 65  
That on the evidence before this inquiry there is a compelling case to make a specific apology to Mr Barrett, which we now do, and we call on the NSW Government to do the same.
- Finding 7** 83  
That the failure of the then New South Wales Crime Commissioner to co-operate with Strike Force Emblems prevented the effective completion of that investigation.
- Finding 8** 83  
That the failure of respective commissioners of police to demonstrate leadership by overcoming the barriers confronted by Strike Force Emblems has compounded the grievances of the complainants.
- Finding 9** 83  
That the committee commends the members of Strike Force Emblems for conducting a thorough and professional investigation of serious allegations regarding police misconduct, including their pursuit of material necessary to complete their investigation.
- Finding 10** 110  
That the NSW Ombudsman should not have incorporated both the legality of warrants and the leaking of confidential information into a single inquiry. Combining these two issues has resulted in participants being considered both complainants and perpetrators, and has delayed the completion of the inquiry.

## Summary of recommendations

### Recommendation 1

46

That the NSW Government establish an open and independent inquiry to review the current system for granting surveillance device warrants, to:

- 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.

### Recommendation 2

91

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.

### Recommendation 3

99

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:

- *Ombudsman Act 1974*
- *Crime Commission Act 2012*
- *Police Integrity Commission Act 1996*
- *Independent Commission Against Corruption Act 1988.*

### Recommendation 4

110

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.

### Recommendation 5

114

That the Premier of New South Wales and the Minister for Police and Emergency Services demonstrate to the community that Deputy Commissioners Kaldas and Burn can maintain a professional relationship, pending the Ombudsman's report expected in June 2015.

### Recommendation 6

119

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.



## Chapter 1 Introduction

This chapter provides an overview of the establishment of the committee and the conduct of the inquiry as well as an outline of the structure of this report.

### Terms of reference

- 1.1 On 12 November 2014 a motion was moved by the Hon Robert Borsak MLC and passed by the Legislative Council for the establishment of a select committee to inquire into the conduct and progress of the Ombudsman's inquiry 'Operation Prospect'.<sup>2</sup>
- 1.2 The full terms of reference are set out on page iv. The Legislative Council resolved that the committee report by 25 February 2015.

### Conduct of the Inquiry

#### Submissions

- 1.3 The committee invited submissions through advertisements in the *Sydney Morning Herald* and *The Daily Telegraph*, and through a press release distributed via *Media Monitors*. In addition, the committee wrote to key stakeholders inviting them to make a submission to the inquiry. The closing date for submissions was 12 January 2015, however, the committee continued to accept submissions after this date.
- 1.4 The committee received 28 submissions to this inquiry and five supplementary submissions. The full list of submissions is set out in Appendix 1.

#### Hearings

- 1.5 The committee held five public hearings on 29 and 30 January and 3, 4 and 10 February 2015, at which 20 witnesses appeared. A full list of witnesses who appeared at hearings is included in Appendix 2. Transcripts of the hearings, including *in camera* hearings that have since been published, are available on the committee's website [www.parliament.nsw.gov.au/conductandprogress](http://www.parliament.nsw.gov.au/conductandprogress).
- 1.6 The committee would like to thank inquiry participants for their contribution to the inquiry, many of whom have been trying to resolve this issue for more than a decade.

### Seeking information by utilising standing orders 52 and 53

- 1.7 Soon after the establishment of the committee, the committee Chair, the Hon Robert Borsak MLC, sought to use the procedures of the Legislative Council to gain access to certain documents relevant to the terms of reference.

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<sup>2</sup> *Minutes*, Legislative Council, 12 November 2014, pp 273-275.

- 1.8** On 20 November 2014 the House made an order under standing order 52 for the Strike Force Emblems report and related attachments as well as an order under standing order 53 for a number of specific documents relating to warrants, affidavits and other court documents between 4 April 2000 and 14 September 2000.<sup>3</sup>
- 1.9** Under standing order 52, commonly referred to as 'orders for papers', the House may order the production of documents held by the government. Documents concerning the administration of justice must be requested under standing order 53 in the form of an address to the Governor.
- 1.10** The standing order 52 order was declined in correspondence from the General Counsel to the Department of Premier and Cabinet, dated 4 December 2014, on the basis of advice from the Crown Solicitor that the Emblems report is a document 'concerning the administration of justice' and should be sought by way of an address to the Governor pursuant to standing order 53.<sup>4</sup>
- 1.11** The standing order 53 order was declined on 3 December 2014 when the President received a message from His Excellency the Honourable David Hurley AC DSC, declining to produce the documents on advice from the Executive Council.<sup>5</sup>
- 1.12** While over the course of the inquiry the committee has received many of the documents that the executive has refused to provide, there are still a number of documents outstanding that would have assisted the committee with its endeavour.
- 1.13** Therefore, on 5 February 2015 the committee resolved to request that the Executive Council reconsider its previous advice to the Governor in light of the evidence received to date by the committee, and lodge with the Clerk the documents sought by the House under standing order 53 on 20 November 2014.<sup>6</sup> As at the date of the committee's deliberative meeting to agree to this report, the committee has not yet received a reply to this correspondence.
- 1.14** We note that the NSW Government strongly opposed the establishment of this committee. While this opposition has not assisted us, it is a fact that the material uncovered by the committee and the matters addressed in this report are of significant public concern and will need to be addressed by the executive, despite its initial hostility to this inquiry.

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<sup>3</sup> *Hansard*, Legislative Council, 20 November 2014, pp 363-364; pp352-353 (Robert Borsak).

<sup>4</sup> Return to order for papers, 4 December 2014, Report of Police Strike Force Emblems, General Counsel of the Department of Premier and Cabinet, [http://www.parliament.nsw.gov.au/prod/lc/lctabdoc.nsf/cccc870c6126b1b6ca2571ee000318a4/ec528e637cf9fcbeca257da4007b3c38/\\$FILE/Letter%20-%20Report%20of%20Police%20Strike%20Force%20Emblems%204%20December%202014.pdf](http://www.parliament.nsw.gov.au/prod/lc/lctabdoc.nsf/cccc870c6126b1b6ca2571ee000318a4/ec528e637cf9fcbeca257da4007b3c38/$FILE/Letter%20-%20Report%20of%20Police%20Strike%20Force%20Emblems%204%20December%202014.pdf).

<sup>5</sup> Return to address to the Governor, 4 December 2014, Papers relating to the administration of justice, General Counsel of the Department of Premier and Cabinet, [http://www.parliament.nsw.gov.au/prod/lc/lctabdoc.nsf/cccc870c6126b1b6ca2571ee000318a4/d0161ec72d879d4aca257da400275e6e?OpenDocument&Highlight=0,address\\*](http://www.parliament.nsw.gov.au/prod/lc/lctabdoc.nsf/cccc870c6126b1b6ca2571ee000318a4/d0161ec72d879d4aca257da400275e6e?OpenDocument&Highlight=0,address*).

<sup>6</sup> Correspondence from Chair to the Hon Mike Baird MP, Premier, 5 February 2015.

## Statutory secrecy and the powers of the Legislative Council

- 1.15** Given the subject matter of this inquiry, the committee was conscious that much of the information it would receive via submissions or oral evidence would be covered by statutory secrecy provisions. Such provisions aim to prohibit the disclosure of particular information by making such disclosure a criminal offence. The position of the Legislative Council, the same as the Australian Senate and other Houses, is that these provisions do not restrict the powers of the Council to ask and compel questions that disclose information covered by these provisions except by express enactment.<sup>7</sup> However, until recently, the executive has rejected this position based on Crown Solicitors advice since at least 1988, which has advised government agencies against disclosing information captured by secrecy provisions to parliamentary committees.<sup>8</sup>
- 1.16** Indeed at a Budget Estimates hearing for the Police and Emergency Services portfolio on 11 October 2012 where questions were asked about Strike Force Emblems, Ms Catherine Burn, Deputy Commissioner APM, Specialist Operations, NSW Police Force, declined to answer on the grounds that it might be in breach of statutory secrecy provisions in the *Crime Commission Act 2012*.<sup>9</sup>
- 1.17** Following that hearing, the Clerk obtained the advice of Mr Bret Walker SC, who confirmed that a person bound by secrecy provisions in the *Crime Commission Act 2012*, *Police Integrity Commission Act 1996* or any relevant provisions regarding confidentiality in the *Police Act 1990*, would not be in breach of those provisions if the person disclosed information in answer to questioning by a committee of the Legislative Council, thus confirming earlier advice he had given on this subject in relation to a different statute in 2000.<sup>10</sup>
- 1.18** In this instance the committee did not press the question, although the Chair made it clear that this decision was made notwithstanding the power of the committee to compel answers to such questions. By this stage the Premier had announced that the Ombudsman was to commence his review of Emblems and so the committee resolved to defer consideration of the matter until the completion of his review.
- 1.19** Recent legal opinion provided by the NSW Solicitor General and Ms Mitchelmore of Counsel to the NSW Department of Premier and Cabinet indicates a move away from earlier Crown Solicitors advice which rejected the position of the Legislative Council. The opinion observed that it is reasonably clear that authorities such as *Odgers Senate Practice*, the Commonwealth Attorney General and Solicitor General, and Mr Bret Walker SC take the view that statutory non-disclosure provisions could only affect the powers of parliament by express reference or necessary implication. The NSW Solicitor General went on to state that ‘We are inclined to

<sup>7</sup> Legislative Council, General Purpose Standing Committee No. 4, *Budget Estimates 2012-2013*, (2012), pp 40-41.

<sup>8</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Practice*, (Federation Press, 2008) p 513.

<sup>9</sup> General Purpose Standing Committee No. 4, NSW *Legislative Council, Budget Estimates 2012/2013*, Report 26 (2012) pp 1-2. The committee’s report includes as an appendix two legal advices from Bret Walker SC, dated 24 October 2012 and 2 November 2000.

<sup>10</sup> Mr Bret Walker SC, Opinion, Legislative Council: Parliamentary privilege and witnesses before General Purpose Standing Committee No. 4, 2 November 2000.

agree that this view accords with the role of Parliament a system of responsible and representative government, although the matter can hardly be free from doubt'.<sup>11</sup>

**1.20** At the commencement of the current inquiry, the committee resolved to seek advice from Mr Bret Walker SC in relation to a number of issues specific to this particular inquiry, including:

- statutory secrecy provisions in the *Ombudsman Act 1974* (including amendments to that Act and related Acts that were enacted in late 2012)
- the voluntary provision of information by persons in response to a call for a submissions (as opposed to the answering of lawful questions by a sworn or affirmed witness at a hearing)
- the apparent desire of some potential witnesses to give their evidence under the compulsion of a summons
- the communication of information to staff in the committee secretariat and whether there can be any doubt that such communications would be protected in the same way as submissions received and evidence provided at a hearing
- the circumstances in which a witness before a committee could in effect exercise a right to silence on the grounds that to answer a question may have a deleterious impact upon future legal proceedings or on the grounds of self-incrimination.<sup>12</sup>

**1.21** In his advice, Mr Walker confirmed his view of the relevant parliamentary law and statutory interpretation remains the same as it was in 2000 and 2012 and that there is nothing specific to the Ombudsman's Act that would suggest otherwise:

It remains the case that there are no words or necessary implication to be seen in these statutory provisions that amount to the abrogation by Parliament of this aspect of parliamentary privilege – meaning, in this case, that aspects of the power of the democratic institution to investigate matters in the discharge of its function in our system of responsible government.<sup>13</sup>

**1.22** The 2015 advice provided by Mr Walker is attached at Appendix 5.

**1.23** The committee has received a large volume of information in submissions and from witnesses that without the protection of parliamentary privilege would breach secrecy provisions.

**1.24** In his correspondence of 28 January 2015, the Ombudsman advised that he would make a claim of public interest immunity in relation to documents and evidence that would disclose or tend to disclose the identity of persons who have provided evidence to his inquiry or that would disclose the methods that have been pursued in Operation Prospect.<sup>14</sup>

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<sup>11</sup> The Solicitor General (Mr Serton SC) and Ms Mitchelmore, 'Question of Powers of Legislative Council to compel the Production of Documents from Executive', 9 April 2014, p 8.

<sup>12</sup> Correspondence from the Clerk of the Parliaments to Mr Walker SC, 4 December 2014.

<sup>13</sup> Mr Bret Walker SC, Opinion, Legislative Council's Inquiry on Ombudsman's "Operation Prospect," 14 January 2015.

<sup>14</sup> Correspondence from the Ombudsman to the Chair, 28 January 2015, p 3.

- 1.25 The committee is satisfied with the detailed written information, oral evidence and answers to questions on notice provided by the Ombudsman during our inquiry and is pleased to note that the Ombudsman did not make a claim of public interest immunity in response to any specific questions put to him by the committee, although the committee did agree to hear some of his evidence *in camera*.
- 1.26 We therefore note the acceptance by the executive and the Ombudsman of the power of the Legislative Council to seek information that would otherwise be covered by statutory secrecy provisions. This inquiry is one of the most significant in any Australian parliamentary jurisdiction in its use of committee powers to obtain evidence under privilege that is subject to statutory secrecy provisions. The Legislative Council will not accept attempts by future state governments and their agencies to hide behind statutory secrecy when the Council or its committees are seeking to comply with the key role of scrutiny of the executive.

### Summoning witnesses

- 1.27 In his advice dated 14 January 2014, Mr Bret Walker SC stated that he strongly favoured the service of a summons if the committee was substantively questioning a witness on matters they might otherwise not be permitted to answer. For this reason the committee resolved to summons all witnesses appearing before the committee. A total of 22 summonses were issued, which includes the re-issuing of summonses for the second appearances of Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force and Ms Burn.
- 1.28 A decision to issue a summons is unusual in the committee context and was suggested due to the particular circumstances of this inquiry, that is, the need to make it abundantly clear to witnesses that the committee can compel answers to questions that may reveal information covered by statutory secrecy provisions. It is not an appropriate approach for most other inquiries.

### Legal representation

- 1.29 In another departure from our usual procedures, almost all of the witnesses who appeared at the hearings were accompanied by their legal representatives. This meant the lawyers were permitted to accompany their clients but were not sworn in or allowed to address the committee. In light of the sensitive nature of the inquiry terms of reference and the fact that many of these witnesses appearing before us had been legally represented at the Ombudsman's inquiry, the committee agreed to all requests made in this regard.

### Mental health and welfare issues

- 1.30 Given the subject matter of the inquiry, the committee wanted to ensure witnesses and submission authors would be appropriately supported during the inquiry process. At its first meeting on 24 November 2014 the committee resolved that the secretariat confer with the Police Association of New South Wales with a view to developing a mental health protocol for the purposes of the inquiry.

- 1.31** At this meeting the Association raised concerns that provisions in the *Ombudsman Act 1974*, the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996* precluded NSW Police Force officers from revealing information provided under statutory secrecy provisions to mental health professionals and that this has deterred many officers from receiving the appropriate help in relation to the Ombudsman's inquiry. The Association also questioned the confidentiality of the NSW Police Force Employee Assistance Program (EAP).
- 1.32** The committee subsequently resolved to write to the NSW Ombudsman, the Crime Commission, the Police Integrity Commission and the NSW Police Force for advice regarding these concerns.
- 1.33** The responses to this correspondence indicated a general consensus among the agencies that seeking support from a mental health professional constituted a legitimate reason to disclose matters covered under statutory secrecy provisions. The committee was therefore reassured that the NSW Police Force and the oversight bodies would not support taking punitive action against individuals who disclosed confidential information for the purpose of obtaining medical treatment. The committee was also confident that the confidentiality provisions relevant to the NSW Police Force EAP were appropriate. This correspondence can be found on the inquiry web page. This matter is the subject of further discussion and a recommendation following paragraph 6.33.
- 1.34** The committee therefore agreed on an appropriate response where an inquiry participant might raise a welfare/mental health issue. This response incorporated elements of a mental health protocol previously developed by the Department of the Legislative Council.

## Terminology

- 1.35** Since the Wood Royal Commission, various titles have been used to refer to the NSW Police. Throughout this report the current title: 'NSW Police Force' is used, notwithstanding the period of time under discussion.

## Report structure

- 1.36** **Chapter 2** is comprised of a timeline of key issues and events to provide context to the current select committee and Ombudsman inquiries. It begins with a discussion of the Wood Royal Commission into the New South Wales Police Service and concludes with an outline of the ongoing NSW Ombudsman inquiry 'Operation Prospect'.
- 1.37** **Chapter 3** explores the integrity of a number of listening device warrants obtained during Operation Mascot, an issue at the heart of this inquiry. The chapter specifically focuses on a listening device warrant issued by Justice Bell in September 2000 along with its supporting affidavit.
- 1.38** The genesis of the Emblems strike force and report is the theme of **chapter 4**. It examines the progress of the 'finalised' report through the police hierarchy and the rationale for withholding key NSW Crime Commission documents from the investigators.

- 1.39** **Chapter 5** discusses the personal and professional impact of the events associated with Operation Mascot both on those inappropriately named on warrants, as well as the people who have been accused of improper or illegal actions in relation to the warrants.
- 1.40** **Chapter 6** examines the current Ombudsman inquiry 'Operation Prospect' and details the various complaints that have been made regarding its conduct and progress including the length of time Operation Prospect has taken, that its hearings have been conducted in secret, as well as a perceived focus on the leaking of information instead of the allegations of illegally obtained warrants.
- 1.41** The final chapter, **chapter 7** considers two key themes of the inquiry relevant to a post Operation Prospect future: issues concerning the leadership of the NSW Police Force; and the efficacy of existing police oversight arrangements.



## Chapter 2 Background

... the genesis of this issue ... begins with the royal commission. It moves to Operation Mascot-Florida and the arrest, charge, conviction and imprisonment of a number of people, including police officers ... My understanding is that affidavits were sworn, warrants were issued and, as I say, the rest is but history.<sup>15</sup>

This chapter comprises a timeline of key issues and events to provide context to the current select committee and Ombudsman inquiries. It begins with a discussion of the Wood Royal Commission into the New South Wales Police Service and concludes with an outline of the ongoing NSW Ombudsman inquiry 'Operation Prospect'.

### Wood Royal Commission

- 2.1 The Royal Commission into the New South Wales Police Service was established on 13 May 1994 with Justice the Hon James Wood appointed as Commissioner. The Royal Commission was tasked with investigating the nature and extent of corruption in the NSW Police Force, and other related matters.<sup>16</sup>
- 2.2 It examined allegations made by a former NSW Police Force officer that senior police had 'cleared the way' for corrupt officers to resign rather than be prosecuted and tarnish the name of the force. The Royal Commission held 419 hearings, examined 856 witnesses and received 226 public submissions.<sup>17</sup>
- 2.3 Interim reports were issued in February and November 1996, with the final report released in May 1997. The Royal Commission found that corruption in the NSW Police Force was widespread and long-standing in origin and made a raft of recommendations to improve the structure and integrity of the force. One of the Royal Commission's recommendations in its first interim report was the establishment of a permanent commission to investigate serious police misconduct. Pursuant to this recommendation, the Police Integrity Commission was established and came into effect in January 1997.<sup>18</sup>

### Special Crime and Internal Affairs

- 2.4 In 1997, the NSW Police Force underwent a major restructure in response to the findings and recommendations of the Royal Commission. The Office of Internal Affairs, which had

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<sup>15</sup> Evidence, Mr Ken Moroney AO APM, Former Commissioner of Police, NSW Police Force, 4 February 2015, p 76.

<sup>16</sup> NSW State Records, *Royal Commission into the New South Wales Police Service [Wood Royal Commission]*, <http://search.records.nsw.gov.au/agencies/6566;jsessionid=9269B2C8CDA24CCDE4CBF75D72B68296>.

<sup>17</sup> NSW State Records, *Royal Commission into the New South Wales Police Service [Wood Royal Commission]*, <http://search.records.nsw.gov.au/agencies/6566;jsessionid=9269B2C8CDA24CCDE4CBF75D72B68296>.

<sup>18</sup> NSW State Records, *Royal Commission into the New South Wales Police Service [Wood Royal Commission]*, <http://search.records.nsw.gov.au/agencies/6566;jsessionid=9269B2C8CDA24CCDE4CBF75D72B68296>.

previously consisted of the Corruption Prevention Unit, Internal Affairs Administration, and the Customer Assistance Unit, was restructured in 1997-98 and increased its focus on police corruption. The office utilised integrity testing methods employed by the Royal Commission, and was aided by a corruption hotline, an internal witness program, and information supplied by NSW Police Force officers.<sup>19</sup>

- 2.5** On 1 June 1999 the then Commissioner of Police, Mr Peter Ryan, approved the establishment of a permanent contingent in the Office of Internal Affairs to investigate and combat organised crime and related police corruption. This unit became known as the Special Crime Unit.<sup>20</sup> The Office of Internal Affairs was further restructured in December 1999 and renamed Special Crime and Internal Affairs.<sup>21</sup>
- 2.6** The commander in charge of Special Crime and Internal Affairs was Assistant Commissioner Mal Brammer. The commander of the Special Crime Unit was Superintendent John Dolan. Mr Dolan reported to Mr Brammer. Ms Catherine Burn APM, now Deputy Commissioner, Specialist Operations, NSW Police Force, was one of three Inspectors in the Special Crime Unit and reported to Mr Dolan.<sup>22</sup>

## Operations Mascot, Mascot II and Florida

- 2.7** In mid-December 1998 a NSW police officer volunteered information to the New South Wales Crime Commission (hereafter Crime Commission) about 'police corruption and criminal activity involving himself and a number of serving and former NSW police officers over a lengthy period'.<sup>23</sup> The corrupt officer received the codenames 'Sea' (his Crime Commission codename) and 'M5' (his Police Integrity Commission codename). For the remainder of this report, the officer will be referred to as 'M5'.
- 2.8** The Crime Commission commenced operation on 20 January 1986 and is currently established under the *Crime Commission Act 2012*.<sup>24</sup> Its purpose is to reduce the incidence of organised and other serious crime and ensure that persons involved in criminal activity do not retain the proceeds or benefits of their crimes.<sup>25</sup>
- 2.9** In response to the allegations by M5 a reference was granted to the Crime Commission on 9 February 1999 to conduct an investigation of serious drug offences, money laundering, and

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<sup>19</sup> NSW State Records, *Office of Internal Affairs (c.1994-1999) / Special Crime and Internal Affairs Command (1999-2003) [New South Wales Police Service]*, <http://search.records.nsw.gov.au/agencies/5076>.

<sup>20</sup> Memorandum, Mr Peter Ryan, Former Commissioner of Police, NSW Police Force, *Special Crime Unit, Internal Affairs and Special Crime*, 23 December 1999.

<sup>21</sup> NSW State Records, *Office of Internal Affairs (c.1994-1999) / Special Crime and Internal Affairs Command (1999-2003) [New South Wales Police Service]*, <http://search.records.nsw.gov.au/agencies/5076>.

<sup>22</sup> Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 30 January 2015, p 57.

<sup>23</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, p 2.

<sup>24</sup> New South Wales Crime Commission, *Home*, (5 November 2012), <http://www.crimecommission.nsw.gov.au/>.

<sup>25</sup> New South Wales Crime Commission, *Annual Report 2013/14*, p 3.

conspiracies to pervert the course of justice.<sup>26</sup> The reference was codenamed 'Mascot'. Officers from Special Crime and Internal Affairs were assigned to work with the NSW Crime Commission on the investigation.<sup>27</sup>

- 2.10** The reference named a total of 19 persons who were associates of M5 and whom he identified as being involved in, or having knowledge of, corruption. From January 1999 until late 2001, M5 was covertly deployed to prompt and record discussions with current and former officers to corroborate some of his original disclosures, and capture any additional evidence that persons or their associates may have engaged, may be engaging, or may be about to engage, in the specified criminal activities.<sup>28</sup>
- 2.11** In July 2000 the Police Integrity Commission joined the Mascot investigations, with the Commissioners of the NSW Police Force, the Crime Commission and the Police Integrity Commission signing a Memorandum of Understanding.<sup>29</sup>
- 2.12** On 9 November 2000, a further reference, dubbed 'Mascot II' was referred to the Crime Commission.<sup>30</sup> Under Mascot II, the list of suspected persons was broadened significantly to 'not be limited to the persons named in the original Reference but extend to all police (former & serving) suspected of engaging in the offences the subject of the Reference'. It also included the additional offences of larceny, corruption and corruptly receiving a benefit.<sup>31</sup>
- 2.13** On 8 October 2001, the investigation entered its 'overt' stage, with the Police Integrity Commission commencing public hearings. The Police Integrity Commission's involvement in the investigation became known as 'Operation Florida' and it held hearings for 14 months which included 78 days of public hearings and a number of private hearings.<sup>32</sup>
- 2.14** The evidence presented in the public hearings revealed a range of corrupt conduct on the part of police officers, including:
- soliciting and receiving bribes from drug dealers
  - organising or 'greenlighting' drug trafficking
  - stealing cash and property
  - reducing charges in return for payment
  - perverting the course of justice
  - assaulting, 'verballing' or 'loading' suspects

<sup>26</sup> New South Wales Crime Commission, *Annual Report 2000/01*, p 15; NSW Crime Commission, *Annual Report 2002/03*, p 12.

<sup>27</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, p 2.

<sup>28</sup> Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 12.

<sup>29</sup> Report to Parliament: Operation Florida – Volume 1, *Police Integrity Commission*, June 2004, p 2.

<sup>30</sup> NSW Crime Commission, *Annual Report 2000/01*, p 15; NSW Crime Commission, *Annual Report 2002/03*, p 12.

<sup>31</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 13.

<sup>32</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, p i.

- organising or 'greenlighting' break and enter offences.<sup>33</sup>

**2.15** The conduct was committed by officers attached to a number of different commands within the NSW Police Force spanning a period from the late 1980s until 2001. In total, the investigation identified 418 incidents of alleged police corruption or misconduct, 29 of which were examined in the hearings.<sup>34</sup> The Police Integrity Commission provided its report to Parliament in June 2004. The report was in two volumes and divided into eight different inquiry segments.

**2.16** Of particular note was the segment concerning the conduct of detectives from the Northern Beaches of Sydney, particularly the Manly/Davidson Local Area Command. Corrupt conduct from this command arose primarily from dealings between drug offenders and police, and featured theft by police while executing search warrants, as well as the reduction of charges in return for money and/or drugs.<sup>35</sup>

**2.17** The segment featured a significant amount of electronic evidence, including listening device and telephone intercept recordings, and was assisted by two covert operatives, the corrupt officer M5 and a civilian drug dealer. As a result of this investigation, six (now former) police officers were found to have engaged in police misconduct and were criminally prosecuted, receiving custodial sentences.<sup>36</sup>

### **Operation Volta**

**2.18** On 4 July 2002 the then Commissioner of Police, Mr Ken Moroney AO APM, authorised the establishment of a new Special Crime and Internal Affairs taskforce, codenamed Volta, to deal with 199 medium to low risk allegations that were not finalised by the Mascot/Florida investigation.<sup>37</sup>

**2.19** The operation and recommendations of this taskforce were never publicly released. However, in May 2013, in an answer to a question taken on notice in the Legislative Council, it was reported that Taskforce Volta ran for approximately 12 months, with each matter being investigated as a complaint under the *Police Act 1990*.<sup>38</sup> It has never been explained how such a large number of outstanding allegations were resolved by a single taskforce in just 12 months.

### **Listening Device warrant 266/2000 (the Bell warrant) reported in the media**

**2.20** On 13 April 2002, the *Sydney Morning Herald* published an article regarding the listening device warrant 266/2000. The warrant was issued on 14 September 2000 and obtained as part of the Mascot/Florida investigation. It was granted by Justice Virginia Bell of the Supreme Court

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<sup>33</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, p i.

<sup>34</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, p ii.

<sup>35</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, p ii.

<sup>36</sup> Police Integrity Commission, *Report to Parliament: Operation Florida – Volume 1*, June 2004, pp ii-iii.

<sup>37</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 13.

<sup>38</sup> *Questions and Answers Paper*, Legislative Council, 1 May 2013, p 3883.

under s 16 of the *Listening Devices Act 1984* and contained the names of 114 persons, including 112 serving and former police, as well as a barrister and a journalist.<sup>39</sup>

- 2.21 The article stated that the warrant included 'some of the force's most respected detectives, including the heads of three major Crime Agency squads seen as 'Untouchables'".<sup>40</sup> The article also noted that the warrant had 'sent shockwaves through the elite detective force' and that the Police Minister was requesting a full and urgent report from Mr Ryan and the NSW Crime Commissioner, Mr Phillip Bradley.<sup>41</sup>

### 60 Minutes interview

- 2.22 On 13 April 2002, the same day the *Sydney Morning Herald* article was published, Mr Ryan recorded an interview at approximately 2 pm for the program 60 Minutes.<sup>42</sup> The interview was aired the following evening, on 14 April 2002.

- 2.23 In the following exchange with the interviewer, Mr Ryan stated that the reason why over 100 names were included on the warrant was because M5 was attending a function. He explained that the warrant required the names of people who were reasonably likely to have their conversation recorded:

PETER RYAN: ... What happens is an undercover agent has a tape recorder. We must obtain a warrant for that tape recorder to be used in the presence of another person. From what I can gather, the officer was going to a function at which a lot of people would be present.

RICHARD CARLETON: Oh, I see.

PETER RYAN: And therefore, he may be talking to 100 people, all of whom had to be named in the warrant.

RICHARD CARLETON: I see. So it wasn't an investigation of 110-odd individuals?

PETER RYAN: Oh, no, no. If I was at that function, my name probably would have been on the warrant too.<sup>43</sup>

### Internal memorandum to Commissioner of Police

- 2.24 Also on 13 April 2002, commencing at approximately 4.45 pm, Ms Catherine Burn, as the Acting Commander of the Special Crime Unit, prepared a memorandum to the Commissioner of Police regarding the validity of the warrant. The memorandum, in part, corroborates Mr Ryan's statement on 60 Minutes:

<sup>39</sup> Mr Phillip Cornford, *Police spy tapes furore*, Sydney Morning Herald, 13 April 2002, <http://www.smh.com.au/articles/2002/04/13/1018333425560.html>.

<sup>40</sup> Mr Cornford, *Police spy tapes furore*, Sydney Morning Herald, 13 April 2002.

<sup>41</sup> Mr Cornford, *Police spy tapes furore*, Sydney Morning Herald, 13 April 2002.

<sup>42</sup> Evidence, Mr Steven Barrett, Journalist, Seven Network Australia, 9 January 2015, p 9.

<sup>43</sup> 60 Minutes, Mr Richard Carleton, *Transcript: Peter Ryan*, 14 April 2002, p 1.

It was the procedure to include on the warrant names of people who were likely to be spoken to by the informer whether they were targets, suspects or 'persons of interest'. This did not extend to every person the informer would come in contact with, just those where it was likely the conversation would be recorded (e.g. At a function). In this way, it was ensured the Judge would be aware of the scope of the operation and the number of people M5 would be likely to engage in recorded conversations.<sup>44</sup>

**2.25** However, the memorandum also states that '[e]very name mentioned on the warrant was on the warrant for legitimate reasons' and that '[of] the total, 100 had explicit adverse mentions by M5 or were reasonably suspected of being involved in crime and corruption'.<sup>45</sup>

**2.26** When questioned on the preparation of the briefing Ms Burn said:

From my understanding, as Mr Barrett gave in evidence yesterday, Mr Ryan was interviewed at 2 o'clock on Saturday the 13th and it was shown on the Sunday night the 14th. He was interviewed at 2.00 p.m.; I started work at 4.45 p.m. on a report for Monday, for a briefing with the Minister and the commissioner.

Mr DAVID SHOEBRIDGE: Did you speak to anybody on the Saturday prior to getting to work? I assume you did not just turn up at work for no reason.

Ms BURN: I had conversations with officers on the Saturday before I turned up.

Mr DAVID SHOEBRIDGE: Who?

Ms BURN: From recollection, again from my duty books after examination-do you want me to name them?

...

Mr DAVID SHOEBRIDGE: What about your commander? Was that one of them?

Ms BURN: No.

Mr DAVID SHOEBRIDGE: What about people senior to you?

Ms BURN: I have a recollection ... potentially Mr Bradley.

Mr DAVID SHOEBRIDGE: And you gave a summary, I assume, of what you knew at the time and said, 'But I will come in and put in a memorandum.'

Ms BURN: If I spoke to Mr Bradley, yes.

Mr DAVID SHOEBRIDGE: What you would have said obviously would have been consistent with what went in your memorandum. You would not have said one thing on the phone and another thing in the memorandum, would you?

Ms BURN: Well, one, we are assuming that I had a conversation, so I really do not know.<sup>46</sup>

<sup>44</sup> Submission 18, Mr Steven Barrett, Attachment E, p 2, Memorandum, Ms Catherine Burn, *Operation Mascot/Florida – Listening Device Warrant 266/2000 dated 14 September 2000*, 13 April 2002, p 2.

<sup>45</sup> Submission 18, Mr Steven Barrett, Attachment E, p 2, Memorandum, Ms Catherine Burn, *Operation Mascot/Florida – Listening Device Warrant 266/2000 dated 14 September 2000*, 13 April 2002, p 2.

- 2.27 In the years to come, the explanation given by Mr Ryan on 60 Minutes and the comments made by Ms Burn in her memorandum would become serious matters of contention.

*Committee comment*

- 2.28 The evidence before the committee does not demonstrate that Ms Catherine Burn was responsible for briefing of Commissioner Ryan prior to his interview on 60 Minutes. The committee can however conclude that both Commissioner Ryan and Police Minister Costa were briefed by Ms Burn on 15 April 2002 and that neither the then commissioner or the police minister sought to correct the assertions made by Commissioner Ryan during his 60 Minutes interview.
- 2.29 This issue is discussed further at paragraph 3.55.

**Inspector of the Police Integrity Commission reviews the warrant**

- 2.30 On 15 April 2002 Mr Ryan requested that the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, examine the propriety of the warrant. In his preliminary report on 29 April 2002, Mr Finlay concluded that the warrant was 'justifiably sought, complied with the legislation in all material aspects' and 'advised the Police that the matter did not warrant further investigation'.<sup>47</sup>

*Committee comment*

- 2.31 The committee does not agree with the Inspector's conclusion. The report of the Inspector does not deal with the issue arising in this inquiry, namely whether there needed to be evidence of wrongdoing by persons who were targets named in listening device warrants alleged in the supporting evidence. The Inspector's report was based upon a range of other matters and did not consider this important aspect. We make no criticism of the Inspector. No doubt he reported on matters upon which his view was sought.

**Problems in Special Crime and Internal Affairs**

- 2.32 Although not specifically the focus of this inquiry, a number of internal police investigations into the operation and management of Special Crime and Internal Affairs were conducted during this period. These included Operation Banks in 1999 and Strike Forces Sibutu and Tumen in 2002, which among other things investigated the efficacy of warrants and supporting affidavits.<sup>48</sup>
- 2.33 During Mr Andrew Scipione's brief period as the Commander of Special Crime and Internal Affairs from April to December 2001, he oversaw a major review of the command, which ultimately led to its restructure and the disbandment of the Special Crime Unit.<sup>49</sup>

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<sup>46</sup> Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 30 January 2015, p 79.

<sup>47</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 14.

<sup>48</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 14.

<sup>49</sup> Evidence, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, 4 February 2015, pp 34, 55.

- 2.34 On 1 September 2003, Special Crime and Internal Affairs was amalgamated with other commands, becoming the Professional Standards Command.<sup>50</sup>

### Strike Force Emblems

- 2.35 Strike Force Emblems was an internal NSW Police Force inquiry established in 2003 to investigate allegations of the impropriety of the Bell warrant and other allegations concerning the management practices of the Special Crime Unit and Special Crime and Internal Affairs.<sup>51</sup>
- 2.36 The Strike Force Emblems team was ultimately left frustrated in its investigation, as the Crime Commission was unwilling to release key documentation, such as the supporting affidavit to the Bell warrant, citing secrecy provisions under s 29 of the former *New South Wales Crime Commission Act 1985*.<sup>52</sup>
- 2.37 The Strike Force Emblems report was finalised in early 2004, but was never made public, although significant sections of it were leaked to the media and others in 2012. The report stated that Strike Force Emblems was 'unable to determine any findings in relation to the issues' regarding the warrant.<sup>53</sup> The team did however make a number of recommendations including:
1. That the matter be referred to the Police Integrity Commission with a view to forming a joint taskforce, as the Police Integrity Commission possesses the legislative power to obtain information from the Crime Commission.
  2. That the Crime Commission Act be amended to state that if the NSW Police Force is conducting an investigation into complaints about the conduct of police officers under 8A of the *Police Act 1990*, those officers working under a joint reference with the Crime Commission are not bound by the secrecy provisions of the Crime Commission Act.
  3. That the relationship between the NSW Police Force and the Crime Commission be reviewed.
  4. That the 'suspicion' of alleged corruption discovered by Strike Force Emblems be considered similar to the issues of systemic corruption and mismanagement identified by Operation Banks and Strike Forces Sibutu and Tumen.<sup>54</sup>

### *Correspondence from the Ombudsman regarding request to oversight Emblems*

- 2.38 On 12 August 2003, the Ombudsman wrote to the Commissioner of Police, Mr Moroney, responding to a request to oversight Strike Force Emblems:

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<sup>50</sup> NSW State Records, *Office of Internal Affairs (c.1994-1999) / Special Crime and Internal Affairs Command (1999-2003) [New South Wales Police Service]*, <http://search.records.nsw.gov.au/agencies/5076>.

<sup>51</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 2.

<sup>52</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, pp 13 – 15 and p 30.

<sup>53</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 30.

<sup>54</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 32.

I have been concerned from the outset that it is not appropriate for the Ombudsman to oversight this investigation. The reasons for this include the following matters:

1. The present investigation plan by NSW Police includes consideration of the conduct of officers of the NSWCC and the PIC. The conduct of both of these agencies is outside the jurisdiction of the Ombudsman - see schedule 1 of the *Ombudsman Act* and Part 12 of the *Police Integrity Commission Act*. I am concerned that, should my office oversight Strike force Emblems, any meaningful review would be limited by these legislative prohibitions.<sup>55</sup>

**2.39** The letter from the Ombudsman demonstrates that he was aware of the limitations of his jurisdiction and advised the Commissioner of this.

**2.40** The question can be asked though, if not the Ombudsman, then who should oversight the strike force, given that the other police oversight agencies had been involved in the Mascot/Florida investigations and were therefore conflicted?

#### ***Aftermath of the Strike Force Emblems Report***

**2.41** On 28 June 2004 the Assistant Commissioner of the Professional Standards Command prepared a memorandum on his review of the Strike Force Emblems report. He concluded that 'the comments of the investigator are extremely subjective, as he has drawn an inference of corrupt conduct without addressing key source documents that would confirm or refute those inferences'. The Assistant Commissioner also stated that '[t]he findings are based on conjecture and not based on empirical evidence'.<sup>56</sup> He therefore recommended that the then Deputy Commissioner, Mr Bradley Howell, make a finding of 'not sustained' or 'unable to be determined'.<sup>57</sup>

**2.42** However, on 31 December 2004, at the request of the then Commissioner of Police Mr Moroney, the Police Legal Services Branch wrote to the Director of Public Prosecutions to see if there was sufficient evidence to justify the commencement of criminal proceedings in relation to the warrant. On 22 February 2005, the Director of Public Prosecutions responded that there was insufficient evidence for prosecution. The Emblems lead investigator was told by the Manager of the NSW Police Force's Operational Legal Advice Unit that there did not appear to be any further viable avenue for investigation unless access could be gained to the NSW Crime Commission affidavits and other documentation.<sup>58</sup>

**2.43** Save for some questions asked in Parliament, including during budget estimates committee hearings, the matter went quiet for a number of years. The retiring Commissioner of Police, Mr Moroney, had told his successor, Mr Andrew Scipione APM, that it had gone 'as far as it could'.<sup>59</sup>

<sup>55</sup> Answers to questions on notice, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, received 11 February 2015, Attachment B, Correspondence from NSW Ombudsman to Commissioner of Police, 12 August 2003.

<sup>56</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 15.

<sup>57</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 15.

<sup>58</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, pp 15-16.

<sup>59</sup> Evidence, Mr Scipione, 4 February 2015, p 45

***Inspector of the Police Integrity Commission reviews the Strike Force Emblems Report***

**2.44** On 11 May 2012 the Hon Michael Gallacher MLC, then Minister for Police and Emergency Services, who had previously pursued the Emblems matter while in Opposition, requested that the Inspector of the Police Integrity Commission, the Hon David Levine QC, review the Strike Force Emblems report and advise if it should be released. On 25 May 2012 the Premier also wrote to the Inspector seeking his advice on the release of the report.<sup>60</sup>

**2.45** The Inspector provided his review to the Minister on 23 November 2012. Although this report is confidential, its covering letter was made public. In that letter, the Inspector expressed the view that the Strike Force Emblems report and its recommendations were not of a high enough standard for public release:

The report of Strike Force Emblems I have found to be such an abstruse and unsatisfactory internal police document that it is not in the public interest for it, its findings (such as they are) and its recommendations (such as they are) to be made public. ...

... it is severely wanting in sound reasoning and logical exposition of investigations said to have been undertaken. Its findings and recommendations on my reading of accompanying internal police communications do not enjoy support or confidence among police commentators of high rank.<sup>61</sup>

**2.46** In addition to these comments, the Inspector observed that the release of the report could harm the reputations of the NSW Police Force and relevant individuals:

There is a grave risk to the reputation of not only the NSW Police as an institution but also of many named persons by false perceptions flowing from publication as well as inevitable speculations which would be fruitless as they would be dangerous.<sup>62</sup>

**2.47** The Inspector acknowledged that the Bell warrant 'could understandably give rise to concern', but stated that he did not consider it part of his functions to 'pursue any question of suspected or perceived criminal misconduct or the motivation if any therefore in the application for the warrant in the form it was made'.<sup>63</sup>

**2.48** However, while undertaking the review, Mr Levine received a number of complaints and submissions in connection to matters in the report, as did the NSW Ombudsman. On 7 October 2012, the Premier announced that the Inspector of the Police Integrity Commission had conferred with the Ombudsman and agreed that the Ombudsman would be well-placed to undertake an independent inquiry into Strike Force Emblems and any relevant matters leading up to it.<sup>64</sup>

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<sup>60</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 16.

<sup>61</sup> Correspondence from the Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, to the Minister for Police and Emergency Services, 23 November 2012, p 1.

<sup>62</sup> Correspondence from Mr Levine to the Minister, 23 November 2012, p 1.

<sup>63</sup> Correspondence from Mr Levine to the Minister, 23 November 2012, p 2.

<sup>64</sup> *Hansard*, Legislative Assembly, 20 November 2012, p 17099 (Greg Smith).

**2.49** It was agreed that due to the breadth of the complaints received by both offices, the Ombudsman was the appropriate independent body to comprehensively review these matters.<sup>65</sup>

*Committee comment*

**2.50** Having read what the committee understands to be the final version of the Strike Force Emblems report, the committee does not agree with the description given by Mr Levine. This matter will be considered further in chapter 4.

*Strike Force Jooriland*

**2.51** On 31 August 2012, a police officer who was formerly attached to Strike Force Emblems received an anonymous package of documents related to the Mascot/Florida investigation, including the affidavit supporting the Bell warrant.<sup>66</sup>

**2.52** Around the same time, the freelance journalist, Mr Neil Mercer, also obtained a large number of confidential documents relating to the investigation, including the Strike Force Emblems report. Mr Mercer proceeded to write a series of articles in the *Sun Herald* and the *Sydney Morning Herald* from 9 September 2012 on the subject.<sup>67</sup>

**2.53** In addition, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force received a number of documents, including some that indicated to him there had been 'a level of intense electronic and other surveillance carried out as part of Operation Mascot/Florida on every aspect of [his] life, home and work, including [his] ex-wife and children'.<sup>68</sup> On 13 September 2012, Mr Kaldas make a formal written complaint to the Commissioner of Police, Mr Scipione, about these matters.<sup>69</sup>

**2.54** These occurrences led to the formation on 21 September 2012 of the NSW Police Strike Force Jooriland within the Professional Standards Command. Jooriland was charged with investigating a range of matters including the leaking of documents and the bugging Mr Kaldas 'during and/or subsequent to 1999'.<sup>70</sup>

**2.55** The following is the full terms of reference for Strike Force Jooriland:

- That, during or before 2012, a person/s unknown supplied to journalist Neil Mercer and others an affidavit or affidavits related to Mascot contrary to s 29(2) of the NSWCC Act.
- That, during or before 2012, a person/s unknown supplied to journalist Neil Mercer and others documents related to NSWPF investigation Emblems contrary to cl 75 of the *Police Regulation 2008*.
- That, during and/or subsequent to 1999, a person/s attached to SCIA knowingly swore an affidavit or affidavits containing false or partly false information contrary to s 319 Crimes Act 1900.

<sup>65</sup> *Hansard*, Legislative Assembly, 20 November 2012, p 17099 (Greg Smith).

<sup>66</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 16.

<sup>67</sup> Submission 3, Mr Neil Mercer, p 1.

<sup>68</sup> Submission 21, Mr Nick Kaldas APM, p 3.

<sup>69</sup> Submission 21, Mr Nick Kaldas APM, p 4.

<sup>70</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 17.

- That, during and/or subsequent to 1999, a person/s attached to SCIA unlawfully monitored and/or recorded conversations in the office of now Deputy Commissioner Kaldas contrary to ss 5 and 10 of the *Listening Devices Act*.
- That, during and/or subsequent to 1999, a person/s attached to SCIA unlawfully monitored and/or recorded conversations on the mobile telecommunications service of now Deputy Commissioner Kaldas contrary to ss 7(1) and 105 of the *Telecommunications (Interception and Access) Act*.
- That, during and/or subsequent to 1999, a person/s attached to SCIA unlawfully monitored and/or recorded conversations on the former home telecommunications service of now Deputy Commissioner Kaldas contrary to ss 7(1) and 105 of the *Telecommunications (Interception and Access) Act*.
- That, during and/or subsequent to 1999, a person/s took detrimental action against now Deputy Commissioner Kaldas substantially in reprisal for him making protected allegations contrary to s 206(2) of the Police Act.
- That, during and/or subsequent to 1999, a person/s attached to SCIA failed to comply with s 7 of the Police Act in respect to the investigation of now Deputy Commissioner Kaldas and others.<sup>71</sup>

**2.56** Also on 21 September 2012, Mr David Shoebridge MLC contacted the Ombudsman and offered to refer certain documents to him concerning the matter. In his evidence before the committee, the Ombudsman stated:

... I think it is very important to note in response that I explained to you as carefully and constructively as I could when you called me the limitations on my powers and why I could not do what you were asking me to do, and I recommended to you that you refer all of the material that you ... had been provided ... to the Inspector of the Police Integrity Commission because, at that stage, he had the reference to the former police Minister.

Mr DAVID SHOEBRIDGE: Of course, that is a part-time officer with two administrative staff and no substantive resources. That would have been woefully inadequate, would it not, Mr Barbour?

Mr BARBOUR: I am not commenting on that, sir.<sup>72</sup>

### ***Budget Estimates hearing***

**2.57** At the General Purpose Standing Committee No. 4 Budget Estimates hearing for the Police and Emergency Services portfolio on 11 October 2012, Ms Burn declined to answer a question about Strike Force Emblems on the grounds that it might be in breach of statutory secrecy provisions.<sup>73</sup>

**2.58** During the same hearing, the then minister, Mr Michael Gallacher MLC, tabled a letter dated 10 October 2012 from the Ombudsman to Police Commissioner Scipione. The following extract of that letter noted the Ombudsman's new inquiry and the matters he would be inquiring into:

<sup>71</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 17.

<sup>72</sup> Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 22.

<sup>73</sup> Legislative Council, General Purpose Standing Committee No. 4, *Budget Estimates 2012-2013*, (2012), pp 40-41.

I am writing to confirm that I am conducting an inquiry into allegations that have been made about the conduct of officer of the NSW Police Force, The NSW Crime Commission and the Police Integrity Commission in relation to Operations Mascot, Florida and Emblem's, and associated matters.

As you would be aware, the allegations concern a wide range of conduct that has occurred over a significant period of time. Many of these matters raise contemporary but related concerns about access to and release of highly confidential material relating to the 'Emblems' matter. In this light, it is clear that the investigation of such a wide range of related matters will be protracted and that matters going to the integrity of the investigation will, particularly at this early stage of my inquiry, be paramount.<sup>74</sup>

- 2.59** The committee subsequently resolved on 15 November 2012 to defer consideration of a self-reference into the issue until the work of the Inspector of the Police Integrity Commission and the NSW Ombudsman's office was finalised.<sup>75</sup>

*Committee comment*

- 2.60** The committee notes it is evident from the Ombudsman's letter of 10 October 2012 that it had always been the intention of the Ombudsman for Operation Prospect to be a wide ranging investigation. The tabling of the Ombudsman's letter demonstrates that the Parliament was also informed at a very early stage of this fact.

## NSW Ombudsman inquiry Operation Prospect

- 2.61** Following the Premier's announcement that the Ombudsman would conduct an inquiry into Strike Force Emblems, the Ombudsman undertook steps to ensure his office had sufficient jurisdiction and statutory powers to conduct the inquiry:

At the time of the PIC Inspector's referral, my office did not have a sufficient jurisdiction in relation to the conduct of members and officers of the NSW Crime Commission and the Police Integrity Commission, nor did my office possess the full complement of statutory powers to conduct an effective investigation of this kind. This was because many of the allegations relate to serious and extensive misconduct ordinarily investigated by agencies such as the Police Integrity Commission and the Independent Commission Against Corruption.<sup>76</sup>

- 2.62** The following amendments to the *Ombudsman Act 1974* facilitated the establishment and conduct of the Ombudsman's inquiry, 'Operation Prospect'.

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<sup>74</sup> Correspondence from Mr Bruce Barbour, NSW Ombudsman to Mr Andrew Scipione, Commissioner of Police, 10 October 2012.

<sup>75</sup> Legislative Council, General Purpose Standing Committee No. 4, *Budget Estimates 2012-2013*, (2012), pp 45.

<sup>76</sup> Correspondence from Mr Barbour, NSW Ombudsman, to Chair, 19 November 2014, Attachment 1, p 3.

### **Ombudsman Amendment (Crime Commission) Proclamation 2012**

- 2.63** On 10 October 2012, the Ombudsman Amendment (Crime Commission) Proclamation 2012 was published on the NSW Legislation Website. This Proclamation enabled the Ombudsman to investigate a matter relating to the conduct of the Crime Commission that is referred to the Ombudsman by the Inspector of Crime Commission or by the Inspector of the Police Integrity Commission.<sup>77</sup>
- 2.64** Essentially this Proclamation allowed for the Inspector of the Police Integrity Commission to formally refer the matter to the Ombudsman for inquiry. This direction was made on 11 October 2012.<sup>78</sup>

### ***Ombudsman Amendment Act 2012***

- 2.65** On 20 November 2012 the then Attorney General, the Hon Greg Smith MP, introduced the Ombudsman Amendment Bill 2012 into Parliament in order to deliver further powers to assist the Ombudsman to conduct the inquiry. The Ombudsman already had broad powers concerning investigation of police conduct, including coercive powers to compel witnesses to attend private hearings and to produce evidence, but they did not extend to the Crime Commission or Police Integrity Commission. The bill extended the Ombudsman's coercive powers to cover these agencies in instances where there has been a referral from an appropriate inspector.<sup>79</sup>
- 2.66** The bill also provided the Ombudsman with secrecy provision powers under ss 19A, 19B and 19C, whereby the Ombudsman may make non-disclosure directions to witnesses who give evidence, or persons who receive production notices and summons. The maximum penalty for contravening such directions is 50 penalty units and/or imprisonment for 12 months. These powers are the same as ones conferred on the Police Integrity Commission and the Independent Commission Against Corruption.<sup>80</sup>
- 2.67** The bill was passed by both Houses and assented to on 26 November 2012.

### **Operation Prospect**

- 2.68** Operation Prospect is an ongoing inquiry being conducted by the Ombudsman that is primarily investigating allegations of misconduct by officers of the NSW Police Force, the Crime Commission and the Police Integrity Commission in relation to certain investigations conducted by these agencies between 1998 and 2004.<sup>81</sup>

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<sup>77</sup> Ombudsman Amendment (Crime Commission) Proclamation 2012, Explanatory Note.

<sup>78</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 17.

<sup>79</sup> *Hansard*, Legislative Assembly, 20 November 2012, p 17100 (Greg Smith).

<sup>80</sup> *Hansard*, Legislative Assembly, 20 November 2012, p 17099 (Greg Smith); *Ombudsman Amendment Act 2012*, schedule 1.

<sup>81</sup> Correspondence from Mr Barbour to Chair of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, 19 November 2014, Attachment 1, p 1.

**2.69** The objective is to deal with all serious allegations made in connection with the Mascot references, together with subsequent investigations of those references by the NSW Police Force that have not been previously dealt with or had been inadequately dealt with. The scope of the investigation has been informed by:

- A broad referral from the Inspector of the PIC on 11 October 2012, which included matters referred to him in May 2012 by the then Minister for Police in relation to Strike Force Emblems (which was established in 2003 to investigate matters associated with the Mascot references) and “at least” three other related police operations: Operation Florida [a Police Integrity Commission operation], and Strike Forces Sibutu and Tumen.
- Matters which, as at October 2012, were under investigation by NSW Police Force Strike Force Jooriland, including “all current complaints about the conduct of officers of the NSW Police Force in relation to the Operations Mascot, Florida and Emblems and associated matters” (which Operation Prospect took over pursuant to s 156(1) of the *Police Act 1990* because it was related to the same or overlapping subject matters).
- A large number of complaints made under s 12 of the Ombudsman Act, Part 8A of the Police Act, and the *Public Interest Disclosures Act 1994*, including in response to a public call for information by the Ombudsman.<sup>82</sup>

**2.70** Following a call for information, the Ombudsman assessed all complaints and allegations associated with the referral from the Inspector of the Police Integrity Commissions, Strike Force Jooriland and the call for information and categorised them into the following lines of inquiry:

- the use of false and misleading information in warrant applications and supporting affidavits under the *Listening Devices Act 1984* (NSW) and the *Telecommunications (Interception and Access) Act 1987* (Cth),
- improper targeting or investigation of individuals,
- mishandling of informants/undercover operatives,
- unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the Crime Commission and the Police Integrity Commission,
- improper interference from the current Commissioner of Police,
- the provision of misinformation and/or making of false statements, and
- other wrong conduct.<sup>83</sup>

**2.71** By late January 2015 the Ombudsman had issued over 60 summonses and production of documents notices. He has held over 70 non-continuous days of hearings and interviews that have been conducted with 102 persons and has reviewed over one million pages of information.<sup>84</sup>

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<sup>82</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 3.

<sup>83</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 19.

<sup>84</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, pp 1 and 6.

**2.72** By way of example, regarding the issue of the alleged mishandling of informants/undercover operatives, the Ombudsman observed:

Former mascot officers and other persons of interest were profiled by operation prospect investigators and a large number of these persons were interviewed by my officers. This process included obtaining and reviewing duty books of the involved officers. Other former Mascot officers were also questioned about the handling of this informant. Operation prospect included approximately 16 hearings connected to this allegation, including a hearing with the informant 'paddle'.<sup>85</sup>

**2.73** During evidence, the Ombudsman stated that at this stage he has not made any findings, and will only do so once all evidence is gathered:

Most importantly, though, I have not made any findings and I will only do so after I have completed gathering all relevant evidence, analysing and reflecting upon that evidence and, significantly, after any persons who may be adversely affected by any findings have had an opportunity to respond to them.<sup>86</sup>

**2.74** Prior to the establishment of the Select Committee, very little information about Operation Prospect was publicly available as hearings had been held in private and the Ombudsman had 'routinely given a non-disclosure direction to each witness who has been examined'.<sup>87</sup> The Ombudsman explained in correspondence to the Chair of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission that this is '[b]ecause of the importance of minimising the risk of collusion between witnesses and potential witnesses, many of whom are well known to each other, and in order to protect the confidentiality of lines of enquiry and the safety and welfare of prospective witnesses'.<sup>88</sup>

**2.75** The Ombudsman has indicated that he intends to make a 'special report' to the Presiding Officers of NSW Parliament in relation to this matter and that the report will be accompanied by a recommendation for the Presiding Officers to make the report public.<sup>89</sup>

**2.76** During evidence to this committee the Ombudsman indicated that he will endeavour to produce his final report in June 2015.<sup>90</sup>

### ***Committee comment***

**2.77** It should be noted that s 17 of the *Ombudsman Act 1974* provides that 'an investigation under this Act shall be made in the absence of the public'.<sup>91</sup> Unlike hearings before the Independent Commission Against Corruption and the Police Integrity Commission where there is an option to hold hearings in public, the Ombudsman's hearings must be held in private.

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<sup>85</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 24.

<sup>86</sup> Evidence, Mr Barbour, 3 February 2015, p 2.

<sup>87</sup> Correspondence from Mr Barbour to Chair, 19 November 2014, Attachment 1, p 4.

<sup>88</sup> Correspondence from Mr Barbour to Chair, 19 November 2014, Attachment 1, p 4.

<sup>89</sup> Correspondence from Mr Barbour to Chair, 19 November 2014, Attachment 1, p 5.

<sup>90</sup> Evidence, Mr Barbour, 3 February 2015, p 12.

<sup>91</sup> *Ombudsman Act 1974*, s 17.

**2.78** Therefore, given the legislation, there can be no criticism of the Ombudsman for undertaking hearings in the absence of the public. The appropriateness of the non-disclosure provisions of the Ombudsman are discussed in chapter 6.

**Table 1** Timeline of events

1994 – 1997	<b>Wood Royal Commission</b>
January 1997	Police Integrity Commission established
December 1998	Corrupt officer 'M5' volunteers information to Crime Commission about police corruption
January 1999	Special Crime and Internal Affairs conduct five day debrief with M5
February 1999	<b>Operation Mascot</b> – reference to Crime Commission and Special Crime and Internal Affairs to investigate M5's allegations
1999	Operation Banks conducted
July 2000	<b>Operation Florida</b> – Police Integrity Commission joins the Mascot investigation
November 2000	<b>Mascot II</b> – further reference to Crime Commission and Special Crime and Internal Affairs
October 2001	Police Integrity Commission begins public hearings
2002	Strike Forces Sibutu and Tumen conducted
13 April 2002	<i>Sydney Morning Herald</i> article regarding Bell warrant  Commissioner Ryan interview on 60 Minutes recorded  Ms Burn prepares memorandum to Ryan regarding Bell warrant
14 April 2002	Ryan interview on 60 Minutes is aired
15 April 2002	Ryan requests the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, to examine propriety of Bell warrant
29 April 2002	Inspector provides his 'preliminary report'
July 2002	<b>Operation Volta</b> – Special Crime and Internal Affairs oversights by the Police Integrity Commission investigate medium to low risk corruption allegations
July 2003 to March 2004	<b>Strike Force Emblems</b> conducted
June 2004	Police Integrity Commission publicly releases <b>Operation Florida</b> report

December 2004	Commissioner Moroney seeks legal advice regarding evidence to prosecute based on Emblems report
February 2005	Director of Public Prosecutions responds there is insufficient evidence
May 2012	Minister for Police and Emergency Services requests the Inspector of the Police Integrity Commission, the Hon David Levine QC, to review if Emblems report should be publicly released
August/September 2012	Documents leaked to the media and individuals
9 September 2012	Mr Mercer's <i>Sun Herald</i> article published
13 September 2012	Deputy Commissioner Kaldas' Public Interest Disclosure to Commissioner Scipione
21 September 2012	<b>Strike Force Jooriland</b> commences – Professional Standards Command
7 October 2012	Premier announces NSW Ombudsman will conduct inquiry into Emblems and events leading up to it
11 October 2012	<b>Operation Prospect</b> commences – NSW Ombudsman  Deputy Commissioner Burn declines to answer a question regarding Emblems in a budget estimates hearing
23 November 2012	Inspector of the Police Integrity Commission, the Hon David Levine QC, produces confidential report regarding Emblems with covering letter made public
26 November 2012	<i>Ombudsman Amendment Act 2012</i> assented to, granting additional powers to the Ombudsman
12 November 2014	Legislative Council Select Committee established
25 February 2015	Legislative Council Select Committee tables report
June 2015	NSW Ombudsman expected to table his Operation Prospect report



## Chapter 3 Integrity of listening device warrants

There is no doubt in my mind that I was singled out during and after Operation Mascot Florida a decade ago and I felt every aspect of my life was invaded: my phone calls, my work, my private life despite no real accusation being levelled at me. I have not done anything that would justify this level of intense intrusive targeting.<sup>92</sup>

The integrity of a number of listening device warrants obtained during Operation Mascot is at the heart of this inquiry. Indeed, for over a decade now, serious questions and complaints have been raised about the propriety of such warrants and whether people were targeted inappropriately.

This chapter considers several issues related to the integrity of these warrants, including the requirements of legislation at the time they were issued and various explanations given to justify the inclusion of so many names on a large number of warrants.

The focus of this chapter is on one specific listening device warrant issued by Justice Bell in September 2000, a copy of which the committee obtained during this inquiry, along with its supporting affidavit. This warrant is referred to as the Bell warrant throughout this report. While this warrant is the source of much controversy, having been leaked to the media in 2002, the committee recognises that a large number of warrants and telephone intercepts obtained during Operation Mascot have also been questioned and are currently being investigated by the NSW Ombudsman as part of Operation Prospect.

This chapter also looks at a significant deficiency within the affidavit to the Bell warrant. It considers who has responsibility for the content of listening device warrant applications and affidavits and whether judicial oversight is effective in preventing the unjustified intrusion of such warrants into people's privacy.

### Legal framework for listening device warrants

- 3.1** The governing legislation at the time the Bell and other controversial warrants were issued was the *Listening Devices Act 1984* ('the Act'), now repealed.<sup>93</sup> Section 16 of the Act set out the requirements for listening device applications and the circumstances in which a listening device warrant could be granted by an eligible judge of the Supreme Court.<sup>94</sup>
- 3.2** In particular, s 16(1) provided the basis for which a listening device warrant application could be made:

#### 16 Warrants authorising use of listening devices

(1) Upon application made by a person that the person suspects or believes:

(a) that a prescribed offence has been, is about to be or is likely to be committed,  
and

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<sup>92</sup> Evidence, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, 30 January 2015, p 4.

<sup>93</sup> The *Listening Devices Act 1984* was repealed by the enactment of the *Surveillance Devices Act* in 2007.

<sup>94</sup> *Listening Devices Act 1984*, s 16.

(b) that, for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the use of a listening device is necessary,

an eligible Judge may, if satisfied that there are reasonable grounds for that suspicion or belief, authorise, by warrant, the use of the listening device.<sup>95</sup>

**3.3** Section 16(2) outlined a number of factors a Judge should consider when determining whether to grant a listening device warrant, including:

- a. the nature of the prescribed offence in respect of which the warrant is sought
- b. the extent to which the privacy of any person is likely to be affected
- c. whether there is any alternative means of obtaining the evidence or information sought to be obtained
- d. the evidentiary value of any evidence sought to be obtained, and
- e. any previous warrant sought or granted in connection with the same prescribed offence.<sup>96</sup>

**3.4** Section 16(4) specified a number of requirements for a listening device warrant, including, at (b), the requirement that the warrant specify 'where practicable, the name of any person whose private conversation may be recorded or listened to'.<sup>97</sup>

**3.5** Although the *Listening Devices Act 1984* was repealed, the *Surveillance Devices Act 2007* operates in its place and s 20 similarly sets out what a listening device warrant must specify. In particular, to replace s 16(4)(b) of the old Act, the current requirement states:

20(1)(b)(viii) if the warrant authorises the use of a surveillance device in respect of the conversations, activities or geographical location of a person [the warrant must then specify] the name of the person (if known).<sup>98</sup>

**3.6** The current legislation also requires that the Ombudsman inspect and report every six months on law enforcement agencies' compliance with the *Surveillance Devices Act 2007*.<sup>99</sup>

## The Bell warrant

**3.7** On 14 September 2000, listening device warrant number 266 was issued by Justice Bell under s 16 of the *Listening Devices Act 1984*. This warrant authorised the private conversations of 114 people to be listened to or recorded, including at that time, a number of serving and former police and civilians.<sup>100</sup>

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<sup>95</sup> *Listening Devices Act 1984*, s 16(1).

<sup>96</sup> *Listening Devices Act 1984*, s 16(2).

<sup>97</sup> *Listening Devices Act 1984*, s 16(4)(b).

<sup>98</sup> *Surveillance Devices Act 2007*, s 20(1)(b)(viii).

<sup>99</sup> *Surveillance Devices Act 2007*, ss 48-49.

<sup>100</sup> Submission 18, Mr Steven Barrett, Attachment B.

- 3.8** In support of the application for the Bell warrant was an affidavit, also dated on or about 14 September 2000, sworn by Glenn William Trayhurn, a Detective Sergeant with the NSW Police Force. The affidavit sets out the facts and grounds upon which the application for the listening device warrant was made in connection with some named persons; however it failed to do this for 46 of the people listed on the warrant.<sup>101</sup>
- 3.9** The contents of the affidavit related to allegations of corruption, money laundering, conspiracy to pervert the course of justice and tampering with evidence. The allegations were based on information provided by M5,<sup>102</sup> a corrupt police officer who had 'rolled over' to become an informant and undercover officer in late 1998 as part of Operation Mascot, a covert investigation into crime and corruption within the NSW Police Force.<sup>103</sup>
- 3.10** During the inquiry, the committee was provided with a copy of the Bell warrant and its supporting affidavit. We were also provided with a copy of a similar warrant to the Bell warrant, albeit without the supporting affidavit, issued by Justice Dowd on the 25 April 2000, some four months before the Bell warrant was granted. This warrant, hereafter referred to as the Dowd warrant, similarly included a list of names, 113 in total, all of which were reflected later on the Bell warrant.<sup>104</sup>
- 3.11** Given the similarities between the Dowd warrant and the Bell warrant, and the common practice of police in 'rolling over' (extending) listening device warrants every 21 days where required, it is likely that a number of other similar listening device warrants were issued during the course of Operation Mascot, possibly also with a long list of names included, many of which may be identical to the names on the Dowd and Bell warrants.
- 3.12** This proposition is consistent with statements made by Mr Bruce Barbour, the NSW Ombudsman, who explained to the committee:

Operation Prospect summonses have caused the production of 99 affidavits that were sworn in support of applications for 462 listening device warrants (it should be noted in this regard that a single affidavit can and generally does support an application for multiple listening device warrants). The 99 supporting affidavits comprise, in total, approximately 3,812 pages. The shortest supporting affidavit is eight pages long (003/1999 and 022-025/1999) while the longest is 82 pages (262-268/2000). The median size of the supporting affidavits produced to Operation Prospect is 38.5 pages.

In addition, a total of 111 supporting affidavits in relation to 246 telephone intercept warrants have been produced. In total the 111 telephone intercept supporting affidavits produced comprise approximately 2,322 pages. The shortest affidavit that is in Operation Prospect holdings is nine pages (093/1999) whilst the longest is 40 pages

<sup>101</sup> Submission 18, Mr Steven Barrett, Attachment B. The committee notes that varying numbers have been proffered in terms of how many people were named in the warrant without supporting reference in the affidavit, however the committee's calculation is 46.

<sup>102</sup> M5 is the codename for this informant used by the NSW Police Force. M5 is also known as 'Sea', a code name used by the NSW Crime Commission.

<sup>103</sup> Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 12.

<sup>104</sup> Submission 18, Mr Steven Barrett, Attachment A.

(174/2001). The median size of a telephone intercept supporting affidavit is 20.9 pages.<sup>105</sup>

- 3.13** It is important to note that in 2002 the Bell warrant, but not the affidavit dated 14 September 2000, was in public circulation and the subject of significant media attention and speculation. Several individuals named in the warrant made complaints, both at that time, and over the following years. The current Deputy Commissioner, Field Operations, NSW Police Force, Mr Nick Kaldas, was one of the individuals named on the Bell warrant. A number of other current or former police officers also provided evidence that they were named on the Bell warrant, including Mr Brian Harding and Mr Ken Desmond.<sup>106</sup> In addition, Mr Steven Barrett, journalist at Seven Network Australia, also disclosed the presence of his name on the Bell warrant.<sup>107</sup>

### Controversy surrounding the Bell warrant

- 3.14** One of the most controversial aspects of the Bell warrant is the unusually large number of names on it, with 114 individuals included. This alone has raised questions, with several experienced police officers providing evidence that they have never applied for nor seen a warrant with so many names.
- 3.15** Mr Kaldas stated that the Bell warrant involved ‘an astounding and unprecedented number of people against whom evidence must have been presented to a judge to justify invading their privacy’.<sup>108</sup> He informed the committee that the most names he has ever seen on a listening device warrant is about six or seven.<sup>109</sup> Mr Harding, a former police officer, also gave evidence that supported the highly unusual nature of the Bell warrant. He informed the committee that the highest number of names he has seen on a listening device warrant would be approximately 20.<sup>110</sup>
- 3.16** Given its extraordinary nature, the committee sought to understand the circumstances in which 114 people came to be listed on the Bell warrant. It considered an explanation provided by Mr Peter Ryan, the former Commissioner of Police, on *60 Minutes* in 2002, and an explanation by Ms Catherine Burn APM, current Deputy Commissioner, Specialist Operations, NSW Police, in a memorandum she drafted, also in 2002.
- 3.17** Both of these explanations were provided soon after details of the Bell warrant were included in an article in the *Sydney Morning Herald* in early April 2002.<sup>111</sup>

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<sup>105</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 19.

<sup>106</sup> Submission 16, Mr Brian Harding, p 2; Submission 2, Mr Ken Desmond, p 1.

<sup>107</sup> Submission 18, Mr Steven Barrett, p 2.

<sup>108</sup> Evidence, Mr Kaldas, 30 January 2015, p 2.

<sup>109</sup> Evidence, Mr Kaldas, 30 January 2015, p 11.

<sup>110</sup> Evidence, Mr Brian Harding, former Detective Superintendent, NSW Police Force, 29 January 2015, p 41.

<sup>111</sup> Mr Phillip Cornford, *Police spy tapes furore*, *Sydney Morning Herald*, 13 April 2002, <<http://www.smh.com.au/articles/2002/04/13/1018333425560.html>>

### **The Commissioner of Police's explanation**

- 3.18** Given the media interest in the Bell warrant, the Commissioner of Police at the time, Mr Ryan, participated in an interview with Richard Carleton for *60 Minutes*, broadcast on 14 April 2002. During the interview, the Commissioner was questioned about the circumstances surrounding the Bell warrant, including why it was necessary for the conversations of over 100 people to be recorded.
- 3.19** The Commissioner suggested that certain names were only included on the warrant because they were attending a function, now known to be a farewell function for a police officer, commonly referred to as the 'King send-off'. When asked whether it was actually an investigation of over 110 individuals, the Commissioner replied 'Oh, no, no. If I was at that function, my name probably would have been on the warrant too'.<sup>112</sup>
- 3.20** An excerpt from the transcript is included below, demonstrating that Mr Ryan's comments gave the impression that people were included on the warrant purely because they were at a function at which M5 would be present, the 'King send-off':

RICHARD CARLETON: Mr Ryan, what are you going to tell Costa on Monday morning about the 100-plus policemen, the barrister and the *60 minutes* producer that you were recording their phone conversations and other conversations?

PETER RYAN: Mmm, I don't think the warrant actually goes that far, but it's in relation to an investigation that's going on through the Integrity Commission at the moment with an operative called M5. What happens is an undercover agent has a tape recorder. We must obtain a warrant for that tape recorder to be used in the presence of another person. From what I can gather, the officer was going to a function at which a lot of people would be present.<sup>113</sup>

- 3.21** In 2003 Senior Assistant Commissioner Peter Walsh published an article in the *Police Service Weekly* suggesting that those named on the warrant did not necessarily have allegations against them. Mr Ken Moroney AO APM, former Commissioner of Police, outlined the essence of the article:

...it was a requirement of the *Listening Devices Act 1984*...that the names were included, but the inclusion of those names did not of itself imply impropriety, misconduct or criminal conduct on the part of any person that was named there.<sup>114</sup>

### **Can listening device warrants include the names of bystanders?**

- 3.22** Given the Commissioner's explanation that some innocent people were named on the Bell warrant because they were invited to or attended the 'King send-off', it is necessary to explore whether this was permitted under the requirements of the *Listening Devices Act 1984*.

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<sup>112</sup> Submission 18, Mr Steven Barrett, Annexure D.

<sup>113</sup> Submission 18, Mr Steven Barrett, Annexure D.

<sup>114</sup> Evidence, Mr Ken Moroney AO APM, former Commissioner of Police, NSW Police Force, 4 February 2015, p 72.

*Interpretation of s 16(4)(b)*

- 3.23** Earlier in this chapter, s 16(4)(b) of the *Listening Devices Act 1984* was outlined, which is the requirement that a listening device warrant specify 'where practicable, the name of any person whose private conversation may be recorded or listened to'. This section is critical, as it has been relied on by many over the years to justify the inclusion of so many names on the Bell warrant.
- 3.24** In 2002, when the Hon Mervyn Finlay QC, Inspector of the Police Integrity Commission, conducted a review of the Bell warrant at the request of the Minister for Police. He was tasked with considering whether the warrant was justifiably sought, if it complied with the relevant legislation and whether the material obtained by the warrant was used appropriately.<sup>115</sup>
- 3.25** The Inspector's review found that the warrant was justifiably sought, noting that it was 'an exceptional investigation encompassing a wide range of serious misconduct and corrupt behaviour by a large number of serving and former police'.<sup>116</sup> In coming to this conclusion, he stated that that it was 'erroneous' for people to think that for any person to be named in the warrant there 'must be reasonable grounds to suspect that such person was involved in a prescribed offence or at least had some information about it'.<sup>117</sup>
- 3.26** The Inspector agreed with the Crown Solicitor's advice, that the warrant can name any person whose private conversation may be recorded or listened to, regardless of whether the person is an alleged offender or not:

What is relevant to whether a name must be specified, where practicable, is not whether the person is reasonably suspected of having information relating to the prescribed offence or of having been involved, directly or indirectly, in the prescribed offence but whether the person is a person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant.<sup>118</sup>

- 3.27** Further, on the basis that M5 was likely to have had extensive contact with the people named in the warrant, the Inspector found it 'understandable' that the warrant listed the number of names it did:

It is understandable that the applicant would seek to include in the warrant all names of those whom it was reasonably suspected M5 ('SEA') may engage in recorded conversations in order to corroborate his allegations, gain evidence about their corruption, gain information about their knowledge of the allegations/corruption, and/or may reasonably be expected to be present when M5 was going to record conversations.<sup>119</sup>

- 3.28** Mr John Giorgiutti, the former solicitor of the Crime Commission, told the committee that at the time these issues unfolded, the NSW Police Force was of the view that the names of all

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<sup>115</sup> Answers to questions on notice, the Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, 4 February 2015, Attachment A, *Report by Inspector of preliminary investigation, Operation Florida Listening device warrant*, 29 April 2002, p 1.

<sup>116</sup> Answers to questions on notice, Mr Levine, Attachment A, p 17.

<sup>117</sup> Answers to questions on notice, Mr Levine, Attachment A, p 13.

<sup>118</sup> Answers to questions on notice, Mr Levine, Attachment A, p 17.

<sup>119</sup> Answers to questions on notice, Mr Levine, Attachment A, p 17.

persons likely to be recorded should be included on a warrant. He explained that in September 2000, he discussed these issues with Mr Mark Standen, the former Assistant Director of the Crime Commission, who informed him that the police had reviewed their legal position and determined that the names of all persons who could be recorded by a listening device had to be included on the warrant, whether they were suspects or not.<sup>120</sup>

**3.29** Mr Barbour also noted the requirements of legislation at the time and the misconception in the public arena that only targets could be named on a listening device warrant, explaining that 'being named on a warrant is not evidence of unlawful targeting or investigation, nor is it evidence that they are a suspect person'.<sup>121</sup>

**3.30** Further, Mr Barbour said that the requirements of the legislation at the time were very clear, although he suggested it could be clearer on the documentation:

The legislation that was in operation at the time clearly required the names of people who might incidentally be recorded, and where that was known to be potentially the case to also be included in a warrant...Names wherever possible were supposed to be included on the warrant. The legislation is very clear and the obligations are very clear. Certainly, in my view that ought to be made clear on all of the documentation.<sup>122</sup>

### *Police practice*

**3.31** Not everyone interpreted s 16(4)(b) in the same way as the NSW Ombudsman or Mr Finlay. Mr Mark Galletta, a former Commander with almost 33 years policing experience, argued that it is not the practice to include on a listening device warrant the names of all people that will be incidentally recorded. He asserted that 'you cannot put people's names on a warrant just because they [will be] there', as it is necessary 'to meet the criteria of the offences identified in the *Listening Devices Act*'.<sup>123</sup>

**3.32** Both Mr Galletta and Mr Barrett pointed to a judgment by Justice O'Keefe, *Application No ST03/173; Ex parte Police Service (NSW)*, to support their understanding of the legislation.<sup>124</sup>

**3.33** In terms of section 16(4)(b), Justice O'Keefe found it relevant to consider whether all the persons named on the warrant were involved in any of the prescribed offences or whether they were 'suspects or...principals or persons who otherwise should have their right to privacy interfered with'. In his decision, as part of his reasons to refuse the warrant, he commented 'I am further of the opinion that the extent to which the privacy of innocent persons unassociated with the application may be interfered with is unacceptable having regard to the policy of the Act'. In this comment, Justice O'Keefe was clearly alluding to the importance of protecting the privacy of conversations of those not accused of wrong doing.<sup>125</sup>

<sup>120</sup> Submission 25, Mr John Giorgiutti, pp 3-4.

<sup>121</sup> Correspondence from Mr Barbour to Chair, Statement, 28 January 2015, p 11.

<sup>122</sup> Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 8.

<sup>123</sup> *In camera* evidence, Mr Mark Galletta, former Commander, NSW Police Officer, 29 January 2015, p 28. Evidence published by resolution of the committee.

<sup>124</sup> *Re Listening Devices Act 1984 – Application No ST03/173; Ex parte Police Service (NSW)*

<sup>125</sup> *Re Listening Devices Act 1984 – Application No ST03/173; Ex parte Police Service (NSW)*, at paras 20, 21 and 30.

**Was the Commissioner of Police's explanation accurate?**

**3.34** While the Commissioner's interview on *60 Minutes* gave the impression that the people named in the Bell warrant were innocent bystanders attending a function, a memorandum, dated 13 April 2002 and authored by Ms Burn, the then Acting Commander of the Special Crime Unit, tells a different story. It highlighted that there were said to be serious allegations against most of those named in the warrant. A copy of the two page memorandum (without its annexure) is included in Appendix 7.

***Ms Burn's memorandum***

**3.35** In Ms Burn's memorandum, she stated that it was common procedure to include in the warrant the names of suspects, as well as others if they are likely to be recorded:

It was the procedure to include on the warrant names of people who were likely to be spoken to by the informer whether they were targets, suspects or persons of interest. This did not extend to every person the informer would come in to contact with, just those where it was likely the conversation would be recorded (e.g at a function). In this way, it was to ensure the Judge would be aware of the scope of the operation and the number of people M5 would be likely to engage in recorded conversations.<sup>126</sup>

**3.36** Ms Burn asserted it was necessary to include all of the names on the Bell warrant as it was likely that M5 would engage with these people in recorded conversations:

For all names included in the warrant it was reasonably suspected that M5 would be likely to engage those people in recorded conversations in order to corroborate his allegations, gain evidence about their corruption, gain information about their knowledge of the allegations/corruption, and/or would reasonably have suspected of being present when M5 was going to record conversations.<sup>127</sup>

**3.37** However, towards the end of the document, Ms Burn stated that 'every name mentioned on the warrant was on the warrant for legitimate reasons'. Of the people named in the warrant, she noted that:

- 66 were mentioned in the affidavit and the 'majority of the remaining names were mentioned in previous affidavits'
- 100 persons in the warrant had explicit adverse mentions by M5 or were reasonably suspected of being involved in crime and corruption
- of the remaining names, ten were reasonably suspected to have knowledge of M5's allegations and/or corruption by others, and three were persons of interest who M5 was likely to engage in recorded conversations.<sup>128</sup>

**3.38** According to Ms Burn, and in a letter she wrote to the Inspector of the Police Integrity Commission on 22 April 2002, all but three names on the warrant had adverse allegations against them.<sup>129</sup>

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<sup>126</sup> Submission 18, Mr Steven Barrett, Annexure E, p 2.

<sup>127</sup> Submission 18, Mr Steven Barrett, Annexure E, p 2.

<sup>128</sup> Submission 18, Mr Steven Barrett, Annexure E, p 2.

<sup>129</sup> Submission 18, Mr Steven Barrett, Annexures D, E and L.

**3.39** Annexed to Ms Burn's memorandum was a list of the people named in the Bell warrant, a statement as to whether they were 'mentioned' in the supporting affidavit and an explanation as to why they were included in the warrant, for example, whether there were criminal allegations against the person or whether there were adverse mentions of the person in the schedule of debrief, a document in which the allegations of M5 were documented during the course of Operation Mascot. In addition, in respect to those not named in the Bell warrant, the annexed document explicitly stated that their name was not included in the supporting affidavit.<sup>130</sup>

**3.40** In fact, for many of those not mentioned in the supporting affidavit, the document annexed to the Burn memorandum stated that they were mentioned in earlier affidavits. An excerpt of the complete references for Mr Kaldas, Mr Harding and Mr Barrett is shown below:

**Nick Kaldas** Not mentioned in September affidavit

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police.

Mentioned in affidavits covering 19 April 2000 to 16 July 2000. Adverse SOD involvements.

**Brian Harding** Not mentioned in September affidavit

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police.

Mentioned in affidavits covering 19 April 2000 to 16 July 2000. Adverse SOD involvements.

**Steven Barrett** Not mentioned in September affidavit

King send-off list, part of Mascot strategy to gather corroborative evidence. Suspected to have been involved in or have knowledge of, corrupt or criminal conduct by Police.

Mentioned in affidavits covering 19 April 2000 to 16 July 2000.

Known associate of named targets. Allegation that he may have a tape of the firearms located at a search warrant of interest to the inquiry.<sup>131</sup>

**3.41** Given that the supporting affidavit did not contain grounds to support the inclusion of 46 of the individuals listed on the Bell warrant, the committee asked Ms Burn why she did not draw a conclusion in her memorandum that there was a serious problem with the evidence upon which the Bell warrant was issued. She responded:

There is an issue. I have not said otherwise. There is an issue that the evidence or the allegations were not mentioned in that affidavit. They might have been, as is said there, mentioned in previous affidavits. However, for whatever reason, they were not mentioned in the September affidavit.<sup>132</sup>

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<sup>130</sup> Submission 18, Mr Steven Barrett, Annexure E.

<sup>131</sup> Submission 18, Mr Steven Barrett, Annexure E.

<sup>132</sup> Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 30 January 2015, p 69.

- 3.42 Ms Burn also acknowledged that her only recommendation in the memorandum was that the information be 'maintained as highly protected'.<sup>133</sup>
- 3.43 While it might be reasonable to assume that Ms Burn's memorandum would have been provided to the Commissioner before his television appearance, the committee noted evidence from Mr Barrett that the *60 Minutes* interview was actually recorded on 13 April 2002 at approximately 2.00 pm.<sup>134</sup>
- 3.44 Ms Burn told the committee that she started work on the 13 April 2002 at approximately 4:45 pm, and that her document was prepared for the Commissioner and the Minister for a meeting on Monday 15 April 2002.<sup>135</sup>
- 3.45 During the Strike Force Emblems investigation, Ms Burn was questioned about the Commissioner's explanation. When asked by the investigator why the Commissioner had said people named on the warrant were included because they were attending a function, Ms Burn stated 'I have no idea why he said it, I'd say he wasn't briefed'.<sup>136</sup>
- 3.46 When asked whether the Commissioner's statement was true, she replied 'No'. In the course of that interview, Ms Burn also told investigators that she was not aware of the Commissioner's interview until after it had happened.<sup>137</sup>

### *The 'King send-off'*

- 3.47 The other issue with the Commissioner's explanation is that it centered on the relevance of a function, likely to have been the 'King send-off', as the basis on which people were included on the warrant. However, on facts alone, there is a fundamental problem with this suggestion as the 'King send-off' actually took place on 30 June 2000, approximately three months before the Bell warrant was obtained.<sup>138</sup>
- 3.48 The committee was also told that many of these people were not invited to or did not attend 'King send-off'.<sup>139</sup> While Mr Harding admitted to knowing Mr King, he asserted that he was not a friend of his and that he did not socialise with him.<sup>140</sup> Mr Kaldas also provided evidence that he was not aware of the function. He stated that he did not recall going to the 'King send-off' and that he did not think he was ever invited.<sup>141</sup>
- 3.49 When the committee asked Ms Burn about this issue, she said that the 'King send-off' was being planned as early as February that year.<sup>142</sup>

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<sup>133</sup> Evidence, Ms Burn, 30 January 2015, p 87.

<sup>134</sup> Evidence, Mr Steven Barrett, Journalist, Seven Network Australia, 29 January 2015, p 9.

<sup>135</sup> Evidence, Ms Burn, 30 January 2015, p 76.

<sup>136</sup> Submission 18, Mr Steven Barrett, Annexure G, pp 46-47.

<sup>137</sup> Submission 18, Mr Steven Barrett, Annexure G, pp 46-47.

<sup>138</sup> Submission 18, Mr Steven Barrett, Annexures H.

<sup>139</sup> Evidence, Mr Harding, 29 January 2015, p 30; Evidence, Mr Barrett, 29 January 2015, p 10.

<sup>140</sup> Evidence, Mr Harding, 29 January 2015, p 30.

<sup>141</sup> Evidence, Mr Kaldas, 30 January 2015, p 7.

<sup>142</sup> Evidence, Ms Burn, 30 January 2015, p 70.

**3.50** She also told the committee that the list for the 'King send-off' was prepared in conjunction with M5:

It was compiled by me in our meetings with M5... around February there was discussion about planning for the send-off and we made notes of a number of names who M5 potentially thought would be on that invitation list because he was one of the people who was organising it and could invite them.<sup>143</sup>

**3.51** Ms Burn also suggested that the reference to the 'King send-off' in the memorandum was because it was a reason for people having been included on a warrant earlier:

They may have had mentions, allegations about them, but they were also a part of the King send-off list, which was a reason they ended up being on a warrant initially and their names still appear on a warrant in September.<sup>144</sup>

**3.52** When the committee put to Ms Burn that some of these people were not invited to or did not attend the 'King send-off', and how this explanation could have been used, she replied 'at the time of the list there was an honest belief that those people would be attending the send-off'.<sup>145</sup>

**3.53** Ms Burn provided the committee with a copy of the 'King send-off' list, taken from an entry in her diary on 20 February 2000.<sup>146</sup> The list included approximately 60 names to be invited to the 'King send-off', including Mr Barrett, Mr Harding and Mr Kaldas.<sup>147</sup>

**3.54** No explanation, however, was provided by Ms Burn as to why a number of persons, including those named above, were referred to as being connected to the Mascot/Florida operation in this way when they were never invited to the event in question.

#### **What was done to correct the public explanation?**

**3.55** Despite the erroneous explanation provided by the Commissioner as to the circumstances surrounding the Bell warrant, the committee noted that little was done to publicly correct the record.

**3.56** Although Ms Burn informed the committee that she made sure her memorandum and report were discussed at a subsequent briefing with the Commissioner and others, it is unclear what further steps were taken by her superiors. When asked what was done to ensure the public record was corrected, Ms Burn stated 'this [the memorandum] is documented and this is passed up the chain, so you will definitely need to ask the chain of command and others'.<sup>148</sup>

<sup>143</sup> Evidence, Ms Burn, 30 January 2015, p 70.

<sup>144</sup> Evidence, Ms Burn, 30 January 2015, p 72.

<sup>145</sup> Evidence, Ms Burn, 30 January 2015, p 73.

<sup>146</sup> Evidence, Ms Burn, 30 January 2015, p 70.

<sup>147</sup> Published extract from confidential answer, .Answers to questions on notice, Ms Catherine Burn, Deputy Commissioner, Specialist Operations, NSW Police Force, 9 February 2015.

<sup>148</sup> Evidence, Ms Burn, 30 January 2015, p 82.

- 3.57** When the committee pressed Ms Burn as to what has been done to redress the injustice to those improperly placed on the warrant, she referred to the review by Mr Finlay in 2002:

An inquiry was conducted by a justice, Mr Finlay, into this matter, and ...[f]rom my memory, it was justifiably sought is what he had said. In terms of what you are talking about in terms of how this could happen, it is clear that a mistake was made. There is no doubt at least a mistake was made, and I have said if a mistake was made that was not my mistake and in fact I had warned people about correctness and quality of affidavits if a mistake was made. If there were false representations and illegalities I was not aware of them. In terms of what we did, there was a review. A justice came in and reviewed it. There was visibility at the chain of command about this and we were reviewing internal procedures.<sup>149</sup>

- 3.58** For reasons which are touched on above, the committee is of the view that reliance placed on the Finlay review was misplaced. The Finlay report appears to have focused on whether non-targets should be listed on warrants and on the importance and success of Operation Mascot and not on the issue that arises in this inquiry.

#### *Committee comment*

- 3.59** The committee is troubled by the then Police Commissioner's interview on *60 Minutes* in 2002 and the incorrect explanation he provided publicly as to the circumstances of the Bell warrant. Clearly, the implication of his comments were that many people were included on the warrant simply because they were attending a function, the 'King send-off'. As we note later in this report this explanation is implausible, as the 'King send-off' occurred more than two months before the September 2000 warrant was issued.
- 3.60** Unmistakably, the majority of people named on the Bell warrant were included because they had allegations against them or adverse mentions, as evidenced in Ms Burn's memorandum.
- 3.61** Notwithstanding obvious deficiencies in the affidavit, and the fact the 'King send-off' had occurred two months earlier, almost all of the names on the Bell warrant were included because they were suspected of engaging in or knowing about corrupt conduct.
- 3.62** Despite the truth of this matter, no one stepped forward to rectify the erroneous public explanation given by the Commissioner. While Ms Burn passed her memorandum up through the chain of command, the committee is troubled by the fact that more was not done to correct this misconception.

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#### **Finding 1**

That almost all of the names on listening device warrant 266/2000 were included because they were suspected of engaging in or knowing about corrupt conduct and not because they were attending a function.

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<sup>149</sup> Evidence, Ms Burn, 30 January 2015, p 87.

### **Finding 2**

That in April 2002 the then Commissioner of Police, Peter Ryan, provided an erroneous explanation to the public through the media as to why such a large number of names were included on listening device warrant 266/2000.

### **Finding 3**

That the NSW Police Force never corrected the record by publicly acknowledging the erroneous explanation provided by the then Commissioner of Police, Peter Ryan.

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## **Concerns about the affidavit**

- 3.63** One of the major concerns in this inquiry was how the Bell warrant could have been granted when the facts and grounds to support the inclusion of 46 people were not contained in the supporting affidavit.
- 3.64** Although not specifically stated as a requirement in the *Listening Device Act 1984*, a supporting affidavit was generally required in support of an application for a listening device warrant. The purpose of the affidavit is to set out the facts and grounds upon which the application is based, including the allegations or circumstances that support the basis for all the individuals named in the warrant having their conversations listened to or recorded.
- 3.65** Under the current legislation, the *Surveillance Devices Act 2007*, explicit reference is made to the requirement that a listening device application be supported by an affidavit setting out the grounds on which the warrant is sought.<sup>150</sup>

### **Absence of grounds to support the inclusion of some people on the warrant**

- 3.66** While the supporting affidavit for the Bell warrant should have set out the facts and grounds to support the granting of the warrant, it did not reference 46 of the named individuals. The affidavit does, however, state that 'previous warrants have been sought or granted...in connection with the offences' and that the particulars of previous warrants are set out in an annexed document attached to the affidavit.<sup>151</sup>
- 3.67** Mr Kaldas is one of the individuals named in the Bell warrant but not the supporting affidavit. In the document annexed to her memorandum, Ms Burn stated that Mr Kaldas was 'mentioned in affidavits covering 19 April 2000 to 16 July 2000'. When the committee questioned Mr Kaldas about the inclusion of his name on the Bell warrant, without there being a reference to him in the September affidavit, Mr Kaldas stated:

...you cannot possibly be asking a judge to authorise the bugging of people based on a document that he or she neither acknowledges, mentions nor outlines it in the warrant that he or she is actually signing. The fact that someone may have been 'mentioned',

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<sup>150</sup> *Surveillance Devices Act 2007*, s 17(3).

<sup>151</sup> Submission 18, Mr Steven Barrett, Annexure C, p 57.

whatever that means, in a previous affidavit cannot justify inclusion in a warrant which is being signed today unless the judge mentions it and says what it is.<sup>152</sup>

- 3.68** Mr Barrett similarly noted that 'there is no reason for [him] to be on the Bell warrant because [he is] not in the affidavits'.<sup>153</sup> He reiterated this point when he stated to the committee that 'backed up by the affidavits and backed up by the explanation of Cath[erine] Burn', a majority of people whose names were sworn before Justice Bell are not on the affidavits.<sup>154</sup>
- 3.69** Despite this major deficiency, in 2002 the Inspector of the Police Integrity Commission, Mr Finlay, found that the Bell warrant complied with the relevant legislation, subject to one minor irregularity, which was that the application and affidavit in support failed to mention two of the names listed on the warrant. In his report, the Inspector stated that the 'minor irregularity of the omission of those two names was clearly inadvertent and is, in my view, of no substantial consequence'.<sup>155</sup> In light of the material considered above, Mr Finlay's conclusion is unsustainable.
- 3.70** Ms Burn, in her memorandum, dated two weeks before the Inspector's report, outlined that only 66 people were mentioned in the affidavit, although she noted that the 'majority of the remaining names were mentioned in previous affidavits'.<sup>156</sup> The issue of who was responsible for preparing the warrant and affidavit is considered at 3.99.
- 3.71** When Ms Burn was asked about this serious deficiency and what steps were taken to redress it, she acknowledged that 'the September warrant did not have evidence against all the people named in the warrant'.<sup>157</sup> She agreed that the matter was 'shocking' and 'serious' and that the warrant was 'not legal'.<sup>158</sup>

***Are the requirements different if it is a rollover warrant?***

- 3.72** Given the supporting affidavit did not contain allegations against a significant number of people named on the warrant, the committee sought to understand whether this could be explained by the fact the warrant was a 'rollover' warrant, the extension of an existing warrant.
- 3.73** The committee noted a reference in the affidavit that stated 'previous warrants have been sought or granted...in connection with the offences' and that the particulars of previous warrants are set out in an annexed document attached to the affidavit.<sup>159</sup>
- 3.74** While the Bell warrant may have been a 'rollover' warrant, Mr Galletta told the committee that the requirements are the same for a fresh application. He stated 'if you are going to rollover a

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<sup>152</sup> Evidence, Mr Kaldas, 30 January 2015, p 7.

<sup>153</sup> Evidence, Mr Barrett, 29 January 2015, p 5.

<sup>154</sup> Evidence, Mr Barrett, 29 January 2015, p 22.

<sup>155</sup> Answers to questions on notice, Mr Levine, Attachment A, p 18.

<sup>156</sup> Submission 18, Mr Steven Barrett, Annexure E

<sup>157</sup> Evidence, Ms Burn, 30 January 2015, p 86.

<sup>158</sup> Evidence, Ms Burn, 30 January 2015, p 68.

<sup>159</sup> Submission 18, Mr Steven Barrett, Annexure C, p 57.

warrant you must have new information on a particular person who is going to be nominated'.<sup>160</sup>

- 3.75 The committee noted in this regard that the legislation makes no distinction for 'rollover' warrants in terms of the requirements needing to be met.<sup>161</sup>

***Could oral evidence have been provided?***

- 3.76 One possible explanation for the absence of material in the affidavit to support the inclusion of 46 names is that perhaps this information was conveyed verbally to the judge.

- 3.77 While it may be possible for oral evidence to be given in support of a warrant, Mr Kaldas noted that 'it is very rare and the only reason that would happen would be at the judge's discretion'.<sup>162</sup>

- 3.78 The Hon David Levine, former Judge of the Supreme Court and current Inspector of the Police Integrity Commission, also confirmed that it is rare for oral evidence to be sworn in support of a listening device warrant application.<sup>163</sup>

- 3.79 It is important to note that applications for listening device warrants are not heard in open court. They are usually considered in a closed hearing in a judge's chambers with only the judge, the law enforcement agency and its lawyers present. Because there is no other party present to contradict the material put by the agency, this places an obligation on the agency to be frank with the judge and include material that both assists their case (inculpatory material) and detracts from their case (exculpatory material).

- 3.80 Unfortunately, the committee was unable to ascertain whether oral evidence may have been given in support of the Bell warrant, as it has been unable to access a copy of the transcript of the proceedings before the Judge.<sup>164</sup> Not only did the NSW Governor, on the advice of the Government, fail to provide information central to the work of this committee as requested by the Legislative Council, but a request for this same material made by the committee itself to the Premier has also not resulted in the material being provided.<sup>165</sup> No explanation or reply from the Premier has been provided.

- 3.81 On the limited material we have before us, and noting that these applications are usually considered in chambers, it is most likely that the decision to issue the listening device was based solely on the evidentiary material contained in the affidavit supporting the application.

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<sup>160</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 9.

<sup>161</sup> *Listening Devices Act 1984*.

<sup>162</sup> Evidence, Mr Kaldas, 30 January 2015, p 8.

<sup>163</sup> Evidence, the Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, 30 January 2015, p 41.

<sup>164</sup> *Minutes*, Legislative Council, 20 November 2014, pp 352-3, 363-4.

<sup>165</sup> Correspondence from Chair to the Hon Mike Baird MP, Premier, 5 February 2015.

### **Absence of exculpatory evidence**

- 3.82** Several inquiry participants commented on the tendency for applications for listening devices by Special Crimes and Internal Affairs investigators not to include exculpatory evidence in relevant affidavits. Exculpatory evidence is information that tends to exonerate or be favourable for an accused.
- 3.83** One inquiry participant suggested this was a problem with the supporting affidavit for the Bell warrant, otherwise it should have referred to the 'King send-off' taking place on 30 June 2000.<sup>166</sup>
- 3.84** Mr Galletta explained to the committee the obligation of applicants for listening device warrants to include both inculpatory and exculpatory evidence in the affidavit. He identified that this practice was not occurring during his Sibutu and Emblems investigations:

We certainly identified with Sibutu and it appears to be with Emblems as well that, for example, if they said "Mr Galletta" – on my complaints history that I had a matter of stealing and a matter of assault but they were not sustained, so I was found not guilty of those, they would say that I had a 'history' of corruption...so they would not put exculpatory material in.<sup>167</sup>

- 3.85** Mr Clive Small, former Assistant Commissioner of the NSW Police Force, also commented on this issue in relation to another Special Crimes and Internal Affairs investigation, Strike Force Banks. In that matter, eighteen affidavits in support of applications for telephone intercepts and listening devices, sworn by three different Special Crimes and Internal Affairs officers, failed to include exculpatory material which could have provided a balanced view.<sup>168</sup>

### ***Committee comment***

- 3.86** The committee is alarmed that a listening device warrant could be granted when its supporting affidavit did not provide justification for the inclusion of 46 of the 114 people named. Such a deficiency is a troubling matter and the committee is deeply concerned that this can occur in a process that involves oversight by police officers, solicitors and judges. The issue of judicial oversight is discussed further at paragraph 3.114.
- 3.87** The committee is also concerned that Mr Finlay, in his review of the Bell warrant in 2002, only noted one 'minor irregularity' and that the warrant was found to have complied with the legislation. As noted above, Mr Finlay's conclusion is unsustainable.
- 3.88** Regardless of whether the Bell warrant was a rollover warrant or whether there were grounds to substantiate the inclusion of 114 names, it is fundamentally important that a supporting affidavit outline the facts and grounds upon which a listening device warrant is sought.
- 3.89** This includes any allegations against the people named in the warrant, as well as exculpatory evidence. The provision of this information is required so that a judge can have a balanced view in considering the application, including the extent to which a person's privacy may be affected. As the Ombudsman also noted in his evidence, both warrants and their supporting

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<sup>166</sup> Submission 8, Name suppressed, p 3.

<sup>167</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 27.

<sup>168</sup> Submission 1, Mr Clive Small, pp 11-12.

affidavits should clearly identify who is a target and who may be incidentally recorded. Without this information being provided to an authorising judge, it is difficult to see how the requirements of the legislation could be met.

- 3.90** While Ms Burn conceded in this inquiry that the Bell warrant is ‘not legal’,<sup>169</sup> no other senior member of the NSW Police Force Executive has ever acknowledged this fact. We agree that this is the case, and that this warrant should never have been granted in the absence of material to support all 114 people named.

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#### **Finding 4**

That the application and supporting affidavit for listening device warrant 266/2000 did not provide the necessary facts and grounds to justify 46 out of the 114 people having their private conversations listened to or recorded.

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- 3.91** The committee notes that in 2013, the Committee on the Ombudsman, the Police Integrity Commission and the NSW Crime Commission recommended that the Attorney General review the current system for granting surveillance device warrants, with the aim of strengthening integrity checks on affidavits submitted in support of warrants.
- 3.92** The Government supported this recommendation, although they noted, at that time, that a statutory review of the *Surveillance Devices Act 2007* was underway, which would to a limited extent examine the integrity of affidavits in support of applications. The Government stated that they would progress the recommendation upon finalising the statutory review.
- 3.93** The committee acknowledges the importance of maintaining public confidence in a system that recognises the need to protect individuals’ privacy. It notes that the Ombudsman is required to inspect and report every six months on surveillance device warrants obtained by all law enforcement agencies so as to determine the extent of compliance with legislation.<sup>170</sup>
- 3.94** These inspection and reporting obligations are, however, limited. Section 48 of the *Surveillance Devices Act 2007* requires the Ombudsman to, ‘from time to time’, inspect the records of each law enforcement agency (other than the Australian Crime Commission) to determine the extent of compliance with this Act.<sup>171</sup> Section 49 of the Act stipulates that the Ombudsman must make a written report to the Minister at six monthly intervals on the results of an inspection under section 48, with his report having to be laid before both Houses of Parliament.<sup>172</sup>
- 3.95** The fact that 46 people were the subject of a listening device warrant with no evidence presented against them in that application shows a substantial failure in the checks and balances in the system. This failure extends from the investigating officers who were obliged to present cogent material to support the application, the lawyers who were required to

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<sup>169</sup> Evidence, Ms Burn, 30 January 2015, p 85.

<sup>170</sup> *Surveillance Devices Act 2007*, ss 48-49.

<sup>171</sup> *Surveillance Devices Act 2007*, s 48(1).

<sup>172</sup> *Surveillance Devices Act 2007*, s 49.

review, draft and present the final application and the court itself which failed to ensure that the legislative prerequisites were met before so many people's civil liberties were infringed.

- 3.96** Our court system is based on adversarial proceedings where judges assess the relative merits of the arguments put by two or more parties before them in open court. This system is not well suited to dealing with closed hearings with only one party present so that there is no one testing the evidence or merits of the application being made.
- 3.97** The committee suggests that one way to address this is through having an Office of Independent Counsel, to ensure that independent legal representatives are available to act as a contradictor in proceedings for listening device and telephone intercept warrants. These counsel would, without being connected to or acting on behalf of persons to be subject to the warrants, be able to test the evidence and assertions of law enforcement agencies that seek the warrants before judicial officers.
- 3.98** It is therefore proposed that the NSW Government establish an inquiry to examine this proposal, as part of a comprehensive review of the current system for granting surveillance device warrants.

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### **Recommendation 1**

That the NSW Government establish an open and independent inquiry to review the current system for granting surveillance device warrants, to:

- 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.

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### **Who is responsible for the information in warrants and affidavits?**

- 3.99** A key question raised during the inquiry is who was responsible for the content of listening device warrants and affidavits during Operations Mascot/Florida. This is an important issue, particularly given the deficiency with the supporting affidavit to the Bell warrant.
- 3.100** Ms Burn advised the committee that on or about 29 June 2001 she reported to the following superiors during Operation Mascot:
- Superintendent John Dolan, Commander Special Crime Unit, NSW Police Force
  - Assistant Commissioner Andrew Scipione, Special Crime and Internal Affairs, NSW Police Force
  - Deputy Commissioner Ken Moroney, NSW Police Force
  - Commissioner Peter Ryan, NSW Police Force
  - Assistant Director Mark Standen, NSW Crime Commission
  - Director and Solicitor John Giorgiutti, NSW Crime Commission

- Commissioner Phillip Bradley, NSW Crime Commission.<sup>173</sup>

**3.101** Ms Burn provided evidence to the committee about the usual process of applying for a listening device warrant:

The applications for listening device warrants by members of the Special Crime Unit to the Supreme Court were made by the investigating police officer deposing an affidavit on advice by the NSW Crime Commission solicitor Mr Neil Owen on most occasions. Other NSW Crime Commission solicitors also provided advice from time to time. The form of the affidavits and the warrants that were then issued by court order were prepared by Mr Owen.<sup>174</sup>

**3.102** Mr Mal Brammer, former Commander, Special Crime and Internal Affairs, pointed to the role of solicitors in the process, stating that he:

...reasonably relied upon the professional expertise and scrutiny of NSW Crime Commission legal officers to ensure the probity and factual soundness of evidence presented in affidavits to the Supreme Court.<sup>175</sup>

**3.103** By contrast, Mr John Giorgiutti, former solicitor for the NSW Crime Commission, acknowledged that the solicitor in preparing the documentation relies heavily on the information provided by the lead investigator.<sup>176</sup>

**3.104** In attempting to determine what level of responsibility Ms Burn may have had in relation to the preparation of documents, the committee asked her a series of questions about her role on Operation Mascot.

**3.105** When asked whether she would have been required to approve the application for a listening device warrant before it was sent to court, Ms Burn explained that she had no responsibility for overseeing the documentation and that the material was provided to the solicitor and head of the Crime Commission NSW.<sup>177</sup>

**3.106** When it was put to Ms Burn that she cannot avoid responsibility simply because the affidavit was settled by the solicitor, she responded by stating 'I cannot accept responsibility for what was put in the affidavit, what the solicitor did with it and the form it then took when it was taken to court. That was not my responsibility'.<sup>178</sup>

**3.107** Despite being a supervisor, Ms Burn continued to deny responsibility for the affidavit. When asked whether it is the role of a junior officer to be responsible for identifying who should and should not have been on the warrant, Ms Burn replied:

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<sup>173</sup> Answers to supplementary questions, Ms Catherine Burn, Deputy Commissioner, Specialist Operations, NSW Police Force, 9 February 2015, p 6.

<sup>174</sup> Evidence, Ms Burn, 30 January 2015, p 57.

<sup>175</sup> Submission 22, Mr Malcolm Brammer APM, p 7.

<sup>176</sup> Evidence, Mr John Giorgiutti, former solicitor, NSW Crime Commission, 4 February 2015, p 18.

<sup>177</sup> Evidence, Ms Burn, 30 January 2015, pp 64-65.

<sup>178</sup> Evidence, Ms Burn, 30 January 2015, pp 64-65.

I think that there is responsibility on the officer who signs it as the deponent. I think there is a responsibility on the assistant director. I think there is a responsibility on the solicitor who then takes the affidavit and the warrant to the court.<sup>179</sup>

- 3.108** Ms Burn did, however, acknowledge that 'there is a responsibility clearly for information and evidence to be in an affidavit to support the warrant; there is no doubt about that'.<sup>180</sup>
- 3.109** When asked to comment on this issue, Ms Burn acknowledged that the matter was 'serious', however she continued to deny any responsibility for the problem: 'I did not have a role in affidavits...It was the solicitor's responsibility to check those things off and to make sure those things were happening. There were checks and balances'.<sup>181</sup>
- 3.110** Ms Burn provided evidence to the committee that during her time as Team Leader, Special Crimes and Internal Affairs she reinforced to her staff the importance of providing quality affidavits during investigations. She noted an email she had sent in March 2000 to Senior Sergeants on Operation Mascot, which reminded them 'of the importance of affidavits and...their correctness and quality'. Ms Burn stated that she was 'reminding them that it was their responsibility'.<sup>182</sup>

#### *Committee comment*

- 3.111** The committee accepts that Ms Burn did not have ultimate responsibility for the content of the Bell warrant and its supporting affidavit. While Ms Burn had a supervisory role in Special Crimes and Internal Affairs, the committee recognises that it was not the practice for her to check all documentation in relation to listening device warrants or telephone intercepts.
- 3.112** The committee is, however, troubled by the fact that no one person throughout the inquiry has taken responsibility for the serious deficiency with the affidavit. Both the deponent and the solicitor clearly had a legal (and in respect of the solicitor an ethical) responsibility in relation to the material. However, with regards to the September 2000 warrant, there was clearly a lack of checks and balances in both Special Crimes and Internal Affairs and the Crime Commission, for which senior officers in both organisations were responsible.
- 3.113** The committee notes that although the investigator in question (the deponent of the affidavit) may have reported to Ms Burn through the chain of command, Ms Burns evidence was that he did not do so in connection with the preparation of the warrant or the material in support, reporting instead directly to Superintendent Dolan and the Assistant Director of the Crime Commission, Mr Mark Standen. On Ms Burn's evidence, the responsibility for the warrants and affidavit material rests with them.

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<sup>179</sup> Evidence, Ms Burn, 30 January 2015, p 57.

<sup>180</sup> Evidence, Ms Burn, 30 January 2015, p 74.

<sup>181</sup> Evidence, Ms Burn, 30 January 2015, p 68.

<sup>182</sup> Evidence, Ms Burn, 30 January 2015, p 74.

## Judicial oversight

- 3.114** In light of the deficiencies with the supporting affidavit for the Bell warrant, the committee sought to understand the oversight role played by judges and whether it is effective in detecting flawed material to prevent the unwarranted intrusion into people's privacy.
- 3.115** In particular, the committee noted comments made by Mr Levine, Inspector of the Police Integrity Commission and a former Judge of the Supreme Court, during evidence he gave to the Committee on the Office of the Ombudsman, the Police Integrity Commission and the Crime Commission. When asked about the extent to which information in applications, such as listening device warrant applications, are checked, and whether a judge could detect information that may be flawed, misleading or incompetent, Mr Levine replied:
- From my own experience...I, like any other judge, developed an idiosyncratic methodology for reading this material, which at times would come in inundating, waves one after the other. I do not want to diminish the process, but I said, "I am going to see if there is someone named in this warrant who is named 'M. Mouse' or 'D. Duck'".<sup>183</sup>
- 3.116** Mr Levine, in that response, also alluded to the importance of judicial officers having 'confidence in the integrity of the applying body'.<sup>184</sup>
- 3.117** During this inquiry, the committee asked Mr Levine about these comments and how people could have confidence in this type of assessment process by judges. Mr Levine suggested the committee focus on the context of his answer at the time, stating that there was 'no rational foundation' for the issue of confidence to be raised at all.<sup>185</sup>
- 3.118** The committee asked Mr Levine whether he has ever refused a listening device warrant application, to which he confirmed he has not.<sup>186</sup> He also confirmed he has never found a 'M. Mouse' or 'D. Duck' in an application for a warrant.<sup>187</sup>
- 3.119** Mr Levine did, however, affirm that as a bare minimum, a judge should check that the names on the warrant are actually referenced in the affidavit.<sup>188</sup>
- 3.120** Mr Small, former Assistant Commissioner, noted that in May 2001, Supreme Court Judge Bruce James stated that 'almost all applications are granted' and that false affidavits are 'unlikely to be detected'. Mr Small stated that 'this is a damning indictment on the integrity of the system'.<sup>189</sup>

<sup>183</sup> Evidence, The Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, *Thirteenth General Meeting with the Inspector of the Police Integrity Commissioner*, 22 February 2013, p 6.

<sup>184</sup> Evidence, Mr Levine, Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, *Thirteenth General Meeting with the Inspector of the Police Integrity Commissioner*, 22 February 2013, p 6.

<sup>185</sup> Evidence, Mr Levine, 30 January 2015, p 42.

<sup>186</sup> Evidence, Mr Levine, 30 January 2015, p 42.

<sup>187</sup> Evidence, Mr Levine, 30 January 2015, p 42.

<sup>188</sup> Evidence, Mr Levine, 30 January 2015, p 42.

<sup>189</sup> Submission 1, Mr Clive Small, p 38.

**3.121** Mr Barrett questioned the effectiveness of the system when he stated: 'The Government needs to know why judges of the Supreme Court of New South Wales have been duped'.<sup>190</sup>

**3.122** Mr Giorgiutti, the former solicitor and director of the NSW Crime Commission, suggested that there appears to be a 'disconnect' between parliamentarians and legislation and what happens in practice:

There is certainly a perception that these affidavits will never see the light of day. Leaving aside corruption, if I am lazy and I know that no-one else is reading the affidavits because the judges will sign anything...you could well get a warrant that does not meet that threshold.<sup>191</sup>

**3.123** Mr Giorgiutti observed that there has been an increase in applications for listening device warrants since the time of Operation Mascot:

...what could have happened over the years is that back in the day when you had people like Gordon Lever - who again, I knew more of him than knew him - he might have been doing one application a week and he was doing the whole lot. He was getting the original source material and had evidence of that. It is not like that nowadays. The NSW Crime Commission has four to six lawyers, full time, churning out warrant applications, different types of warrants. You heard Mr Levine say they are inundated - it comes like floods. In that environment it is not like it might have been when the legislation passed in 1985, where you were doing one a week and one practitioner could turn his mind to every source document and make sure the I's were dotted and the T's were crossed. That is what I think the committee should look at, to see the reality, that what Mascot is highlighting and all these allegations highlight is that there is some bigger problem out there.<sup>192</sup>

**3.124** Mr Giorgiutti also pointed out that it is often assumed that such material will never be seen, which may impact on whether applicants take care to include enough information to meet their statutory obligations:

I think the parliamentarians have assumed that having criteria in the legislation means that there are systems in place to ensure that they are met...the reality is something different. Because these things are so secret and generally because they contain sensitive information, methodology and so forth...they do not see the light of day. Therefore, it is possible, that in some organisations, in some affidavits, in some sections of the Police Force...these things probably do not even meet the threshold.<sup>193</sup>

**3.125** Mr Giorgiutti called for the committee to consider whether the checks and balances put in place by Parliament are working in practice. He suggested the committee look beyond Mr Levine's comments, as they highlight the difficulties associated with judges detecting flawed material in the applications:

I watched Mr Levine be questioned... If he says to you 'Donald Duck' or 'D. Duck' and 'M. Mouse', to me you have to look beyond those words and say, 'What is he

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<sup>190</sup> Evidence, Mr Barrett, 29 January 2015, p 3.

<sup>191</sup> Evidence, Mr Giorgiutti, 4 February 2015, p 18.

<sup>192</sup> Evidence, Mr Giorgiutti, 4 February 2015, p 19.

<sup>193</sup> Evidence, Mr Giorgiutti, 4 February 2015, p 18.

really telling me?' What he is really telling you is, 'Do not expect the Supreme Court to be checking anything because we really cannot'.

If I read an affidavit at the Crime Commission, the only reason why I can go beyond 'M. Mouse' and 'D. Duck' is if I have been to operational meetings and I actually know, otherwise I would be like the judge, I just would not have a clue. How can you tell if something is false?<sup>194</sup>

### *Committee comment*

- 3.126** Judicial oversight is of utmost importance in relation to surveillance device applications. It should serve to ensure warrants are only granted in cases where legislative requirements are met, so as to protect unnecessary intrusion on people's privacy.
- 3.127** The fact that the Bell warrant was granted in light of the affidavit's serious deficiency is deeply concerning. Clearly, at least with the Bell warrant, the very process put in place to protect people's privacy failed. How or why this happened, the committee is unsure, however, its occurrence highlights the very reason effective judicial oversight is needed.
- 3.128** The committee recognises that the onus in ensuring the accuracy and quality of information within applications and affidavits is with deponents and solicitors involved in the process.
- 3.129** However, it is troubled by comments from Mr Levine about his 'idiosyncratic' methods of checking documentation, in addition to evidence the committee received that indicates such warrants are rarely refused. These matters have done nothing to reassure the committee that applications are being scrutinised to the extent necessary.

## **Claims that allegations were false and that warrants were used as payback**

- 3.130** This section explores the claims made by some inquiry participants that their names were included on the Bell warrant because of false allegations or as part of a personal vendetta. In exploring these claims, it is firstly necessary to consider the context of Operation Mascot.

### **The context of Operation Mascot**

- 3.131** To consider these claims in context, it is necessary to provide some background information about the Special Crimes Unit and Operation Mascot. Ms Burn noted that the Special Crime Unit was set up 15 years ago following the Wood Royal Commission:

I invite the Committee to consider this in the context of the Special Crime Unit, which was set up some 15 years ago following that royal commission. The purpose of this unit was to investigate corrupt officers, particularly those who allowed organised crime or major crime to flourish. I felt then when I served in that unit—as difficult and personally taxing as it was—it was an important duty. It was critical to the health of the force and it was owed to every officer across the State doing their uniform proud every day and night.<sup>195</sup>

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<sup>194</sup> Evidence, Mr Giorgiutti, 4 February 2015, p 19.

<sup>195</sup> Evidence, Ms Burn, 10 February 2015, p 4.

- 3.132** According to Ms Burn, a Team Leader at the time, Operation Mascot focused on serious allegations of crime and corruption, predominantly based on allegations made by M5, the corrupt police officer who had 'rolled over' and was covertly working to corroborate such allegations.<sup>196</sup> The Ombudsman observed:

In December 1998 a police officer approached the NSWCC and disclosed his knowledge of and involvement in organised crime and police corruption spanning over fifteen years whilst he performed criminal investigation duties in various locations. The disclosures he made implicated a large number of former and serving police as well as civilians. This police officer became a NSWCC registered informant and was codenamed 'Sea'. Each disclosure he made, and each allegation regarding others being involved, was recorded in a document called a Schedule of Debrief ('SOD') and was allocated a number. There were initially 86 SODs. This increased over time to 231.<sup>197</sup>

- 3.133** The Ombudsman further outlined the role of the informant and how the investigation came to be jointly conducted by the Crime Commission, Police Integrity Commission and NSW Police Force:

From January 1999 until late 2001 Sea was covertly deployed to prompt and record discussions with current and former officers to corroborate some of his original disclosures and to capture any additional evidence that persons or their associates may have engaged, may be engaging, or may be about to engage in the specified criminal activities. Other investigative activities were also undertaken during this period to investigate the allegations under the Mascot reference and other informants, including serving police officers, provided assistance to Mascot.

In 2000 a Memorandum of Understanding was entered into by the NSWCC, the PIC and the NSWPF outlining the agreement between the three organisations to jointly pursue the allegations and matters being investigated under the Mascot reference.<sup>198</sup>

- 3.134** During the initial debrief of M5, Ms Burn and another investigator recorded each allegation made by M5 in a schedule of debrief, with the schedule expanding as the operation continued. Other sources of information were also considered when determining operational strategies for the investigation, including intelligence, complaints and information from files. Ms Burn stated that there was an 'enormous amount of information that was gathered as part of this operation in an attempt to do something about these very serious allegations that we had in front of us'.<sup>199</sup>

- 3.135** In terms of who was involved in Operation Mascot, Ms Burn explained that she was a Team Leader reporting to Mr Dolan, a Superintendent, who in turn reported to Mr Brammer, Assistant Commissioner. In addition, on the management committee for the investigation was Mr Phillip Bradley and Mr Mark Standen from the Crime Commission. Ms Burn explained that these people and 'others from the Mascot team met on a weekly basis to review operational direction and strategies'.<sup>200</sup>

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<sup>196</sup> Evidence, Ms Burn, 30 January 2015, p 58.

<sup>197</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 12.

<sup>198</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 12.

<sup>199</sup> Evidence, Ms Burn, 30 January 2015, p 88.

<sup>200</sup> Evidence, Ms Burn, 30 January 2015, p 57.

- 3.136** Ms Burn said that the decision of who to investigate was made by the management committee and operational committee:

The management committee and the operational committee...made decisions about the operational direction of Mascot and where the opportunities were, depending on where M5's abilities lay, and considered those factors, considered factors about the seriousness of the allegations and other factors and made decisions about who M5 would seek to further investigate through—whether it be listening devices or other.<sup>201</sup>

- 3.137** Mr Giorgiutti also provided evidence about how these operational meetings worked and who was in attendance:

The Hon. TREVOR KHAN: These were the meetings that actually, in a sense, ran Operation Mascot. Is that the case?

Mr GIORGIUTTI: They were meetings to keep the whole team across what had happened over the previous week and what was proposed to happen in the next week, two weeks, three weeks and so forth. Most people would have known what was discussed at the meetings anyway because they had access to computer systems and so forth, but it was just in case you were not across what might have happened—you might have been on leave or something—and also if you want to have input into a proposed strategy and allow analysts or monitors of the devices or the police or anyone to give input into the proposed operational strategy.

The Hon. TREVOR KHAN: How many people attended these meetings?

Mr GIORGIUTTI: Initially, probably less than a dozen and then the Mascot work increased. There were more police. I do not know if we put on more commission staff, but at the end maybe 20 - maybe. Also, as time went on, the Police Integrity Commission would have people at some of those meetings: so maybe 20 at the end.<sup>202</sup>

- 3.138** While much of the investigation centered on information provided by M5, his credibility has been the source of much contention. In addition to mental health issues, the committee received evidence that M5 had perjured himself on at least one occasion during the investigation.<sup>203</sup>

- 3.139** Ms Burn acknowledged that M5 had mental health issues, but argued that M5 was a credible source and that his health was being managed. She argued that she had an obligation to investigate his allegations and pointed out that ultimately, Operation Mascot led to the convictions of a number of corrupt police officers.<sup>204</sup>

- 3.140** In terms of the perjury matter, the committee was advised that M5 perjured himself to obtain a search warrant during Operation Mascot. This perjury was detailed in a record of conversation between M5, Detective Superintendent Dolan and Assistant Director Mr Standen at covert premises on 23 August 2000. In that document M5 is recorded as saying:

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<sup>201</sup> Evidence, Ms Burn, 30 January 2015, p 62.

<sup>202</sup> Evidence, Mr Giorgiutti, 4 February 2015, p 9.

<sup>203</sup> Evidence, Ms Burn, 10 February 2015, pp 7-8.

<sup>204</sup> Evidence, Ms Burn, 10 February 2015, p 2.

He stated that time was running out (near 4.00 p.m. when the local magistrate completed work) and was aware that the principle of swearing the false information was authorised.<sup>205</sup>

- 3.141** The document notes that both Mr Dolan and Mr Standen informed M5 not to do this again.<sup>206</sup> There is no evidence as to what if any substantive investigation occurred in relation to this serious crime. Ms Burn told the committee that the matter was reported to the Police Integrity Commission.<sup>207</sup>
- 3.142** What is not in issue is that this admitted perjury by M5 during Operation Mascot did not stop him being relied upon in further affidavits. It appears that Mascot did not disclose their key witness's perjury in any later proceedings. It goes without saying that the fact of the perjury is a matter that very substantially impacts on the witness's credit.

### **Claims that the allegations were false**

- 3.143** A number of individuals have claimed that the allegations against them in affidavits were based on false or misleading information.
- 3.144** Ms Burn told the committee that in any investigation it is standard police practice that allegations are investigated on the basis of police forming a reasonable suspicion about a matter. She pointed out that reasonable suspicion 'does not require formation of an actual belief' and that it 'is merely a belief that something might possibly have happened'.<sup>208</sup>
- 3.145** Mr Barrett rejected that there could be any basis for the allegations against him. While the Burn memorandum stated that Mr Barrett is a 'known associate of named targets' and that there are 'allegations that he may have a tape of the firearms located at a search warrant of interest to the inquiry', he stated to the committee that he is a crime reporter/investigative journalist who has videotaped a significant number of incidents. He did not accept that Ms Burn's explanation would have been a sufficient basis for inclusion of his name on a warrant.<sup>209</sup>
- 3.146** Similarly, Mr Harding, another one of the people named on the Bell warrant, vehemently denies being involved in any criminal matter and has raised concerns about the basis of his name being included, particularly when he has had minimal interaction with M5.<sup>210</sup>
- 3.147** In 2003 Strike Force Emblems was established to investigate a number of allegations in relation to Operation Mascot, one of which was the alleged impropriety in relation to the Dowd and Bell listening device warrants. The Emblems investigators reviewed material relied

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<sup>205</sup> Tabled document, Crime Commission, *Record of conversation between NSW Crime Commission Informant Sea, Detective Superintendent Dolan and Mr Mark Standen*, 23 August 2000, p 1.

<sup>206</sup> Tabled document, *Record of conversation between NSW Crime Commission Informant Sea, Detective Superintendent Dolan and Mr Mark Standen*, p 1.

<sup>207</sup> Evidence, Ms Burn, 10 February 2015, p 6.

<sup>208</sup> Correspondence from Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force to committee, 12 February 2015, p 1.

<sup>209</sup> Evidence, Mr Barrett, 29 January 2015, pp 6-7.

<sup>210</sup> Evidence, Mr Harding, 29 January 2015, p 32.

upon for inclusion in the affidavit, including the M5 interviews and subsequent schedule of debrief. They also considered evidence from 35 complainants, who were interviewed by Emblems investigators.

- 3.148** The issues they identified in relation to the 114 people named in the Bell warrant, were that:
- 54 persons ‘may not justify inclusion’ on the documentation and 60 persons ‘may justify inclusion’
  - 26 of the 54 persons referred to above, have no mention recorded against them in the schedule of debrief and 18 have no mention in the transcripts of interviews with M5
  - 28 persons named in the warrant received notification letters concerning their nomination as involved officers in Operation Mascot, suggesting that the remaining named people on the warrant were not classed as ‘involved officers’, thereby also possibly indicating that the affidavit did not include information to support all 114 being named on the warrant.<sup>211</sup>
- 3.149** While the Emblems report outlined a number of findings and recommendations, it also noted the investigation was constrained by the lack of access to certain material possessed by the Crime Commission, including the affidavit supporting the Bell warrant. These issues are discussed further in chapter 4.
- 3.150** The Emblems report did, however, make a finding that, based on the limited material they had, there was an ‘overwhelming inference’ to suggest that the affidavit possibly contained false information:
- It is the opinion of strike force investigators based on limited material reviewed and those persons interviewed, that there is an overwhelming inference to indicate criminal allegations in that the subject affidavit may contain false information and there has been an abuse of due process. The warrant was not within the ‘spirit’ of the legislation.<sup>212</sup>
- 3.151** The report also cast doubt on the operational activities and deployment of M5. It stated that ‘[t]here is certainly a large amount of doubt as to the operational activities of M5 and the legalities of how the informant was deployed’, with this raising ‘serious questions impacting on the propriety of the affidavit/s’.<sup>213</sup>
- 3.152** While the Emblems report focused on specific allegations in relation to the Bell warrant, the committee was also provided with evidence that tends to indicate more of a systemic issue in relation to false or misleading material being used in affidavits.
- 3.153** Mr Small noted that Strike Force Banks, tasked with investigating complaints against Special Crimes and Internal Affairs, found that eighteen affidavits for listening device and telephone intercept warrants contained false information. Mr Small stated that affidavits were also

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<sup>211</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 21.

<sup>212</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 30.

<sup>213</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 30.

‘embellished, exaggerated and...often misrepresented’, and that they were not ‘subject to any form of documented review by a supervisor’.<sup>214</sup>

- 3.154** On a similar note, the report from Strike Force Sibutu, dated 21 February 2002, also highlighted concerns in relation to several telephone intercept and listening device warrants obtained by Special Crimes and Internal Affairs. In short, the strike force was formed to investigate the systemic submission of false and misleading information in a number of listening device and telephone intercept affidavits and search warrant applications. Mr Galletta, lead investigator of Strike Force Sibutu (and later Emblems), outlined to the committee that with Sibutu, his team reviewed 70 affidavits in support of applications for listening devices and telephone intercepts, of which eleven affidavits were found to have included false information.<sup>215</sup>

### Claims that warrants were ‘payback’

- 3.155** During the inquiry, it was argued that the Bell warrant, and possibly other listening devices and telephone intercepts taken out by Special Crimes and Internal Affairs, were used as part of a personal vendetta against certain officers.
- 3.156** Mr Barrett suggested that because there was not a proper or lawful basis for obtaining the warrant, ‘it follows there were unlawful and ulterior motives for seeking the warrants at the time’.<sup>216</sup> The motive he advanced related to senior police officers using their positions to affect the promotional opportunities of others:

...to use a sporting analogy the use of such warrants was nothing more than an orchestrated and pre-emptive strike by a group senior police officers (the second eleven) at a stage in their respective careers using their positions in Professional Standards Command of the New South Wales Police to vilify the names of a number of other senior police (the first eleven) to secure favourable promotional prospects by eliminating the perceived threat of other senior police who they saw as rivals.<sup>217</sup>

- 3.157** Other officers also claimed that they were inappropriately targeted by certain people involved in Operation Mascot/Florida. For example, one former officer suggested that the inclusion of their name on the warrant was a form of harassment and intimidation, related to their arrest of a fellow police officer and investigation of other officers.<sup>218</sup>
- 3.158** Mr Kaldas has repeatedly complained that he has ‘not done anything that would justify this level of intense intrusive targeting’.<sup>219</sup> He stated to the committee that he felt that the informant M5 was being used to target him to settle ‘personal scores’, as discussed in the case study below. It has, however, not been suggested that there was any personal animosity between Mr Kaldas and Ms Burn at the time these investigations were undertaken.<sup>220</sup>

<sup>214</sup> Submission 1, Mr Clive Small, p 12.

<sup>215</sup> *In camera* evidence, Mr Galletta, 29 January 2014, pp 1-2.

<sup>216</sup> Submission 18, Mr Steven Barrett, p 9.

<sup>217</sup> Submission 18, Mr Steven Barrett, p 10.

<sup>218</sup> Submission 15, Name suppressed, p 1.

<sup>219</sup> Evidence, Mr Kaldas, 30 January 2015, NSW Police Force, p 10.

<sup>220</sup> Evidence, Mr Kaldas, 30 January 2015, p 10.

**3.159** Mr Brammer, former Commander of Special Crimes and Internal Affairs, rejected the assertion that people were targeted as 'payback' or named in the warrants for other inappropriate motives. In his submission, he stated:

I categorically reject allegations that I used my position as Commander Special Crimes and Internal Affairs to facilitate or encourage Mascot investigators to use the Mascot investigation for the purpose of payback or a vendetta against other NSW police officers, whether current or past members.<sup>221</sup>

**3.160** Ms Burn, one of three team leaders at Special Crimes and Internal Affairs during Operation Mascot, also firmly denied that warrants were used as part of a personal vendetta:

I deny that as Team Leader of Operation Mascot, I directed the use of illegal warrants as part of a personal vendetta towards Deputy Commissioner Nick Kaldas to secretly record his conversations when I had no suspicion that he had committed an indictable offence.<sup>222</sup>

**3.161** The case study below discusses claims Mr Kaldas has made about the reason he was targeted during Operation Mascot and Ms Burns' response to these claims.

#### **Case study – Was Deputy Commissioner Kaldas inappropriately targeted during Operation Mascot?**

Mr Kaldas, the current Deputy Commissioner, Field Operations, NSW Police Force, has continued to raise concerns about Operation Mascot and the inappropriate targeting and integrity testing of certain people, including himself. He has long argued that an 'injustice' has occurred, by being named on listening device warrants and telephone intercepts without sufficient cause and by not being given an opportunity to respond to the allegations against him.<sup>223</sup> Mr Kaldas was alarmed to find out during this inquiry that he has been the subject of 80 listening device warrants during Operation Mascot.<sup>224</sup>

Ms Burn told the committee that at the time of Operation Mascot, she held a 'reasonable suspicion' in relation to Mr Kaldas and that this suspicion was based on three allegations. The basis of Ms Burn's 'reasonable suspicion' of Mr Kaldas was set out in her answers to supplementary questions and the transcript of her evidence to the committee on 10 February 2015:

Ms BURN: There are three matters I make reference to.

The Hon. ADAM SEARLE: One of the matters is the planting of a firearm?

Ms BURN: There is more than that. I am happy to read it all out if you would like, but it is more than that.

The Hon. ADAM SEARLE: And the alleged fabricated admissions in a notebook in connection with that?

<sup>221</sup> Submission 22, Mr Malcolm Brammer APM, p 7.

<sup>222</sup> Submission 4, Ms Catherine Burn APM, p 2.

<sup>223</sup> Evidence, Mr Kaldas, 30 January 2015, p 2.

<sup>224</sup> Evidence, Mr Barbour, 3 February 2015, p 8.

Ms BURN: Yes, that is outlined; that is right.

The Hon. ADAM SEARLE: That is one allegation. We have received evidence that that matter was dealt with in a court proceeding; it was referred to the PIC and nothing further came of that matter. Is that your understanding of the situation?

Ms BURN: I do not know. I do not have any of that understanding whatsoever.

The Hon. ADAM SEARLE: But that is one of the three matters that you set out in your supplementary answers as giving rise to the reasonable belief.

Ms BURN: That is one matter, but there is a lot more to it, if you would like me to read it out.

The Hon. ADAM SEARLE: I think this document will be published. The second matter is something to do with alleged theft of money, but you do not recall any details. Is that correct?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: The third matter, I think it is on page 3, is the suspicion that Mr Kaldas was the source of a leak concerning M5 and whether or not he was conducting a covert operation. That is the third matter?

Ms BURN: It is about a leak involving M5, yes.

The Hon. ADAM SEARLE: So those are the three matters that you say gave rise to the reasonable belief?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And there is nothing else, as far as you can recall at this point in time?

Ms BURN: Not at this point in time.<sup>225</sup>

While Ms Burn outlined the details of these matters to the committee, Mr Kaldas disputed that such matters would constitute a reasonable basis to target him: 'In all the circumstances, and in my experience, it is preposterous to suggest that they could give rise to reasonable suspicion, let alone a suspicion that causes intense and prolonged targeting and bugging'.<sup>226</sup>

In terms of the first allegation that he was involved in 'loading' (planting) a gun on a suspect in an armed robbery, Mr Kaldas asserted that a thorough investigation of the facts would have shown that this allegation was false. He also noted that the matter would have been quite historic at the time of Operation Mascot and that he was a junior officer at the time, with none of his senior officers involved in the matter investigated for any wrongdoing.<sup>227</sup> The evidence of Mr Kaldas and Mr Giorgiutti is that

<sup>225</sup> Evidence, Ms Burn, 10 February 2015, p 9.

<sup>226</sup> Evidence, Mr Kaldas, 10 February 2015, p 23.

<sup>227</sup> Evidence, Mr Kaldas, 10 February 2015, p 23.

this allegation was raised and dismissed in the District Court proceedings when the offender was convicted of armed robbery.<sup>228</sup>

The second allegation related to an armed robbery in which one of the suspects in that crime had alleged that two police officers (not including Mr Kaldas) had stolen money from him in an incident prior to the robbery. While Mr Kaldas was part of the investigation team for the armed robbery, he pointed out that he was not involved in any of the allegations related to the stolen money and that no allegation had been personally made against him. He also noted that this matter, like the first allegation, was historic, arguing that 'one would need extraordinarily compelling evidence from someone with direct knowledge to commence such an investigation' given it would have occurred almost seven years earlier.<sup>229</sup>

In relation to the third allegation, Ms Burn outlined that there was a suspicion that Mr Kaldas was the source of a leak to colleagues that M5 was wearing a listening device. Mr Kaldas disputed this allegation, stating that during Operation Mascot he identified that M5 was making a poor attempt to test him: 'He [M5] visited me a number of times for no valid reason and attempted to engage me in conversations about his misdeeds. I eventually told him to go away. I had had considerable experience in covert operations and what he was doing simply did not make sense'.<sup>230</sup>

While it was clear that Mr Kaldas disputed the basis on which 'reasonable suspicion' could have been formed against him, Ms Burn asserted that she had a duty to investigate these allegations: 'Based on the information from M5, material from other sources and the credibility of M5, we not only had a duty to further investigate the matter but also had a basis for reasonable suspicion'.<sup>231</sup>

Mr Kaldas argued that the reason he was targeted was to 'settle old scores', with the surveillance and intrusion on his privacy part of a more disturbing plan for personal payback. He told the committee about his serious conflict with Superintendent Dolan and Mr Brammer, Commander of Special Crimes and Internal Affairs. He stated that 'this conflict was so deep that it should have precluded those individuals and that unit from targeting me'.<sup>232</sup> The Emblems report also refers to this and in addition mentions that a number of those subject to this surveillance had had conflict with Mr Dolan and/or Mr Brammer.<sup>233</sup>

Mr Kaldas drew the committee's attention to M5's hurt on duty claim form, which stated that M5 had experienced difficulties as a result of 'settling old scores'. He noted M5's comments that 'I was sent by my supervising superintendent to see a particular person five or six times ... I smelt a rat ... I've done stuff you wouldn't do to your worst enemy ... I've been used'.<sup>234</sup> Mr Kaldas suggested that these comments by M5 related to him.<sup>235</sup>

<sup>228</sup> Evidence, Mr Giorgiutti, 4 February 2015, p 5.

<sup>229</sup> Evidence, Mr Kaldas, 10 February 2015, p 24.

<sup>230</sup> Evidence, Mr Kaldas, 30 January 2015, p 2.

<sup>231</sup> Evidence, Ms Burn, 10 February 2015, p 3.

<sup>232</sup> Evidence, Mr Kaldas, 30 January 2015, p 2.

<sup>233</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 21.

<sup>234</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 21 and 24.

In her record of interview with Strike Force Tumen on 2 December 2002, Ms Burn described working on Operation Mascot under Mr Dolan. She described an intimidatory and authoritarian workplace with Mr Dolan in control.<sup>236</sup> She was also clear in this interview that it was known at the time Mr Kaldas was targeted that there was a conflict between Mr Kaldas and Mr Dolan.<sup>237</sup> This emerged more clearly in Ms Burns 2003 interview with Strike Force Emblems:

Q161: Can you recall at any of the management meetings whether Mr Dolan or Mr Brammer had an overt influence on trying to persuade people or trying to persuade the management meeting to target specific officers?

A: Very much so, well, they ran the place, they ran it like it was their influence, their direction, also, not just that, also Mr Bradley, he had a lot of input into it, so for instance, people like [suppressed], Nick [K]aldas, especially, I know there was a lot of friction there because people would, some people would say, John Dolan has had fall-outs with these people, you know, and it just won't look good or there's a perception here or whatever. Now, they tried to address that with the people at the time, so whether or not it's a perception thing I don't know, but it wasn't that it was like a real shock, it's not, this isn't a shock. Maybe they should have put other things better, more in place because of a perception of a conflict of interest.

Q162: So, well, you're saying there may have been some conflict of interest. Was it declared by Dolan or Brammer?

A: Definitely, it was well-known, it was well-known. Dolan, I mean, whether or not he was just playing a game I don't know because he's quite a manipulative man but he would say, I've had a fall-out with [K]aldas, I've had a fall-out, sorry, not with [K]aldas, with [suppressed]. He doesn't like me, etcetera, etcetera, so I don't really want to have too much on the ground to do with this person, but he still had influence in sort of the, you know, direction. Now, [suppressed], for instance, it doesn't really matter. Allegations were made against him. They were quite strong allegations and we pursued it as we did with other people. Nick [K]aldas, he, he, it was, I didn't know about it but it was quite widely known in the unit that [K]aldas, and Dolan had had a fall-out, I didn't know anything about it. From other people I'd heard that it was a pretty bad fall-out. Dolan would negate that and say he didn't think it was a bad fall-out but nevertheless it would still be, you know, could be still a conflict.

Q163: Did you know what the fall-out was over?

A: I never really took much notice but it was something to do with when they were involved in the, I think the undercover unit, the New South Wales Police undercover unit, relating to a document that somebody was supposed to have authored and I think they had a physical, a verbal argument but I don't know.<sup>238</sup>

It is clear she is speaking about what was known at the time Mr Kaldas was targeted. However, Ms

<sup>235</sup> Evidence, Mr Kaldas, 10 February 2015, p 26.

<sup>236</sup> Submission 18, Mr Steven Barrett, Annexure F, pp 6-7 and 18-19.

<sup>237</sup> Submission 18, Mr Steven Barrett, Annexure F, pp 33-34.

<sup>238</sup> Submission 18, Mr Steven Barrett, Annexure G, p 41.

Burn's evidence to this committee is contradictory about whether she was aware of that in 2000:

Mr DAVID SHOEBRIDGE: You knew that Mr Dolan did not like Mr Kaldas? He did not keep that a secret.

Ms BURN: Post 2002 it became more widely known that Mr Dolan and Mr Kaldas did not like each other. At the time I did not know the extent of their dislike.

Mr DAVID SHOEBRIDGE: You knew they did not like each other. That is clearly the case, is it not, Ms Burn? You knew that they did not like each other.

Ms BURN: I do not necessarily think in around 2000 that I had that view in 2000.

Mr DAVID SHOEBRIDGE: What view did you have?

Ms BURN: I do not know if I particularly had a view, but I do not know if I had that view particularly. To the degree that you are talking about, I do not know the degree of their conflict and what happened about that.<sup>239</sup>

Ms Burn gives no evidence of taking steps about this matter, on learning of that prior conflict between Mr Dolan and Mr Kaldas and the implications this may have for Mascot/Florida (ie that it may have tainted the operation). Ms Burns' later evidence was that she became aware of this animosity in late 2001:

Mr DAVID SHOEBRIDGE: Did Mr Dolan ever declare anything to you?

Ms BURN: I cannot remember specifically in relation to Mr Kaldas.

Mr DAVID SHOEBRIDGE: Did Mr Brammer ever declare anything to you?

Ms BURN: Yes, he did, at a later time.

Mr DAVID SHOEBRIDGE: What did he—sorry.

Ms BURN: Sorry, I am just trying to remember when. It was, I think, late 2001.

Mr DAVID SHOEBRIDGE: What was the effect of what Mr Brammer said to you in late 2001?

Ms BURN: Well, it was really he was setting out issues between Mr Dolan and Mr Kaldas that were— their history.

Mr DAVID SHOEBRIDGE: Do not be coy, Ms Burn; just say what it was.

Ms BURN: It was about their history.

Mr DAVID SHOEBRIDGE: You do not have to be concerned about setting out the detail of it. Feel free to put it on the record. What was it?

Ms BURN: I do not have a great recollection. It was a document I saw when I was being examined by the Ombudsman. I do not have that document, but I do recall when I looked at that document—but I do not have a great recollection—that he did

<sup>239</sup> Evidence, Ms Burn, 30 January 2015, pp 59-60.

set out that there was history between them. That is really all I can recall.

Mr DAVID SHOEBRIDGE: In 2001, Mr Brammer set out in a document the personal animosity or a version of the personal animosity between Mr Dolan and Mr Kaldas? Is that what you are saying?

Ms BURN: I would need to take that on notice about the exact date, but I believe it was late 2001 and it was about their history.

Mr DAVID SHOEBRIDGE: It was not a neutral history, was it; it was a history of conflict between them?

Ms BURN: There was conflict.<sup>240</sup>

The committee finds it difficult to accept that Ms Burn has no recollection of a range of important matters in this inquiry, including the conflict between Mr Kaldas and Mr Dolan:

The Hon. ADAM SEARLE: You have told us that you could not remember who on the operations committee suggested that Mr Kaldas be targeted. You have said you have no independent recollection about M5 admitting perjury or the incident report, and you have also said that you no longer have any independent recollection of the debrief conducted by you and another officer of M5. Given the importance of M5 to the Mascot/Florida operation, and given the importance of the matters that the operation was undertaking, I suggest to you that it is not believable that you would not now have any recollection of at least those three matters?

Ms BURN: Well, I take absolute exception to that, absolutely, and could we just go through those once again?

The Hon. ADAM SEARLE: Sure ....

Ms BURN: I simply do not have a recollection one way or another. But as I have also given in evidence, Mr Kaldas was not central to this investigation. I do not necessarily think that that is unusual. M5 mentioned hundreds of police, many of them who were serving. Mr Kaldas was not central and I do not believe that you can then say to me that I am giving evidence that is not believable.

The Hon. ADAM SEARLE: I thought I had to put it to you as a matter of fairness, Ms Burn.<sup>241</sup>

While Mr Brammer categorically rejected that he was involved in the targeting of individuals as part of payback or personal vendetta,<sup>242</sup> the committee notes that Mr Dolan has not been given an opportunity to respond to these issues. The committee was persuaded by *in camera* evidence that it is inappropriate to contact Mr Dolan, even if he could be located.

The committee was also told that during the initial debrief of M5, it was Ms Burn who proffered Mr

<sup>240</sup> Evidence, Ms Burn, 30 January 2015, p 61.

<sup>241</sup> Evidence, Ms Burn, 10 February 2015, p 20.

<sup>242</sup> Submission 22, Mr Mal Brammer APM, p 7.

Kaldas' name. When the committee asked Ms Burn whether this was the case, she could not recall the details, noting the debrief took place over a five day period.<sup>243</sup> Although Mr Kaldas provided a two page extract of what seemed like the initial debrief with M5, showing his name was suggested by the investigator, this document failed to identify Ms Burn as asking the question about Mr Kaldas. It also showed that Mr Kaldas' name was not the only name put to M5.<sup>244</sup>

Ms Burn rejected allegations that she was involved in any form of a personal vendetta towards Mr Kaldas.<sup>245</sup> She stated 'I did not have any animosity towards, conflict with or vendetta against Mr Kaldas'. She stated 'Mr Kaldas was not central to the operation. Mascot was intended to investigate the entirety of M5's allegations, including those events involving Mr Kaldas. Over the course of Mascot we investigated many of the allegations made against many people'.<sup>246</sup>

Ms Burn acknowledged that Mr Kaldas has denied any wrongdoing. She stated that although she does not know the outcome of any of the original allegations against him (as she left the unit in 2002), Mr Kaldas has been promoted twice, which would be unlikely to occur if there were any outstanding concerns about his character.<sup>247</sup>

Mr Andrew Scipione APM, Commissioner of Police, made it clear to the committee that he could not have appointed Mr Kaldas to the position of Deputy Commissioner if he had not been cleared by the Professional Standards Command.<sup>248</sup> Mr Kaldas thanked Mr Scipione for publicly making that statement: 'I thank him for that endorsement, which was unambiguous in a vote of confidence'.<sup>249</sup>

### *Committee comment*

- 3.162** The committee shares the concerns about the propriety of the Bell warrant, amongst other listening device and telephone intercept warrants obtained during Operation Mascot. Since 2002 many of those named on the warrant have been in the dark as to why they were named. The Commissioner's erroneous explanation on *60 Minutes* only served to cause confusion, with many later finding out that adverse allegations were indeed made against them.
- 3.163** Without ever having an opportunity to respond to these allegations since 2002, the committee understands people's distress and frustration. However, in the absence of all of the documentation, the committee is unable to resolve whether all allegations are false against those mentioned in the warrants and whether there was a sufficient basis for the warrants to be sought for each individual.

<sup>243</sup> Evidence, Ms Burn, 10 February 2015, p 15.

<sup>244</sup> Published extract from confidential document, Tabled document, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, *Two page extract from transcript of debrief with M5*, 10 February 2015, p 70.

<sup>245</sup> Submission 4, Ms Catherine Burn APM, p 2.

<sup>246</sup> Evidence, Ms Burn, 10 February 2015, p 3.

<sup>247</sup> Evidence, Ms Burn, 10 February 2015, p 5.

<sup>248</sup> Evidence, Mr Andrew Scipione APM, Commissioner, NSW Police Force, 4 February 2015, p 38.

<sup>249</sup> Evidence, Mr Kaldas, 10 February 2015, p 29.

- 3.164** In Mr Kaldas' case, the committee acknowledges concerns that he was the target of such intense surveillance for a sustained period of time. While Ms Burn outlined the allegations against Mr Kaldas, based on the material the committee has it is difficult to understand how these matters could justify 80 warrants having been issued during the course of Operation Mascot.
- 3.165** Additionally, given the nature of two of the allegations against Mr Kaldas, and the fact that those issues arose many years before Operation Mascot started, it is difficult to accept that such matters would justify a prolonged covert investigation into his conduct.
- 3.166** The firearms planting issue is dealt with in the evidence of Mr Kaldas and Mr Giorgiutti. The second issue involving money is not specified, other than by Mr Kaldas. The third issue was simply that Mr Kaldas thought he was being set up by Mr Dolan and subject to surveillance, a matter on which he complained to the Crime Commission as set out in the affidavit in support of a telephone intercept warrant. Even if Mr Kaldas told another police officer that he thought M5 was wired up and would record them if they went to the lunch, we do not see how this would constitute a criminal offence. From all the evidence put before us, the committee considers that Mr Kaldas was targeted inappropriately by Operation Mascot.
- 3.167** In terms of Mr Kaldas' belief that he was targeted as part of a personal vendetta, the committee can appreciate why he believes this to be the case, particularly given statements made by M5. However, the committee has not obtained evidence from key witnesses on these matters, including M5, Mr Standen and Mr Dolan.
- 3.168** The history of conflict between Mr Kaldas and Mr Dolan was outlined in Mr Kaldas' evidence and corroborated in the evidence of Ms Burn and also in her records of interview with Strike Force Tumen and Emblems. It is strongly suggestive of an improper motive in targeting Mr Kaldas at least insofar as Mr Dolan had input into the decision, however, the committee has not had access to the extensive documentation available to the Ombudsman including, amongst other things the 210 affidavits supporting the listening device and telephone intercept warrants.
- 3.169** Ms Burn did not concede in her evidence to the committee the obvious impropriety of Mr Dolan sanctioning surveillance of a person with whom he is in a relationship of conflict. Ms Burn in her evidence has clearly tried to downplay the state of her knowledge about the conflict between Mr Kaldas and Mr Dolan at the time Mr Kaldas was targeted by Operation Mascot.
- 3.170** Her evidence to the committee was contradictory, and it was in conflict with her record of interview with Strike Force Emblems. The committee finds that Ms Burn was well aware of the conflict between Mr Kaldas and Mr Dolan at the time Operation Mascot determined to target Mr Kaldas. There is no evidence of what steps, if any, were taken to address this conflict and ensure it did not taint the investigation.
- 3.171** In terms of her recollection about this issue, Ms Burn does not come to these matters cold after more than a decade. She was questioned extensively on them by the Ombudsman in 2014. Furthermore, as her records of interview in 2002 and 2003 show, she well knew the significance of Mr Kaldas in the investigation. Her explanation that she did not recall details pertaining to him because he *'was not central'* to the investigation does not sit comfortably with her earlier interviews.

- 3.172** On the material before this committee it is difficult to accept that there was legitimate basis to expose Mr Kaldas to one listening device warrant, let alone the 80 warrants that he was subjected to. The level of intrusion on his professional, social and family life was extreme. This level of targeting cannot be properly explained by the insubstantial and uncorroborated allegations made against him during the Mascot inquiry. Mr Kaldas is deserving of an apology.

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**Finding 5**

That on the evidence before this inquiry there is a compelling case to make a specific apology to Mr Kaldas, which we now do, and we call on the NSW Government to do the same.

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- 3.173** Even taken at their highest the allegations against Mr Barrett are that, as an experienced investigative crime reporter, he had access to a video tape(s) of police activities and he was conversant with both police and criminals. This is the very job of an investigative reporter. The committee believes strongly that independent journalism is essential to maintain our democracy. Covert surveillance of journalists for simply doing their job is a fundamental attack on this necessary independence.

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**Finding 6**

That on the evidence before this inquiry there is a compelling case to make a specific apology to Mr Barrett, which we now do, and we call on the NSW Government to do the same.

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## Chapter 4 Emblems

To this very day, NSW Police Force senior executive, past and present, seem to not accept responsibility for the emblems investigations or the inadequate outcomes.<sup>250</sup>

This chapter discusses the genesis of the Emblems strike force and report. To this day the investigation remains incomplete and its recommendations unimplemented. As this chapter shows, the lack of access to crucial material held by the New South Wales Crime Commission was a major impediment to the investigation and has had a devastating impact on the credibility of the strike force's findings and recommendations. The chapter examines the progress of the report through the police hierarchy after it was 'finalised' and the claims that the police executive and the government should have done more to resolve the serious issues identified by the investigation.

### The genesis of Strike Force Emblems

- 4.1** Strike Force Emblems was an internal NSW Police Force inquiry established in July 2003 following a complaint by the Police Association about the alleged impropriety of listening device warrant 266 of 2000.<sup>251</sup> The strike force commenced work with a team of eight staff, commanded by Assistant Commissioner Dobson. Detective Inspector Mark Galletta was the lead investigator.<sup>252</sup>
- 4.2** Emblems was not the first strike force to examine the management and operation of the Special Crime Unit. Operation Banks in 1999 and Strike Forces Sibutu and Tumen in 2002 were earlier investigations conducted in response to internal police complaints.<sup>253</sup> The latter two strike forces were also managed by Mr Galletta.<sup>254</sup>
- 4.3** In addition to the complaint raised by the Police Association, several other allegations involving the Special Crime Unit were examined as part of Strike Force Emblems, as detailed in a letter from Mr Galletta regarding a meeting with the Association that took place in June 2003:

During that meeting a series of issues were raised on behalf of the Association membership specifically in relation to the impropriety of Listening Device Warrant No 266 of 2000. As a result of that meeting **Strike Force Emblems** was formed to

<sup>250</sup> Evidence, Mr Malcolm Brammer APM, former Commander, Special Crime and Internal Affairs, NSW Police Force, 4 February 2015, p 21.

<sup>251</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 1. The committee is aware of the existence of at least two versions of the Emblems report: a preliminary report undated and unsigned and the Final Report dated March 2004. References to the Emblems report in this report are to the March 2004 version provided to the committee in a response to questions on notice to the Inspector of the Police Integrity Commission, the Hon David Levine AO RFD QC.

<sup>252</sup> Submission 18, Mr Steven Barrett, Attachment K, Correspondence from Detective Inspector Mark Galletta to Mr Peter Remfrey, President, Police Association of NSW, 18 May 2004.

<sup>253</sup> Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement p 14.

<sup>254</sup> *In camera* evidence, Mr Mark Galletta, former Commander, NSW Police Force, 29 January 2015, p 1. Evidence published by resolution of the committee.

investigate a number of allegations in relation to the said warrant which contained 114 names. Further allegations concerning the management of the Special Crime Unit of SC&IA were incorporated into the Strike Force reference.<sup>255</sup>

- 4.4 The additional matters added to the Emblems reference included several issues raised in 2001 by Mr Brett McFadden, Superintendent, NSW Police Force, who at the time was a Detective Inspector attached to Special Crime and Internal Affairs.

#### The November 2001 complaints

- 4.5 In November 2001 Mr McFadden arranged a meeting with his commander, Assistant Commissioner Andrew Scipione, to discuss complaints that had been made to Mr McFadden by officers attached to the Special Crime Unit. These officers were concerned about aspects of the investigations being carried out by the unit, including the legality of telephone intercept affidavits for Operations Orwell/Jetz, the interception of drugs on private premises in Operation Mascot/Florida and the controlled release of fictitious information to facilitate search warrant applications and executions.<sup>256</sup> The committee is satisfied with the credibility and motivations of these officers and that the inability to have their concerns addressed within the Command led to the approach to Mr Scipione.
- 4.6 Mr Scipione told the committee what happened next:

It is always good to put these things in context, so if I might take you back. I indicated that these matters had been raised with me. The then Inspector McFadden came to me on 28th November and brought to me a series of concerns that he had regarding some supposed or alleged activities within the Special Crime Unit that he had been made aware of by members of that unit. I dealt with those seriously. I thought—and still believe to this day—that those matters that were raised with me were very, very serious. I immediately caused a range of things to happen, as I said. First and foremost, I spoke with Brett. He took me through the allegations. I then thought so much of it that I contacted, by phone from my office, the then Deputy Commissioner and informed him of what I had just been told.

The Hon. ADAM SEARLE: That was Mr Moroney?

Mr SCIPIONE: Mr Moroney. I made arrangements for Brett, and I think a support person to go down with him, to let him talk to the Deputy Commissioner himself face-to-face, so that he could get a sense of just how serious this was. Brett returned, indicated he had been spoken to and been given a very generous amount of time to talk through the issues. Upon returning I said, 'Brett, I now need you to document these because to formalise these complaints I would like to have a record'. He did that that afternoon and in formalising them, he sent to me that day an email—it was later that night—an email indicating just exactly what it was that he had formally advised me of earlier in the day. I immediately turned that around on coming to work on 30 November and that was made available to the Deputy Commissioner.

I indicated to the Deputy Commissioner at the time that I would not be launching an investigation within Special Crime and Internal Affairs because of the Operation

<sup>255</sup> Submission 18, Mr Steven Barrett, Attachment K [emphasis in original].

<sup>256</sup> Evidence, Mr Brett McFadden, Superintendent, NSW Police Force, 3 February 2015, p 38.

Dresden protocols. It would have been inappropriate to have an Internal Affairs investigator conducting an investigation into an Internal Affairs officer over some of the most serious allegations that you could have made against you as an officer in Internal Affairs. For me to have used my resources to do that would have been wrong and I was not going to allow it to happen. I can assure you that Ken Moroney took it seriously. I understand that he registered it, allocated it to a command outside Internal Affairs and brought in Chief Superintendent Brian Reith at the time. That is my recollection. Again, from that point forward I was not consulted or engaged. We basically handed everything over.<sup>257</sup>

4.7 Mr Scipione rejects any suggestions that he did not take Mr McFadden's complaints seriously:

Nothing could be further from the truth. In fact, that afternoon, that very afternoon when Brett McFadden raised these matters with me, I arranged for him to meet with Deputy Commissioner Moroney to discuss and canvass his concerns. Shortly thereafter, Inspector McFadden provided me with a nine-page report—this is on the same day—which, on 30 November, the following day, I forwarded to Deputy Commissioner Moroney where it was registered as a formal complaint and it was subsequently fully investigated.<sup>258</sup>

4.8 Mr McFadden told the committee that he felt that his concerns had been listened to by Mr Scipione and Mr Moroney, and that appropriate action would be taken to address them.

*What happened to these complaints?*

4.9 Mr Scipione assumed that Mr McFadden's November 2001 complaints were fully investigated by Mr Reith and subsequently as part of Emblems, as he recounted:

Mr DAVID SHOEBRIDGE: So how do you know it was fully investigated then?

Mr SCIPIONE: Only from the notion that, when I was told—I assume, because I excluded myself from this investigation. I assumed that it would have been rolled up and become part of what was ultimately known as Emblems.

Mr DAVID SHOEBRIDGE: So you are speculating?

Mr SCIPIONE: No, I have since read Emblems, remember? I got a copy of Emblems sent to me, certainly by Mr Levine, and I had read it earlier in 2012. So I was not speculating because a number of those matters that I understand were the subject of those complaints by Mr McFadden were caught up, in fact, in matters that were looked at as part of the Emblems investigation.

Mr DAVID SHOEBRIDGE: So when you say 'fully investigated', you say 'fully investigated by Strike Force Emblems'?

Mr SCIPIONE: Well, Strike Force Emblems would have done as much as they possibly could, bearing in mind they were under terrible constraints with those restrictions that were placed on them regarding secrecy provisions of the Crime

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<sup>257</sup> Evidence, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, 4 February 2015, p 40-41.

<sup>258</sup> Evidence, Mr Scipione, 4 February 2015, p 34.

Commission. But my understanding was that Mr Reith had conducted a full and thorough investigation.

Mr DAVID SHOEBRIDGE: You say 'full and thorough'—how do you know? You know he was being tasked with an investigation but how do you manage to say to us it was fully investigated and full and thorough? That is purely speculation on your behalf.

Mr SCIPIONE: What I did say, in response to three questions ago was, it might be appropriate that you ask Mr Moroney.

Mr DAVID SHOEBRIDGE: But you told us, in your evidence, that it had been fully investigated.

Mr SCIPIONE: Well that is my understanding. I know the calibre of Mr Reith; I know how committed Ken Moroney was to resolving these matters; and I know that certainly it was something that he took very seriously.

Mr DAVID SHOEBRIDGE: So when you said to Mr Moroney in that regard, 'I will have the matter handled personally by the manager SASC and provide you with advice accordingly', in your email to Mr Moroney on 30 November, what advice did you provide him with accordingly?

Mr SCIPIONE: I do not know what document you are referring to and I am happy to have a look at any document.

The Hon. ADAM SEARLE: Getting back to your evidence, when you say 'fully investigated', that is an assumption you make based on your knowledge of Mr Reith?

Mr SCIPIONE: Yes and wrongly of me to assume that.

The Hon. ADAM SEARLE: There was a two-year gap between your referral of those matters to Mr Moroney that had been raised with you by Mr McFadden and Strike Force Emblems being asked to look into it. Do you know why there was that gap before the matter was looked at more thoroughly?

Mr SCIPIONE: Sir, I have no idea. I was not consulted and rightly, I was excluded, as I indicated in my earlier evidence.

The Hon. ADAM SEARLE: Even to this day you do not actually know why there was that delay?

Mr SCIPIONE: No.<sup>259</sup>

**4.10** As Mr Scipione told the committee, Mr McFadden's allegations were investigated by Assistant Commissioner Reith and then for some reason, unknown to the committee, reinvestigated by Emblems as indicated by the following excerpt from the Emblems report:

The strike force is also re-investigating CIS 01004320, a previous investigation conducted by former Senior Assistant Commissioner Reith into the operational activities of SCU that was oversighted by the Police Integrity Commission requiring further investigation of Issue 3: Controlled release of fictitious information to facilitate

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<sup>259</sup> Evidence, Mr Scipione, 4 February 2015, p 42.

search warrant applications and executions & Issue 5 ... Additionally other issues required review:

- Concern regarding the legality of TI affidavits for Operation Orwell/ Jetz
- Issue concerning the interception of drugs on private premises in Mascot ...
- The delay of the arrest of significant drug suppliers and possible links to drug related deaths...<sup>260</sup>

**4.11** Prior to being called by this committee to give evidence, Mr McFadden had appeared before two budget estimates committee hearings in 2006 and 2012. On all three occasions Mr McFadden has had to deal with the possibility of being asked questions about the matters he reported in good faith some 14 years ago, knowing that his answers may breach statutory secrecy provisions under any other circumstances.

**4.12** At his appearance before this committee, Mr McFadden alluded to the confronting position in which he has found himself since attempting to find a way to resolve his colleagues' concerns about the integrity of the Special Crime Unit all those years ago:

I take pride in my professional standing, which has as its core a foundation of honesty and integrity. As you would appreciate, I take my obligations to always act in accordance with the law seriously and as such I have given this matter extensive consideration. I must say it remains a concern for me.<sup>261</sup>

***Committee comment***

**4.13** It is clear to the committee, that by communicating these matters to his superior and in the years that followed, Mr McFadden has conducted himself with the utmost professionalism and should be commended for his honesty and integrity.

**Investigators' access to Crime Commission material**

**4.14** One of the major challenges confronting the Strike Force Emblems investigators was the need to gain access to Crime Commission documents, especially a copy of the supporting affidavit to the September 2000 Bell warrant, and to interview officers or witnesses involved in the Mascot/Florida investigations.

**4.15** The critical significance of this material was not lost on the lead investigator. When asked if he realised at the beginning of his investigation how important it would be to access the affidavit Mr Galletta answered: "That would be the first document any basic investigation would look at".<sup>262</sup>

**4.16** Regrettably, these documents and interviews were withheld by the Crime Commission on the grounds of statutory secrecy. The ramifications of this refusal on the conduct and outcomes of the Emblems investigation were significant and this fact is acknowledged in numerous

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<sup>260</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March, 2004, p 2.

<sup>261</sup> Evidence, Mr McFadden, 3 February 2015, p 35.

<sup>262</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 6.

internal documents produced by the office of the Commissioner of Police and the Police Ministry in the years following the 'completion' of Emblems:

The investigation outcomes and therefore recommendations were limited by (a) the incapacity of investigators to access the affidavits of the Listening Device warrants, and (b) an incapacity to interview a range of police seconded to the NSW Crime Commission due to the secrecy provisions under S29 of the NSW Crime Commission Act 1985.<sup>263</sup>

**4.17** Mr Galletta told the committee about his painstaking efforts to access the material. He described a meeting at the Crime Commission in the early days of the inquiry involving himself and Mr Dobson, along with the Crime Commissioner, Mr Phillip Bradley and solicitor, Mr Giorgutti:

We asked whether we could get access to it or what was the best form of approach to get the affidavits. The comments that were made were they were concerned that it would "open up a Pandora's box" by going behind a warrant. .... We then sought legal advice through our court and legal systems and I spoke to Ian Dixon. Then we got referred to Mr Bartley, Senior Counsel, to see whether there was any legislation prohibiting us getting the affidavit, and basically they agreed that there was not so on the back of that advice we continued to pursue correspondence and communication with the Crime Commission over a number of occasions, trying to get the affidavits, trying to get source material. It was mooted that we be provided all the documentation in a room at the Crime Commission which we could access. That did not eventuate.<sup>264</sup>

**4.18** According to Mr Galletta, initial agreement from Mr Bradley to provide the material was withdrawn because Mr Bradley suspected the Emblems team had leaked material to the media. Mr Galletta emphatically denies this: '... there had been some articles in the paper and Bradley believed that there were leaks coming from Emblems to the paper, which was completely false'.<sup>265</sup>

**4.19** In evidence to the committee, Mr Bradley advised that he was aware that Mr Kaldas was under surveillance:

I was told at the time that was because there was an allegation flowing from Sea that Kaldas was corrupt. I did not believe that, but I could not interfere. I do not know whether people knew that I was friendly with Kaldas, but I had certainly worked with him very closely on a number of important matters ... I found him to be a person of great ability and integrity, and I do not think I am wrong about that.<sup>266</sup>

**4.20** The Emblems team sought other avenues to secure the Crime Commission information but Mr Bradley made it very clear he would not countenance such a move:

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<sup>263</sup> Answers to questions on notice, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, 11 February 2015, Attachment J, Advice, Sergeant Kendall Strik, Co-ordinator, Professional Standards Unit, in response to Budget Estimates questions, 19 September 2006, p 1.

<sup>264</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 6.

<sup>265</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 7.

<sup>266</sup> Published extract of *in camera* evidence, Mr Phillip Bradley, former Commissioner of the Crime Commission, 29 January 2015, p 57-58.

We tried to do certain other things. We wanted to interview the involved officers that are identified in the Emblems report. However, again, the section 29 curtain was pulled down and we were unable to interview those people. We sought legal advice to see whether, if we went outside 29 and interviewed them, was there an issue, and there was a response back from Bradley that if we tried to interview anyone we would be charged with a breach of the Crime Commission Act.<sup>267</sup>

**4.21** Attempts to secure this material persisted throughout and even after the inquiry was finalised, including through approaches by Mr Moroney. All of these attempts were met without success.<sup>268</sup>

**4.22** The inability to access this material meant that many of the conclusions and recommendations in the Emblems report were tentative. For example, in relation to the propriety of the Bell warrant, Mr Galletta noted that:

It is the opinion of Strike Force investigators, based on the limited material supplied and information from persons interviewed, that there is insufficient evidence to confirm impropriety surrounding the issue of the said warrant. Examination of the supporting affidavit **to which the investigators have not had access** may confirm or refute this finding.<sup>269</sup>

**4.23** Alternatively, those recommendations that were more assertive were vulnerable to criticism (see 4.40).

**4.24** The Emblems complainants were especially frustrated that the investigators were not able to access this material, as expressed to Mark Galletta during a debrief at the end of the investigation:

The complainant was informed that the NSWCC had not given authorisation to the strike force to obtain material or interview persons subject to the Operation Mascot reference. Subsequently the investigation was finalised, as the matters could not be progressed. The complainant was extremely dissatisfied with this outcome and stated it was not right that the persons responsible would not be held accountable. He believed the management of SC&IA that impacted upon his complaint would continue to conduct themselves in the same manner.<sup>270</sup>

**4.25** Several inquiry participants commented on the restraints imposed by the Crime Commission as a factor in the unsuccessful resolution of Emblems, including Commissioner Scipione:

Thinking back, if this had been dealt with by getting access to that material at the time then these matters, I believe, would have been finalised—they would have been finished. And that would have been in everyone's best interest.<sup>271</sup>

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<sup>267</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 7.

<sup>268</sup> Answers to questions on notice, Mr Andrew Scipione, 11 February 2015, Attachment B, Advice, Assistant Commissioner Paul Carey, Professional Standards Command, 20 June 2011, p 3.

<sup>269</sup> Submission 18, Mr Steven Barrett, Attachment K [emphasis added].

<sup>270</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 35.

<sup>271</sup> Evidence, Mr Scipione, 4 February 2015, p 45.

- 4.26 Despite this setback, the Emblems team felt that they had done their very best under difficult circumstances, as one of the investigators, Detective Inspector Peter McErlaine recounted:

When we closed the doors on Emblems we were confident and convinced that we had done the best we could and nothing ever came back in the ... opposite direction to say the contrary.<sup>272</sup>

- 4.27 The following section examines the reasons behind the Crime Commissioner's refusal to allow the Emblems team to access material crucial for its investigation.

### **The Crime Commissioner's rationale for refusing access**

- 4.28 A document prepared by Mr Bradley for the Crime Commission Management Committee in 2004 sets out the Crime Commissioner's response to requests for access to commission documents by the police.

- 4.29 As the documents shows, Mr Bradley was concerned that he was not consulted about the establishment of the strike force '... this investigation had been ordered without consultation with me, notwithstanding the impact that it has on my organisation. I was informed about it by the Commissioner's staff officer after the event'.<sup>273</sup>

- 4.30 The document also confirms Mr Galletta's evidence that the Crime Commissioner's initial decision to assist the strike force was short lived due to his concerns about aspects of the investigation. Because of these concerns, Mr Bradley withdrew his initial support:

I have concerns about Strike Force Emblems. I understand that those concerns are shared by the Commissioner of Police. These concerns may be summarised as an apprehension that the operations of that Task Force are more in the nature of a campaign (partly conducted by the media) on behalf of the complainants who are colleagues, rather than an objective investigation by disinterested professional. Because of these concerns I cannot provide highly confidential information to that Task Force.<sup>274</sup>

- 4.31 On 22 October 2003 Mr Bradley wrote to the Commissioner of Police:

In our meeting on the 7<sup>th</sup>, these issues were again canvassed. I also expressed concern about the sensitive nature of the documents and perceptions about the motivation of those who initiated the complaints. As I understand it, you share these concerns, and more specifically, the continued leaking of information ... There is now an inference available that the Emblems exercise is retaliation... Since we last spoke, I have even less confidence that this matter can be handled appropriately or that confidentiality will be preserved. You indicated that you would investigate other options. I would be interested to know whether you have found any.<sup>275</sup>

<sup>272</sup> Evidence, Mr Peter McErlain, Detective Inspector, NSW Police Force, 3 February 2015, p 29.

<sup>273</sup> Tabled document, Mr Phillip Bradley, former NSW Crime Commissioner, Report to the Crime Commission Management Committee - *Strike Force Emblems*, undated, p 8.

<sup>274</sup> Tabled document, Report to the Crime Commission Management Committee - *Strike Force Emblems*, p 13.

<sup>275</sup> Tabled document, Report to the NSW Crime Commission Management Committee - *Strike Force Emblems*, p 9.

- 4.32 The references in Mr Bradley's document to the former Commissioner of Police, Mr Moroney, having shared his concerns about the Strike Force Emblems investigation are perplexing as the main concern Mr Moroney raised in his evidence to the committee was that the investigation was hampered by lack of access to Crime Commission documents.<sup>276</sup>
- 4.33 More than perplexing, the views attributed to Mr Moroney in the Bradley briefing note are inconsistent with Mr Moroney's evidence on oath to this committee about his views of the Emblems investigation.<sup>277</sup>
- 4.34 Mr Bradley's other rationale for not co-operating with Emblems was that he did not think the matter under investigation was of much significance, a position he no longer holds:
- I thought there probably would not be too much damage as a consequence of it and that there were more important things to do. However, I have now gained a better understanding of it.<sup>278</sup>
- 4.35 Looking back, Mr Bradley speculates whether things may have been very different had he authorised this material to be released: '...to some extent I could have saved \$20 million in distraction that has gone on over the last decade or so'.<sup>279</sup>

### Response of the police hierarchy to the Emblems report

- 4.36 Strike Force Emblems finalised its report in March 2004 and the investigation team was disbanded in August of that year. The total cost of the strike force was \$286,850.<sup>280</sup> While the report was never publicly released, significant parts of it have been leaked to the media and other parties since 2012.<sup>281</sup>
- 4.37 The quality of the Emblems report and recommendations was a major theme throughout the inquiry. The committee heard that on the one hand, the report was prepared by respected and experienced officers and endorsed by the police hierarchy, while on the other hand it was condemned for being poorly drafted and lacking objectivity.

### Support from the police hierarchy

- 4.38 Mr Galletta told the committee that the Emblems report and recommendations were fully endorsed by the police hierarchy:

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<sup>276</sup> Evidence, Mr Ken Moroney AO APM, former Commissioner of Police, NSW Police Force, 4 February 2015, pp 70, 75.

<sup>277</sup> Evidence, Mr Ken Moroney, 4 February 2015, pp 70, 71.

<sup>278</sup> Published extract of *in camera* evidence, Mr Bradley, 29 January, 2015, p 57.

<sup>279</sup> Published extract of *in camera* evidence, Mr Bradley, 29 January, 2015, 2015, p 63.

<sup>280</sup> Answers to questions on notice, the Hon David Levine, AO RFD QC, Inspector of the Police Integrity Commission, 4 February 2015, Mr Les Tree, Briefing Note, Ministry for Police and Emergency Services, 20 June 201, p 1.

<sup>281</sup> Mr Neil Mercer, *Bugging bombshell as secret files revealed*, Sydney Morning Herald, see <http://www.smh.com.au/nsw/bugging-bombshell-as-secret-files-revealed-20120908-2510k.html>.

... the Emblems report was read by Commissioner Moroney, the Executive Complaints Management Team, which comprised Deputy Commissioner Madden at the time, Assistant Commissioners Dobson and Waites and a number of other high-ranking police, who accepted the report to the fact on 14 April 2004 it was reviewed by the Professional Standards Manager of the Executive Complaints Management Team who says that he has comprehensively reviewed the document and agrees with the findings and recommendations, and that is signed on 15 April by Deputy Commissioner Madden, he agreeing with those findings.<sup>282</sup>

- 4.39** Despite the report being signed off by key members of the senior executive, support was not universal. As the former commissioner, Mr Moroney stated, the signing off of a report by a senior officer does not mean there is unequivocal support for its contents:

Each officer has their own capacity to think. Each holds the office of constable, which is an independent office. I would often see documents where an officer had recommended, the next senior officer had agreed and perhaps someone else had disagreed and ultimately it was up to the final arbiter – whether that was the commissioner or a deputy commissioner or the region commander – to make a conclusion.<sup>283</sup>

- 4.40** For example, in June 2004, Mr John Carroll, the Acting Assistant Commissioner of the Professional Standards Command, offered the following forthright assessment:

The comments of the investigator are extremely subjective, as he has drawn an inference of corrupt conduct without addressing key source documents that would confirm or refute those inferences. The findings are based on conjecture and not based on empirical evidence. Whilst it is apparent there has been a resource intensive investigation, there would appear to be no avenues for further inquiry. It is my recommendation that the DCVOP CMT should consider the investigator's findings, circumstances of the investigation and the PSC recommendations with a view to making a finding of 'not sustained' or 'unable to be determined.'<sup>284</sup>

- 4.41** Nevertheless, the report was subsequently approved by Commissioner Moroney and tabled by him at the Crime Commission Management Committee on 26 August 2004. Mr Moroney said he would deal with the report at the next meeting once the committee had a chance to read it.<sup>285</sup> Mr Galletta, who had received a Police Commissioner's commendation for his work on Strike Forces Tumun and Sibutu, was praised for his efforts.<sup>286</sup> As Mr Galletta told the committee, neither the Police Force nor any other party had concerns about his investigation nor were any concerns about the quality or integrity of the Emblems report ever raised with him.<sup>287</sup>

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<sup>282</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 1.

<sup>283</sup> Evidence, Mr Moroney, 4 February 2015, p 73.

<sup>284</sup> Answers to questions on notice, the Hon David Levine, Attachment G, Memorandum from Mr John Carroll, Acting Assistant Commissioner, Professional Standards Command to Detective Inspector Bradley Howell, Strike Force Emblems – Findings and Recommendation, 28 June 2004.

<sup>285</sup> Answers to questions on notice, Mr Andrew Scipione, 11 February 2015, Attachment B, Advice, Assistant Commissioner Paul Carey, Professional Standards Command, 20 June 2011, p 2.

<sup>286</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 18.

<sup>287</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 1

4.42 In the second half of 2004 further efforts were made by or with the endorsement of the Commissioner of Police to gain access to the relevant documents from the Crime Commission as well as to approach the Director of Public Prosecutions to see if there was sufficient evidence to justify the commencement of criminal proceedings in relation to the warrant. While the answer was negative on both counts, these approaches would indicate that the highest levels of the NSW Police Force thought it was important to pursue the matters raised by the Emblems investigation.<sup>288</sup>

4.43 By 2006 it would seem there was little attention given to Emblems within the Force. The last official documentation on this issue between 2006 and 2011 was an advice prepared in September 2006 by Paul Carey, Assistant Commissioner of the Professional Standards Command, in response to a question asked by Ms Lee Rhiannon MLC at a budget estimates hearing. The advice notes that none of the report recommendations had been implemented and, somewhat perplexingly, that there was no record of the Commissioner of Police having viewed the recommendations. The advice includes an excerpt from 2006 advice from Professional Standards Command which noted that:

Further to this, I haven't been able to locate any documentation to indicate that these recommendations (as accepted by the ECMT) have been implemented, or indeed sighted by Commissioner Moroney.<sup>289</sup>

4.44 The advice concludes that:

These issues [trying to access the affidavit and seeking advice from the DPP] in themselves may assist in explaining delays in implementation of the recommendations as the findings would have been significantly different. **However, the pursuit of these issues does not explain the recommendations not being implemented for the most part, which appears to be the case from the available evidence.**<sup>290</sup>

### Mr Scipione's response

4.45 By 2007 Mr Scipione had been appointed as the new Commissioner of Police. He gave the following evidence regarding his knowledge of the Emblems matter:

On commencing as the Commissioner of Police in September 2007, I was of the belief that the matter had been finalised. I had been advised in 2005 by Commissioner Moroney that the matter had been finalised and that no further action could be taken. I am aware that on 15 June 2011 the Ministry for Police and Emergency Services requested advice on behalf of the Minister's office regarding the outcomes of the strike force and what actions had been taken in response to its recommendations. As per the usual protocols of my office, the Office of the Commissioner provided that advice on 16 June 2011, and then further advice on 20 June 2011. I was out of the country on business at that time.<sup>291</sup>

<sup>288</sup> Answers to questions on notice, Mr Andrew Scipione, 11 February 2015, Attachment B Advice, Assistant Commissioner Paul Carey, Professional Standards Command, 20 June 2011, p 2.

<sup>289</sup> Answers to questions on notice, Mr Scipione, Attachment B.

<sup>290</sup> Answers to questions on notice, Mr Scipione, Attachment B [emphasis added].

<sup>291</sup> Evidence, Mr Scipione, 4 February 2015, p 38. See answers to questions on notice, Mr Scipione, 11 Attachment B, Advice, Assistant Commissioner Paul Carey, Professional Standards Command, 20 June 2011, and advice from Nicole Rose, Director, Office of the Commissioner, 16 June 2011.

**4.46** Mr Scipione was told by the former commissioner that the matter had gone as far as it could:

Mr DAVID SHOEBRIDGE: So when did you eventually read the Strike Force Emblems report?

Mr SCIPIONE: Having some understanding that you may ask that question I have turned my mind to it. I am thinking that it was probably around June of that year but I have no formal record. It was as a result of what was happening in and around that time that it became apparent that I needed to look at it, bearing in mind that, as I have indicated in my evidence, I was told by the former commissioner that this matter, Strike Force Emblems, had gone as far as it could.

Mr DAVID SHOEBRIDGE: What did that mean—that it had gone as far as it could?

Mr SCIPIONE: That it had been investigated—that the Strike Force Emblems staff, under very difficult circumstances, had investigated all of the matters that were before them. The problem seemed to be getting access to material from another agency. In seeking that material, it was not provided. I know that the Strike Force Emblems investigators sought to get that material on a number of occasions through a number of different means. Commissioner Moroney was advised accordingly, and from my memory of what I have read he tried on a number of occasions in a number of different ways to get this resolved as well.

Mr DAVID SHOEBRIDGE: Meaning to get the information from the Crime Commission of NSW so as you could find answers?

Mr SCIPIONE: Yes, so that he could get access to the information for those investigators because he believed clearly—I should let him talk for himself. So in attempting to do that I was advised, and I know, that he sought advice from, if you like, the head of our police legal services branch. The matters had been referred to the Director of Public Prosecutions for the consideration of any prosecution. He had engaged people like Ian Temby to get involved in the negotiation for the information that was required. He took advice from people like Mr Bartley, who was a practising barrister at the time and I understand is now a magistrate, with regards to getting access to that very information.

Mr DAVID SHOEBRIDGE: And he told you all of this in 2007?

Mr SCIPIONE: No, I am aware of this now because I have read the material. It was all part of what was in the report that was provided by Mr Levine to me in 2012.

**4.47** Mr Scipione said that he had held the belief that the matter had gone as far as it could since 2005:

The Hon. ADAM SEARLE: In terms of your knowledge, in 2005 when you say Commissioner Moroney told you that the matter had gone as far as it could you were aware then that it had not been resolved. You were aware that the matter had not been fully and thoroughly investigated and the truth gotten to as to whether the surveillance of officers and others was legal or proper or not. That fundamental issue had not resolved.

Mr SCIPIONE: That is true.

The Hon. ADAM SEARLE: You knew that in 2005?

Mr SCIPIONE: I think I may have been advised, to use the terminology—again I am really testing my memory here—it was something along the lines of it was an incomplete investigation.

But by 2012 the matter became a priority after Operation Mascot/Florida documents started leaking to the media:

What did change was that in 2012 these matters became much more high profile as a result of more media reporting around this. The minister of the day at that stage decided and in fact told me that he was going to refer these matters through to the Inspector of the Police Integrity Commission.<sup>292</sup>

- 4.48 Mr Scipione refuted suggestions that he or his predecessor could have done more to resolve the matter before it became a media issue in 2012:

Clearly, in my view, it was not something that was acceptable but again I reiterate that these were things that were beyond my control. Ken Moroney, to give him his dues, tried very hard to get access to—I have since seen records of meetings with Mr Bradley. I have seen a lot of documents which would indicate to me that Commissioner Moroney certainly did all he could, I believe. That ranges from taking the best legal advice, from dealing direct with the commissioner of the commission right through to submitting absolutely everything he could to the Director of Public Prosecutions and then—even then—seeking some other way that he could get access to the material.<sup>293</sup>

- 4.49 Mr Scipione also rejected the suggestion that he should have proposed legislative changes to the Police Minister to ensure the matters could be fully investigated. Mr Scipione noted that as the Government chaired the Crime Management Committee it would seem that ‘... the chair decided it certainly was not worthy of progression ...it is pretty clear to me that the Government had made a decision.’<sup>294</sup>

#### *Committee comment*

- 4.50 With respect, this is not the full story. The view of the then Minister, Mr Costa, was clearly influenced by the report of the then Inspector of the Police Integrity Commission, Mervyn Finlay QC, whose report in essence gave a clean bill of health to the listening device warrants. The Finlay report was released before the Emblems report was finalised. Mr Scipione conceded that the advent of the Emblems investigation and report placed a very different complexion on these matters,<sup>295</sup> yet in the wake of Emblems there were no proposals from the NSW Police Force to properly and thoroughly get to the heart of the matter.

- 4.51 The solution to the legislative impediment of the Crime Commission secrecy provisions that had blocked any effective investigation was suggested by the correspondence from Mr Barbour to Mr Moroney, declining Ombudsman oversight of Emblems due to the issue of

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<sup>292</sup> Evidence, Mr Scipione, 4 February 2015, p 46.

<sup>293</sup> Evidence, Mr Scipione, 4 February 2015, p 48.

<sup>294</sup> Evidence, Mr Scipione, 4 February 2015, p 50.

<sup>295</sup> Evidence, Mr Scipione, 4 February 2015, p 50.

those legislative provisions.<sup>296</sup> Mr Moroney gives no clear evidence why he did not recommend legislative change.<sup>297</sup>

- 4.52** Mr Scipione's evidence as to why he did not make any recommendations for legislative change to facilitate an investigation of these matters was: he believed from his conversations with Mr Moroney that the matter had 'been finalised', he thought the Minister of the day was aware of the existing legislative arrangements and that it was a matter for government to change legislation.<sup>298</sup>
- 4.53** Further, he assumed 'the Crime Commission may have briefed him [the Minister] because that was in the same portfolio'. He also expressed the view that he did not see proposing legislative change of this kind as his role.<sup>299</sup> Given the frequency and number of legislative changes proposed by the Police over the years, this is hard to accept.
- 4.54** Given the controversy involved allegations of serious wrongdoing by police and the possible improper or illegal targeting of persons for surveillance, including many police officers, and that these matters had already reflected poorly on the Police Force, it is hard to credit that the Police Commissioner did not see it as his role to find and propose a solution to this long running issue. ('...I did not believe it was my role to be telling government about legislation that they should be enacting to give the Ombudsman some special powers to do what the Ombudsman may have needed to do. That was not my job, I did not see.'<sup>300</sup>
- 4.55** It is clear from his evidence that Mr Scipione thought the issue had been dealt with so far as it could be, given the legal constraints, and had gone away. However, once he finally read the Emblems report in 2012 - after it had once again become an issue of public controversy - 'I realised ... that there was more that needed to be done, but that could only be done if there was a change to the legislation and the authority was given to the Ombudsman allowing him to get those records'.<sup>301</sup> The committee is of the view that if the Commissioner had availed himself of the report contents earlier, he would have appreciated the need for action at an earlier time as well. It is regrettable he did not do so.

### **Mr Levine's review**

- 4.56** In May 2012 the former Minister for Police and Emergency Services, the Hon Michael Gallacher MLC requested that the Inspector of the Police Integrity Commission, the Honourable David Levine, QC, review the Strike Force Emblems report and advise if it should be released.<sup>302</sup> In his letter to Mr Levine, Mr Gallacher stated that:

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<sup>296</sup> Answers to questions on notice, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, received 11 February 2015, Attachment B, Correspondence from NSW Ombudsman to Commissioner of Police, 12 August 2003.

<sup>297</sup> Evidence, Mr Moroney, 4 February 2015, p 72.

<sup>298</sup> Evidence, Mr Scipione, 4 February 2015, p 51.

<sup>299</sup> Evidence, Mr Scipione, 4 February 2015, p 56.

<sup>300</sup> Evidence, Mr Scipione, p 57.

<sup>301</sup> Evidence, Mr Scipione, 4 February 2015, p 52.

<sup>302</sup> Correspondence from the Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, to the Minister for Police and Emergency Services, 23 November 2012, p 1.

Since becoming Minister for Police I have reviewed those recommendations and I am of the view that they cannot be released in their current form. Firstly, I am not confident that these recommendations have been concluded. Secondly, I am conscious of the need to ensure that no one person is denied natural justice.<sup>303</sup>

- 4.57 The Inspector provided his review to the Minister on 23 November 2012. Although Mr Levine's report was confidential, his covering letter was made public. In that letter the Inspector offered a harsh assessment of the Emblems report and its recommendations:

The report of Strike Force Emblems I have found to be such an abstruse and unsatisfactory internal police document that it is not in the public interest for it, its findings (such as they are) and its recommendations (such as they are) to be made public. ... it is severely wanting in sound reasoning and logical exposition of investigations said to have been undertaken ...<sup>304</sup>

- 4.58 Mr Levine told the committee that he based his review on reading a copy of the report and certain accompanying internal police communications. In his November 2012 response to the Minister he stated that the report's:

'... findings and recommendations on my reading of accompanying internal police communications **do not enjoy support or confidence among police commentators of high rank.**<sup>305</sup>

- 4.59 The committee asked Mr Levine for a copy of the material that had been provided to him by the Minister for Police. However, it would appear that only one of the documents fits Mr Levine's description: a June 2004 memorandum by the Acting Assistant Commissioner, Professional Standards, John Carroll, as discussed in paragraph 4.40

- 4.60 Mr Levine told the committee that in preparing his review he did not speak to the report authors, nor read the 30 boxes of documents that were delivered to his office. As a person holding a part time position with only two secretariat support staff, it would appear that the delivery of the boxes may have been instrumental in the decision to refer the matter to the Ombudsman:

At some point I asked for material relating to Emblems ... I received a telephone call from the Commissioner of Police indicating that he would be pleased to assist and the next thing that happened I was inundated with white boxes of white paper. My present recollection of the chronology is that the decision to refer it to the Ombudsman was made in light of that entity having the resources instead of what had been delivered to me. Notwithstanding that that decision had been made, I still decided that it was appropriate for me to report to the Minister.<sup>306</sup>

- 4.61 Mr Galletta was perplexed as to how Mr Levine could make such a unfavourable assessment in the absence of reading these documents or interviewing the report's authors:

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<sup>303</sup> Evidence, The Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission, 30 January 2015, p 49 [emphasis added].

<sup>304</sup> Correspondence from Mr Levine to the Minister, 23 November 2012, p 1.

<sup>305</sup> Correspondence from Mr Levine to the Minister, 23 November 2012, p 1.

<sup>306</sup> Evidence, Mr Levine, 30 January 2015, p 55.

I totally reject the comments of Mr Levine ...The findings of that [the Emblems] investigation were made with an open mind and a high degree of objectivity with a disclaimer based on the limited material that we received during the tenure of the investigation. My question is how did Mr Levine come to his findings on 27 November 2012 when as of September 2012 he had only just received 30 boxes of information and the disk containing over 20,000 documents and, more importantly, how did he come to his findings without myself or other investigators being given the opportunity to address these issues, denying us of some procedural fairness.<sup>307</sup>

- 4.62** Mr Levine was also asked during his evidence whether he felt that given it was very likely he would have been a duty judge signing off on one or more of the warrants generated by the Mascot investigation, he should have disclosed this matter when asked to review the Emblems report. Mr Levine did not consider that he was obliged to do so.<sup>308</sup> In coming to this conclusion, Mr Levine was influenced by a Court of Criminal Appeal case where objection was taken to a judge sitting on the bench because the judge had some months or years before issued a listening device warrant in relation to the appellant's case. To his recollection, the court declined to have the judge disqualify himself.<sup>309</sup>

#### *Committee comment*

- 4.63** The Emblems report was signed off by the police executive and the investigators were praised for their work. Mr Galletta had every reason to believe that the weight of the hierarchy was behind his efforts to address the serious concerns about the Special Crime Unit uncovered by the strike force. As Mr Moroney told the committee, he had no reason to doubt the competence of the investigators and their commander: 'they took the report as far as they could'.<sup>310</sup>
- 4.64** But the Emblems report and its recommendations would always be susceptible to criticism so long as the Crime Commissioner refused to provide crucial documents to complete the investigation. The failure of the Crime Commissioner to co-operate with the strike force, partly due perhaps to embarrassment over its own role in the complaints being examined, ensured a medium-sized problem for the NSW Police Force expanded exponentially, leaving the police hierarchy with an incomplete Emblems report.
- 4.65** Mr Bradley's decision in 2003 not to release documents to the Emblems team has had far-reaching consequences. While Mr Bradley told us that the leaking of documents was one of his motivations in not co-operating with Emblems, it is ironic that many of these documents eventually found their way to the media in a steady stream of leaks, feeding speculation and misunderstanding, and undermining confidence in our crime fighting agencies. As a result of Mr Bradley's lack of cooperation, this saga has been drawn out for an inordinate amount of time at huge financial and emotional cost.
- 4.66** Mr Levine's review of the Emblems report was a waste of time and money. Everyone knew that there was a significant gap in the evidence available to Strike Force Emblems and the matter could never be fully resolved by simply releasing the report. Mr Levine's harsh and we

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<sup>307</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 1.

<sup>308</sup> Evidence, Mr Levine, 30 January 2015, p 43.

<sup>309</sup> Evidence, Mr Levine, 30 January 2015, p 43.

<sup>310</sup> Evidence, Mr Moroney, 4 February 2015, p. 74.

think unwarranted assessment of Emblems only served to cast aspersions on the Emblems team and to further delay justice for the complainants.

- 4.67** While the failure to resolve the allegations that led to the establishment of Strike Force Emblems continues to resound, the disparagement of the report and investigation has had a profound impact on the investigators. These officers did their utmost to ensure the serious issues that were revealed by their strike force were documented. They deserve thanks for their persistence and commitment, not the dismissive attitude expressed by some people in positions of responsibility. Indeed, their conclusions have been given further force by the disclosure in 2012 of the affidavit supporting the Bell warrant.
- 4.68** The failure of the police executive and successive police ministers up until Minister Gallacher to resolve the serious allegations identified by Strike Force Emblems continues to reverberate within the NSW Police Force and beyond. The evidence to this committee does not inform us about what, if any knowledge, successive police ministers had regarding the detail of these matters. It is clear that from 2007 until 2011, Mr Scipione provided no information to his Ministers on the matter.
- 4.69** In a somewhat prescient indication of what lay ahead, a disgruntled group of complainants who had been told that the Emblems investigation could go no farther because of the Crime Commissioner's stance, advised they would use 'alternate' means to pursue their complaints 'which might likely include media, legal avenue and Parliament'.<sup>311</sup>
- 4.70** This is precisely why we are here today, examining a matter 'from the last decade of the last century', which should have been taken out of the too hard basket and dealt with by the leadership a long time ago.

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### **Finding 7**

That the failure of the then New South Wales Crime Commissioner to co-operate with Strike Force Emblems prevented the effective completion of that investigation.

### **Finding 8**

That the failure of respective commissioners of police to demonstrate leadership by overcoming the barriers confronted by Strike Force Emblems has compounded the grievances of the complainants.

### **Finding 9**

That the committee commends the members of Strike Force Emblems for conducting a thorough and professional investigation of serious allegations regarding police misconduct, including their pursuit of material necessary to complete their investigation.

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<sup>311</sup> Answers to questions on notice, the Hon David Levine, AO RFD QC, Inspector of the Police Integrity Commission, 4 February 2015, Attachment D, Memorandum from Detective Inspector Galletta to the Minister and Commissioner for Police, Strike Force Emblems, 6 May 2004.



## Chapter 5 The impact on individuals

My own experience and the unfairness of what I am going through have been among the worst days of my life. The impact on my family and loved ones makes it even worse and has been horrendous. I call on this Committee, this Parliament and this Government to finally air the truth and right the wrongs; nothing less will restore confidence in our system.<sup>312</sup>

Unquestionably, the events associated with Operation Mascot and the obtaining of controversial listening device warrants and telephone intercepts has had a profound impact on all involved. Not only have those named on warrants felt aggrieved, so too have others, including those who have been accused of improper or illegal actions in relation to the warrants.

This chapter considers how these events have affected the individuals involved on both a personal and professional level.

### Impact on individuals named in listening device warrants

**5.1** During the inquiry, several people named on the controversial listening device and telephone intercept warrants issued during Operation Mascot gave evidence about the impact this has had on their personal and professional life. Some learnt of their inclusion on the Bell warrant when details were leaked to the media in 2002. Others have found out more recently, questioning why they were never told.<sup>313</sup>

**5.2** Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, was named on the Bell warrant and become aware of this in 2002 when details of the warrant were published in the *Sydney Morning Herald*.<sup>314</sup>

**5.3** As a result of this, and the series of events that followed, Mr Kaldas described his life over the last 10 years as one filled with 'angst', complaints, 'reprisals and discrimination'.<sup>315</sup> He told the committee that the 'experience and the unfairness' of what he has been through has been 'among the worst days of [his] life'.<sup>316</sup> Mr Kaldas spoke to the committee about the consequences of having his privacy intruded:

I felt every aspect of my life was invaded: my phone calls, my work, my private life despite no real accusation being levelled at me. I have not done anything that would justify this level of intense intrusive targeting.<sup>317</sup>

**5.4** He also outlined the impact these issues have had on his family stating it 'makes it even worse and has been horrendous'.<sup>318</sup> Mr Kaldas asserted that such intrusive surveillance on him and

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<sup>312</sup> Evidence, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, 30 January 2015, p 4.

<sup>313</sup> Submission 15, Name suppressed, p 1.

<sup>314</sup> Mr Phillip Cornford, *Police spy tapes furore*, Sydney Morning Herald, 13 April 2002, <http://www.smh.com.au/articles/2002/04/13/1018333425560.html>.

<sup>315</sup> Evidence, Mr Kaldas, 30 January 2015, p 2.

<sup>316</sup> Evidence, Mr Kaldas, 30 January 2015, p 4.

<sup>317</sup> Evidence, Mr Kaldas, 30 January 2015, p 4.

those around him 'was clearly unjustified' and that the impact of the entire process was 'highly stressful'.<sup>319</sup>

- 5.5** In addition to the impact on his personal life, Mr Kaldas explained how he has experienced constant accusations against him, with lingering concerns that he is not 'clean' and that there is a stain on his name or cloud over his head:

I am aware of elected officials being told by a number of people over the past decade that I am not someone who is clean and that I have stain on my name or a cloud over my head. I cannot believe this happens sometimes. Nobody rings you and says, 'I understand you are under a cloud. Can you tell us what it is?' They just act on it. That is what has happened to me and to others.<sup>320</sup>

- 5.6** He told the committee that he feels as though these lingering allegations have negatively impacted his career and that he has been denied promotional opportunities as a result. He stated '...my career was derailed for some four years, where I was denied promotion, ignoring merit, and a dark cloud hung over me'.<sup>321</sup>

- 5.7** Mr Kaldas also gave evidence about the serious psychological impact these issues have caused others officers, with several attempting to, or committing suicide:

I am aware of a number of other officers or former officers who I believe have been seriously psychologically affected as a result of what was done through Operation Mascot/Florida or the covering up which followed it, including one who committed suicide and two others who attempted to do so.<sup>322</sup>

- 5.8** The Police Association also noted the mental health impact these issues have had on officers, particularly as the complaints have been left unresolved for years:

We do not wish to see anyone make the fateful decision to end their own life or for their mental health to deteriorate for want of appropriate medical treatment. One only needs to recall the Wood Royal Commission where 12 people took their own lives to understand the devastating impact that protracted inquiries can have on our members.<sup>323</sup>

- 5.9** Mr Brian Harding, a former Detective Superintendent of the NSW Police Force, was also named on the Bell warrant, despite the fact that he had left the NSW Police Force a number of years earlier.<sup>324</sup> He told the committee that he felt 'angered' and humiliated about being included, and that he felt pressure to explain himself to those he knew.<sup>325</sup>

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<sup>318</sup> Evidence, Mr Kaldas, 30 January 2015, p 4.

<sup>319</sup> Submission 21, Mr Nick Kaldas APM, pp 3-4.

<sup>320</sup> Evidence, Mr Kaldas, 30 January 2015, p 13.

<sup>321</sup> Evidence, Mr Kaldas, 30 January 2015, p 12.

<sup>322</sup> Submission 21, Mr Nick Kaldas APM, p 4.

<sup>323</sup> Submission 12, Police Association of NSW, p 2.

<sup>324</sup> Submission 16, Mr Brian Harding, p 2; Evidence, Mr Brian Harding, former Detective Superintendent, NSW Police Force, 29 January 2015, p 32.

<sup>325</sup> Evidence, Mr Harding, 29 January 2015, pp 30 and 37.

- 5.10** Mr Steven Barrett, a former producer of *60 Minutes*, was also listed on the warrant and recounted to the committee his initial reaction when finding out:

As I was sitting in my lounge chair I opened up this document which said ‘NSW Crime Commission listening device warrant’. I then started to examine the document and read through the names in the document. I then started to realise a number of people's names on the document—some very, very senior police officers that I knew.

... and then I saw my own name, Steve Barrett, and I nearly died when I realised the gravity of this legal document. That is how it happened. Somebody sent it in the post to me and I read it when I was at home.<sup>326</sup>

- 5.11** The impact upon Mr Barrett as a journalist with a ‘large contact network’ has been ‘devastating’. He told the committee that after details were published in the media, including his name, a ‘lot of [his] sources just dried up’. He said ‘it devastated me and in the end... I think it cost me my job at *60 Minutes*’.<sup>327</sup>

- 5.12** Mr Barrett said that the invasion of his privacy had a disconcerting effect on his professional life:

There were certain things that happened in my office ... like, one morning I came into work and I noticed that the ceiling had been tampered with and there was all dirt on my desk. I immediately freaked out and got security down because knowing I had been on a warrant I thought that somebody was putting cameras in the ceiling. So the paranoia set in and it disturbed me greatly.<sup>328</sup>

- 5.13** Mr Barrett also told the committee about the frustration he feels about the lack of resolution to these issues: ‘I have been trying for 15 years to get to the bottom of this and I have been blocked all the way’.<sup>329</sup>

- 5.14** While Mr Kaldas, Mr Harding and Mr Barrett all spoke publicly about the impact of these events on them over a long period of time, the committee also noted that others who may have only just found out they were on the warrant are deeply affected.

- 5.15** One former Senior Constable only discovered in December 2014 that they had been named on the Bell warrant. This person stated that the consequence of not knowing or knowing too late was to deny them the opportunity of a ‘right of reply, of complaint or of taking legal action against this blatant disregard for the law’.<sup>330</sup>

- 5.16** Mr Clive Small, former Assistant Police Commissioner, pointed out the serious damage to people’s reputations by being named on controversial warrants and how these issues have reflected more broadly on the integrity of the NSW Police Force:

For almost a decade and a half, the losers in this matter have been specific police, former police and private citizens who have been named in listening device warrants

<sup>326</sup> Evidence, Mr Steven Barrett, Journalist Seven Network, 29 January 2015, p 3.

<sup>327</sup> Evidence, Mr Barrett, 29 January 2015, p 4.

<sup>328</sup> Evidence, Mr Barrett, 29 January 2015, p 4.

<sup>329</sup> Evidence, Mr Barrett, 29 January 2015, p 15.

<sup>330</sup> Submission 15, Name suppressed, p 1.

without justifiable cause and who, as a result, have been tainted with allegations of corruption, other criminality and misconduct and, more broadly, the integrity of the NSW Police has suffered.<sup>331</sup>

## Impact on officers of Special Crimes and Internal Affairs

- 5.17** While many of those named on warrants have felt the impact of the events over the last thirteen years, so too have officers of Special Crimes and Internal Affairs, largely because the controversy surrounding the warrants has never been resolved.
- 5.18** Mr Malcolm Brammer APM, former Commander of Special Crime and Internal Affairs was involved in Operation Mascot from January 1999 to March 2001.<sup>332</sup> As a result of his role, Mr Brammer believes he has had many years of 'misguided' allegations made against him.<sup>333</sup>
- 5.19** Mr Brammer strongly rejected these allegations, in particular, that he had a personal role in obtaining the warrants and that he in any way 'acted corruptly, incited, harboured or condoned corruption or misconduct in the Operation Mascot investigations'.<sup>334</sup>
- 5.20** Mr Brammer noted that like others, he has had to deal with increasing 'agitation' and 'speculative reporting in the media' about these matters:
- It has been frustrating for me particularly because since that time I have had continual media speculation, allegations of corruption and all those sorts of things levelled against me. How can I respond? I could only respond relying on investigation. If there is some criticism of me, I will accept that as long as it is based on factual and verifiable evidence. At this stage I have not seen that.<sup>335</sup>
- 5.21** Mr Brammer said that the NSW Police Force has shown 'little interest if at all in determining the veracity of serious allegations of 'criminal conduct and corruption' held against him.<sup>336</sup> He argued that due to the severity of the allegations the matter should have been investigated but no-one has ever approached him or given him the opportunity of an interview.<sup>337</sup>
- 5.22** Mr Brammer was of the opinion that the 'serious failure of the NSW Police Force to expeditiously and effectively resolve the allegations forming the genesis of the Emblems investigation in 2003 is abysmal and appalling'.<sup>338</sup>
- 5.23** Similarly, Deputy Commissioner Catherine Burn APM is concerned about lingering and unresolved allegations against her as a result of her role as Team Leader working on

<sup>331</sup> Evidence, Mr Clive Small, former Assistant Police Commissioner, NSW Police Force, 4 February 2015, p 59.

<sup>332</sup> Evidence, Mr Malcolm Brammer APM, former Commander, Special Crime and Internal Affairs, 4 February 2015, p 20.

<sup>333</sup> Submission 22, Mr Malcolm Brammer APM, p 3.

<sup>334</sup> Evidence, Mr Brammer, 4 February 2015, pp 21-22.

<sup>335</sup> Evidence, Mr Brammer, 4 February 2015, p 24.

<sup>336</sup> Submission 22, Mr Malcolm Brammer APM, p 3.

<sup>337</sup> Evidence, Mr Brammer, 4 February 2015, p 23.

<sup>338</sup> Submission 22, Mr Malcolm Brammer APM, p 2.

Operation Mascot. She reminded the committee of the 'difficult and damming job' she and other Mascot members experienced when investigating their own.<sup>339</sup>

**5.24** She also commented on how highly she considers her personal and professional integrity: 'I have built a 31-year career in the NSW Police Force on the bedrock of my personal and professional integrity. There is nothing I possess that I value more highly'.<sup>340</sup>

**5.25** Ms Burn rejected the suggestion that she was using secrecy provisions to conceal information, stating that:

It is precisely because of those secrecy positions that I have been unable to defend myself at every step of the way due to the requirements of the law not to disclose such information. This has been to my absolute detriment.<sup>341</sup>

**5.26** She noted the 'completely unsatisfactory position' everyone is in because these issues have been unresolved for so long:

I agree with Mr Kaldas and other witnesses that none of us should be in this position. These matters should have been resolved 12 years ago. I understand the frustration, anger and bitterness which has been expressed and which is being felt. I, too, have experienced and felt those things over the past 12 years. This is the same for the many fine officers who worked on Operation Mascot. This has undoubtedly gone on for too long and it has taken a toll on us all.<sup>342</sup>

**5.27** Ms Burn emphasised the impact on her and her family of the failure to resolve these issues:

I cannot emphasise enough that there is nothing more I wish had happened than that these matters had been resolved earlier. I have had to endure allegations and innuendo in the media for many years without any ability to respond. This has had a detrimental impact on my reputation and a horrible impact on my family.<sup>343</sup>

## Impact on Emblems investigators

**5.28** Also affected by these events are the Strike Force Emblems investigators, who were tasked with investigating a number of allegations relating to the operation of Special Crime and Internal Affairs.

**5.29** Mr Peter McErlain, a Detective Superintendent with the NSW Police Force who worked on Emblems, recounted many challenges his team experienced, including accusations they leaked information, restricted access to information and claims the investigation was deficient.<sup>344</sup>

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<sup>339</sup> Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 10 February 2015, p 4.

<sup>340</sup> Evidence, Ms Burn, 10 February 2015, p 4.

<sup>341</sup> Evidence, Ms Burn, 10 February 2015, p 3.

<sup>342</sup> Evidence, Ms Burn, 10 February 2015, p 3.

<sup>343</sup> Evidence, Ms Burn, 10 February 2015, p 3.

<sup>344</sup> Evidence, Mr Peter McErlain, Detective Superintendent, NSW Police Force, 3 February 2015, p 27.

- 5.30** Mr McErlain stated that some investigating officers, as a result of their involvement with Emblems, had been medically discharged from the NSW Police Force, including one officer, 'whose career [was] cut short due to serious medical issues', possibly attributable to the Emblems investigation'.<sup>345</sup>
- 5.31** Mr Mark Galletta, the lead investigator on Emblems who has over 33 years policing experience, told the committee about the acute impact these issues have had on his life. He stated that he was 'made the scapegoat and collateral damage of what has occurred', in addition to facing 'allegations that he has leaked documents to the media'.<sup>346</sup>
- 5.32** Mr Galletta was medically discharged from the NSW Police Force<sup>347</sup> and stated that his involvement in the Emblems was a key factor in ending his career. He also noted that all of the Emblems investigators had suffered from their involvement in the strike force.<sup>348</sup>

#### *Committee comment*

- 5.33** The committee recognises the profound impact these issues have had on many individuals, both on a personal and professional level. Many have endured unresolved accusations for over a decade, with very little done to address their complaints. Others have endured criticism of their professional abilities.
- 5.34** The committee is concerned about the physical and mental health of individuals involved in this ongoing controversy, including serving police officers, former officers and civilians. We note the welfare concerns expressed by the Police Association, both in terms of officers participating in this inquiry as well as the Ombudsman's investigation. The committee therefore supports the ongoing provision of counselling to affected individuals.
- 5.35** While the fallout from these events is unmistakable, one has to wonder why the NSW Police Executive has not done more to resolve these issues.
- 5.36** The committee is disappointed that Commissioners of Police have not shown leadership over the past 12 years to address these matters. The individuals involved deserve finality and many are entitled to an apology, for what they have endured and for the failure of government to resolve these matters sooner.
- 5.37** The committee therefore recommends that the Premier of New South Wales and Commissioner of Police publicly apologise to any persons who may be found by the Ombudsman to have been inappropriately named on listening device and/or telephone intercept warrants obtained by Special Crimes and Internal Affairs.

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<sup>345</sup> Evidence, Mr McErlain, 3 February 2015, p 27.

<sup>346</sup> *In camera* evidence, Mr Mark Galletta, former Commander, NSW Police Force, 29 January 2015, p 1. Evidence published by resolution of the committee.

<sup>347</sup> *In camera* evidence, Mr Galletta, NSW Police Force, 29 January 2015, p 1.

<sup>348</sup> *In camera* evidence, Mr Galletta, 29 January 2015, p 32.

**Recommendation 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.

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## Chapter 6 Operation Prospect

The matter has gone on too long. Too many people are angry and are now completely cynical about the way this matter has been handled. [The leaking of documents] should never have been a term of reference, in my view. There are serious substantive issues about criminal offences being committed over a long period of time and that should have been the focus, not a whistleblower who ... decides, as a last resort, to give [documents] to a journalist.<sup>349</sup>

This chapter examines the current Ombudsman's inquiry 'Operation Prospect' and details the various complaints that have been made regarding its conduct and progress. The complaints include the length of time Operation Prospect has taken, that its proceedings have been held in secret, an overemphasis on the leaking of information instead of the allegations of illegally obtained warrants, concerns regarding the mental health and welfare of inquiry participants and the dissatisfaction of staff working on the inquiry.

### Ombudsman's involvement prior to Operation Prospect

- 6.1 A number of inquiry participants noted that the Ombudsman has in fact played a role previously in some of the matters being investigated in Operation Prospect.
- 6.2 Firstly, a complaint that officers of the Special Crime Unit induced an informant on two occasions to breach his bail conditions and perjure himself under oath was raised with the previous Ombudsman in 1999 and referred to the NSW Police Force. It is believed that this matter was internally considered by Special Crime and Internal Affairs in 1999 and the complaint was not sustained. However, it is further believed that this matter was then re-referred by the current Ombudsman to Strike Force Emblems in 2003.<sup>350</sup>
- 6.3 Secondly, the former Commissioner of Police, Mr Ken Moroney, requested in 2003 that the Ombudsman, Mr Bruce Barbour, oversee the Strike Force Emblems investigation. Under s 146 of the *Police Act 1990* the Ombudsman may monitor an investigation regarding complaints about the conduct of police officers.<sup>351</sup> In response to this request, the Ombudsman considered it was not appropriate for the following three reasons:
- The present investigation plan by NSW Police includes consideration of the conduct of officers of the NSWCC and the PIC. The conduct of both of those agencies is outside the jurisdiction of the Ombudsman ...
  - Matters touching on the investigation have already been the subject of some review by the Hon MD Finlay QC ... The Inspector's conduct cannot be the subject of complaint, investigation, inquiry or other action under the Ombudsman Act... I am concerned that ... my officers may be called upon to examine matters already the subject of comment by the Inspector. This is not something within the jurisdiction of the Ombudsman.

<sup>349</sup> Evidence, Mr Neil Mercer, freelance journalist, 30 January 2015, p 37.

<sup>350</sup> Published extract from confidential document, NSW Police Force, *Strike Force Emblems*, 22 March 2004, p 6; Submission 14, Confidential, p 17 (quoted by resolution of the committee).

<sup>351</sup> *Police Act 1990*, s 146.

- I am aware that already in Operation Florida/Mascot concerns have been raised by local commanders and other officers affected, that there was a confusion as to the roles of relevant agencies. With the review conducted by the Inspector, at least four agencies have already had a role in applying for or reviewing matters concerning listening device warrant 266 of 2000. In my view, a further oversight of matters touching on Operation Florida/Mascot by this office will only add to that confusion – to the detriment of affected officers and investigators. Because of the previous involvement of those agencies already, it is not in the public interest, or fair to the police officers involved, for a fifth agency (the Ombudsman), with jurisdiction to deal with only some of the matters the subject of Strike Force Emblems, to take on an oversight role.<sup>352</sup>

- 6.4 Although the Ombudsman could not oversight the strike force, he requested to be notified of any findings or recommendations following the finalisation of the investigation.<sup>353</sup>
- 6.5 He also noted that an external agency with appropriate jurisdiction should have some role in overseeing Emblems. He suggested that the Inspector of the Police Integrity Commission could undertake this role, although conceded this may be a matter for the Police Minister to consider.<sup>354</sup>
- 6.6 Thirdly, in September 2012, before the formation of Strike Force Jooriland, a series of complaints were made to the NSW Police Force, including by Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, who made a formal public interest disclosure pursuant to the *Public Interest Disclosure Act 1994* to the Commissioner of Police and copied it to the Ombudsman. The disclosure was regarding 'illegal actions by members of the former Special Crime and Internal Affairs' and requested 'an independent Judicial Inquiry'.<sup>355</sup> Mr Kaldas subsequently received written notification of his status as a whistleblower.<sup>356</sup>
- 6.7 In early October, the matters that were the subject of Strike Force Jooriland were taken over by the Ombudsman as part of Operation Prospect.

## Operation Prospect

- 6.8 As discussed in paragraphs 2.61 to 2.76 in chapter 2, Operation Prospect is an ongoing NSW Ombudsman inquiry that was initiated following a referral from the Inspector of the Police Integrity Commission on 11 October 2012.

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<sup>352</sup> Answers to questions on notice, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, received 11 February 2015, Attachment B, Correspondence from NSW Ombudsman to Commissioner of Police, 12 August 2003, p 2.

<sup>353</sup> Answers to questions on notice, Mr Scipione, Attachment B, p 3.

<sup>354</sup> Answers to questions on notice, Mr Scipione, Attachment B, p 3.

<sup>355</sup> Submission 21, Mr Nick Kaldas APM, Attachment 4, Public Interest Disclosure, 13 September 2012, p 1.

<sup>356</sup> Evidence, Mr Nick Kaldas APM, Deputy Commissioner, Field Operation, NSW Police Force, 30 January 2015, p 2.

## Process of inquiry

- 6.9** The Ombudsman issued a call for information seeking written details by 24 May 2013. This call for information noted that the Ombudsman was conducting an investigation into serious misconduct by officers in relation to Operations Mascot/Florida and associated investigations during 1998 to 2003 and that the 'terms of reference included matters surrounding NSW Crime Commission Listening Device warrant 266/2000 and other associated warrants'.<sup>357</sup>
- 6.10** Following this, the Ombudsman assessed all complaints and allegations associated with the referral from the Inspector of the Police Integrity Commission, Strike Force Jooriland and the call for information and categorised them into the following lines of inquiry:
- the use of false and misleading information in warrant applications and supporting affidavits under the *Listening Devices Act 1984* (NSW) and the *Telecommunications (Interception and Access) Act 1987* (Cth),
  - improper targeting or investigation of individuals,
  - mishandling of informants/undercover operatives,
  - unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the Crime Commission and the Police Integrity Commission,
  - improper interference from the current Commissioner of Police,
  - the provision of misinformation and/or making of false statements, and
  - other wrong conduct.<sup>358</sup>
- 6.11** A detailed statement from the Ombudsman outlining and explaining each of his terms of reference and the process adopted for managing each one can be found at Appendix 8 to this report.<sup>359</sup>
- 6.12** Initial interviews began almost immediately after the commencement of the inquiry with Mr Kaldas interviewed in November 2012.<sup>360</sup>
- 6.13** By 22 April 2013 the Ombudsman had organised the staffing for the inquiry, the purchase of specialised technology equipment and software, construction of a secure area and training for the newly appointed investigators and support staff.<sup>361</sup>
- 6.14** In evidence before the committee, the Ombudsman observed that '... on the basis of our analysis thus far we estimate that we have approximately 140,000 documents and those documents comprise well in excess of 1 million pages of information'.<sup>362</sup>

<sup>357</sup> Submission 21, Mr Nick Kaldas APM, Attachment 6, Call for information, NSW Ombudsman.

<sup>358</sup> Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 19.

<sup>359</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, pp 19-30.

<sup>360</sup> Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 6.

<sup>361</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 5 and p 20.

<sup>362</sup> Evidence, Mr Barbour, 3 February 2015, p 14.

- 6.15** From October 2012 to February 2014, 40 separate deliveries of documents were received following summonses and requests for information to the Crime Commission, the Police Integrity Commission and the NSW Police Force. This huge volume of source material received by Operation Prospect was 'produced in a seemingly random order by agencies, and with no set naming convention'.<sup>363</sup>
- 6.16** The Ombudsman's inquiry is focusing, not only on the 'mega warrants' issued in 2000 that have been the cause of much public debate, but on systemic issues in the obtaining of warrants during the time of the Mascot/Florida investigation. In doing so, Operation Prospect is reviewing 210 affidavits that were sworn in support of applications for 708 listening device and telephone intercept warrants. The affidavits supporting these warrants comprise over 6,000 pages and have required detailed review and cross-referencing. The Ombudsman noted that a single affidavit can, and generally does support an application for multiple warrants.<sup>364</sup>
- 6.17** In the second half of 2013 the Ombudsman engaged external Senior Counsel Assisting who proceeded to analyse the documentation. Also during this time, interviews or private hearings were conducted with individuals 'who could assist prior to an examination of the key witnesses and persons against whom allegations had been made'. By May 2014, 60 individuals had been interviewed or attended a hearing.<sup>365</sup>
- 6.18** In the second half of 2014 the Senior Counsel Assisting conducted examinations with the key witnesses. These examinations are the central component of Operation Prospect and are now nearly completed.<sup>366</sup>
- 6.19** The next step of the inquiry is to prepare the draft report, where the Ombudsman will form his provisional views. The Ombudsman at this stage is required to provide information to anybody he proposes to make an adverse finding or adverse comment about, so that they have an opportunity to respond before the Ombudsman formalises his final view. He noted that this process will likely occur 'within the March/April time period' of 2015.<sup>367</sup>
- 6.20** The Ombudsman will endeavour to produce his final report in June 2015.<sup>368</sup>

### **Concerns about the conduct and progress of Operation Prospect**

- 6.21** The primary concerns with Operation Prospect identified by inquiry participants are that it is taking too long, that it is being held in secret with non-disclosure orders issued to its participants and that it has focused more on the leaking of documents than on the legality of warrants issued during the Mascot/Florida investigation.
- 6.22** Before these matters are analysed, concerns regarding the mental health and welfare of Operation Prospect participants and the dissatisfaction of staff working on the inquiry will be discussed.

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<sup>363</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 20.

<sup>364</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 19.

<sup>365</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 5.

<sup>366</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 6.

<sup>367</sup> Evidence, Mr Barbour, 3 February 2015, p 13.

<sup>368</sup> Evidence, Mr Barbour, 3 February 2015, p 12.

*Mental health/welfare concerns for Operation Prospect inquiry participants*

- 6.23** During the course of the inquiry, the Police Association expressed its concern to the committee that non-disclosure directions under statutory secrecy provisions were preventing police officers from seeking or continuing to receive appropriate medical treatment.<sup>369</sup>
- 6.24** The Police Association asserted that officers were being dissuaded from accessing medical treatment for fear of compromising their position and potentially being accused of breaching statutory secrecy legislation or a direction from the Ombudsman.<sup>370</sup>
- 6.25** The Ombudsman noted that for the purposes of this inquiry he had organised a confidential third-party counselling service to be available to both witnesses and their families. Advice about the counselling service was provided to all individuals in their initial letter from the Ombudsman accompanying their summons to give evidence.<sup>371</sup> An extract from a summons letter is presented below.<sup>372</sup>

*Access to counselling service:*

Operation Prospect has identified that involvement in this matter may cause stress to individuals or their families. Accordingly, we have arranged the following confidential counselling service to be available for all those involved. The service is entirely confidential and there is no ability by Operation Prospect to identify who, if anyone utilises it. Should you or your family wish to contact the service the details are:

Service:	Davidson Trahaire Corpsych (DTC)
Contact details:	1300 360 364
Quote Ref:	OMBPRO

All counsellors are qualified, experienced professionals who have extensive training and experience in counselling. All expenses for any initial consultation is paid for by the NSW Ombudsman at no cost to you. It can be provided face to face, over the telephone, or via video counselling, whichever is more convenient for you.

- 6.26** In addition, the Ombudsman stated that participants may seek a variation to a non-disclosure direction during or after a private hearing to accommodate any legitimate need to disclose information, including seeking medical and welfare assistance.<sup>373</sup> The Ombudsman stated that no such request 'to see a medical practitioner, a psychiatrist, or to speak with a spouse or a support person [has] been denied' during Operation Prospect.<sup>374</sup>
- 6.27** However, it should be noted that the excerpt above does not make it clear if a variation to a non-disclosure direction must be made before disclosing information to a Davidson Trahaire Corpsych counsellor. In addition, a number of the committee's participants told the

<sup>369</sup> Supplementary submission 12a, Police Association of New South Wales, p 1.

<sup>370</sup> Submission 12, Police Association of New South Wales, p 3.

<sup>371</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 31.

<sup>372</sup> See for example, Correspondence, from Mr Bruce Barbour to Mr Clive Small, 7 July 2014, p 3.

<sup>373</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 31.

<sup>374</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, Statement, p 6.

committee that they were unaware that requests to amend non-disclosure directions could be made to the Ombudsman.<sup>375</sup>

- 6.28** In response, the Ombudsman noted that most witnesses to Operation Prospect were legally represented and '[a]ny experienced lawyer would know that confidentiality directions can be varied upon request'.<sup>376</sup> He also noted that even some participants who were not legally represented sought variations to non-disclosure directions.<sup>377</sup>
- 6.29** The Police Association acknowledged the importance of statutory secrecy provisions and recognised the comments of the Ombudsman, but argued that there was 'substantial merit in the Ombudsman adopting an approach where each non-publication direction under s 19A given to a police officer provides an automatic exception for publication to a medical practitioner, psychologist, or counsellor for the purposes of medical treatment'.<sup>378</sup>
- 6.30** In addition, the Police Association recommended that the 'Ombudsman review each non-publication direction made during Operation Prospect which affects a police officer so as to determine whether the direction should be varied to allow for the publication of relevant material ... for the purpose of medical treatment'.<sup>379</sup>

#### *Committee comment*

- 6.31** The committee commends the Ombudsman for adopting certain procedures to ensure participants have access to welfare support, but recognises the concerns raised by the Police Association regarding statutory secrecy provisions.
- 6.32** The Ombudsman has not made it clear to participants in his inquiry when or if they are required to seek a variation to a non-disclosure order for the purposes of obtaining counselling or welfare support. The extract from the summons letter provided above demonstrates that this matter is ambiguous. An individual may make use of the confidential counselling service offered by the Ombudsman, but what are they allowed to actually say during that session? Can an individual speak freely, or must they be granted an amendment to a non-disclosure direction before they reveal that they have even been called before the Ombudsman?
- 6.33** For abundant clarity, the committee supports the suggestion made by the Police Association for each non-publication direction under s 19A of the *Ombudsman Act 1974* to provide for an automatic exception for publication to a medical practitioner, psychologist, or counsellor for the purposes of medical or welfare assistance.

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<sup>375</sup> Submission 18, Mr Steven Barrett, p 6; Submission 3, Mr Neil Mercer, p 6; Evidence, Mr Mercer, 30 January 2015, p 37.

<sup>376</sup> Evidence, Mr Barbour, 3 February 2015, p 4.

<sup>377</sup> Evidence, Mr Barbour, 3 February 2015, p 6.

<sup>378</sup> Supplementary submission 12a, Police Association of New South Wales, p 6.

<sup>379</sup> Supplementary submission 12a, Police Association of New South Wales, p 7.

### Recommendation 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:

- *Ombudsman Act 1974*
- *Crime Commission Act 2012*
- *Police Integrity Commission Act 1996*
- *Independent Commission Against Corruption Act 1988.*

### *Dissatisfaction from Operation Prospect staff*

- 6.34** During the course of the inquiry the committee became aware that a number of staff working on Operation Prospect had expressed dissatisfaction and had resigned.
- 6.35** On 21 January 2015 the committee sought to obtain from the Ombudsman the resignation letters of those people to ascertain the reasons for their dissatisfaction. The Ombudsman responded on 28 January 2015 and declined the committee's request on the grounds that letters of resignation contain personal information and their disclosure is subject to the constraints of the *Privacy and Personal Information Protection Act 1988*.<sup>380</sup>
- 6.36** The Ombudsman later stated that 'around nine or 10' officers working on Operation Prospect had resigned<sup>381</sup> with two staff members indicating 'some concerns in their letter of resignation'.<sup>382</sup> These staff left on 18 November 2013 and 13 March 2014.<sup>383</sup>
- 6.37** The concern expressed by the first staff member was that they were not promoted to a position they thought they should be when a vacancy became available. The staff member also raised concerns about disagreements they had in relation to methodologies and investigation practices.<sup>384</sup>
- 6.38** The second officer described a range of issues which predominantly related to a personality conflict between two senior staff. In addition, the officer was from outside of New South Wales and found it difficult to travel frequently between their home State and Sydney for the purpose of the role.<sup>385</sup>

<sup>380</sup> Correspondence from Mr Barbour to Chair, 28 January 2015, p 1.

<sup>381</sup> Evidence, Mr Barbour, 3 February 2015, p 20.

<sup>382</sup> Evidence, Mr Barbour, 3 February 2015, p 21.

<sup>383</sup> Answers to questions on notice, Mr Bruce Barbour, NSW Ombudsman, received 10 February 2015, p 2.

<sup>384</sup> Evidence, Mr Barbour, 3 February 2015, p 21.

<sup>385</sup> Evidence, Mr Barbour, 2 February 2015, p 21.

***Investigation is taking too long and being conducted in private with non-disclosure orders issued to participants***

**6.39** A number of inquiry participants expressed concern that Operation Prospect has been in progress now for well over two years and has been conducted in private, with non-disclosure orders issued to its participants. It should be noted at this point that under a longstanding provision of the *Ombudsman Act 1974*, an investigation by the Ombudsman must be conducted 'in the absence of the public'.<sup>386</sup>

**6.40** Although this is a longstanding provision, it was only in November 2012 that statutory secrecy provisions were introduced into the *Ombudsman Act 1974*. Due to these amendments, the Ombudsman may now issue directions that his inquiry participants must not disclose information about a summons to give evidence, or the contents of their examination. All participants called before Operation Prospect have been issued with this direction and summonsed pursuant to s 8 of the *Royal Commissions Act 1923* and s 19 of the *Ombudsman Act 1974*. The 2012 statutory amendments are discussed in more detail in chapter 2.

**6.41** To some participants, including Mr Neil Mercer, freelance journalist, the fact that the Ombudsman must hold hearings in private is evidence that he should not have conducted the inquiry; it should have been a public judicial inquiry instead:

... the Ombudsman's inquiry was misconceived. More secrecy was not and is not the answer. In October 2012 I wrote in the Herald, "This matter has been going on for 10 years and it will not go away." Here we are today. It has not gone away and it will not go away. Rather than a secret inquiry by the Ombudsman, there should have been, in my view, a judicial inquiry in public to finally answer the allegations that have been festering in this city for years.<sup>387</sup>

**6.42** Mr Brian Harding, a former NSW Police Force officer, noted that as this matter 'goes to the heart of law enforcement in this State' it was such a 'hot potato' that it was decided it had to be conducted behind closed doors.<sup>388</sup>

**6.43** Mr Kaldas stated that the problem with conducting Operation Prospect in private and with secrecy provisions in place is that no one knows how the inquiry is progressing and if the Ombudsman is testing the allegations brought forward by complainants:

... the problem as I see it is that it has been handed to the Ombudsman and that is all in secret. We do not know what the Ombudsman is doing. We do not know how rigorous that inquiry is. We do not know whether any of these allegations have been raised. Indeed, reading some of these submissions from other people, it appears that matters that in my view should have been raised have not been raised by the Ombudsman.<sup>389</sup>

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<sup>386</sup> s 17, *Ombudsman Act 1974*.

<sup>387</sup> Evidence, Mr Mercer, 30 January 2015, p 24.

<sup>388</sup> Evidence, Mr Brian Harding, former Detective Superintendent, NSW Police Force, 29 January 2015, p 42.

<sup>389</sup> Evidence, Mr Kaldas, 30 January 2015, p 26.

- 6.44** Mr Ken Desmond, a former police officer named on the Bell warrant, noted the lack of communication from the Ombudsman, which has been exacerbated by the holding of hearings in private:

I am still unaware as to the total number of warrant(s) that my name appears or any other information dealing with any other matter concerning me that Operation Prospect is investigating.

To put in plainly, I am in the dark and confused as a complainant in this investigation process, notwithstanding that Operation Prospect has on a several of occasions given general information on the investigation progress, but has not advised me directly on the progress of my specific allegations.<sup>390</sup>

- 6.45** Regarding secrecy and communication issues, Mr Kaldas noted that it was only because of this committee's inquiry that he discovered he had been the subject of 80 warrants. He argued that he would have had more to say to the Ombudsman had he known:

I had not heard of the 80 warrants before the Ombudsman gave evidence to this committee. My original verbal complaint and my written evidence only dealt with what I knew about. I would have had a lot more to say had I been given an opportunity. Even if you were to accept the Ombudsman's evidence at face value, why could he not have asked me about the rest of the 80 warrants?<sup>391</sup>

- 6.46** Journalists who gave evidence before this inquiry have all condemned Operation Prospect in various ways as 'an attack on the freedom of the press in this country'.<sup>392</sup> Mr Steven Barrett, a journalist at Seven Network Australia, argued that as 'a ploy to prevent further reporting' the Ombudsman has used his powers and served summonses on journalists who have been critical of his inquiry,<sup>393</sup> while Mr Neil Mercer noted that secrecy provisions have effectively muzzled journalists from pursuing the investigation.<sup>394</sup>

#### *Ombudsman's response to concerns*

- 6.47** In addressing these concerns, the Ombudsman asserted that Operation Prospect has taken a long time to complete because he wants to ensure that all issues are dealt with in a finite and complete way and considers the protracted timeframe 'a consequence of conducting a fair investigation'.<sup>395</sup>

- 6.48** Further, the Ombudsman noted the complexity and seriousness of the substantive issues:

... the matters which are the subject of Operation Prospect have an extraordinarily long and complex history, involving a multiplicity of individuals, agencies and institutions, and investigations, task forces and strike forces over many years. They have been the subject of a significant number of complaints, involving serious allegations about conduct in the course of the Mascot references and other

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<sup>390</sup> Submission 2, Mr Ken Desmond, p 2.

<sup>391</sup> Evidence, Mr Kaldas, 10 February 2015, p 30.

<sup>392</sup> Evidence, Mr Steven Barrett, Journalist, Seven Network Australia, 29 January 2015, p 25.

<sup>393</sup> Submission 18, Mr Steven Barrett, p 10.

<sup>394</sup> Evidence, Mr Mercer, 30 January 2015, p 37.

<sup>395</sup> Evidence, Mr Barbour, 3 February 2015, p 2 and 26.

subsequent strike forces, both at the level of individual actions and at a more systemic level ...<sup>396</sup>

**6.49** The Ombudsman agreed that 'the interests of those who are personally involved and the public interest are best served by the finalisation of Operation Prospect in as timely a manner' as possible. He also noted the hard work and dedication of his own staff to achieving this aim.<sup>397</sup>

**6.50** The Ombudsman rejected the proposal that he should have either issued an interim or progress report, or separate his lines of inquiry:

I do not believe it is possible to unpick all of the issues. The reality of this matter is that, despite its complexity and the enormous amount of information, all of the issues are interwoven. Whilst we have endeavoured to be as discreet as we can in terms of the particular components of our investigation, they none the less flow over a number of issues and a number of people involved in these matters are central to many of the issues that we are investigating. I do not think it would be in the interests of the investigation or those individuals for us to be reporting in an ad hoc or preliminary way about matters that clearly go to the heart of their conduct.<sup>398</sup>

**6.51** As noted at the start of this section, under his legislation, the Ombudsman must conduct investigations in the absence of the public. Furthermore, the Ombudsman considers secrecy provisions to be imperative for Operation Prospect because it minimises the 'risk of collusion between witnesses and potential witnesses, many of whom are well known to each other, and in order to protect the confidentiality of lines of enquiry and the safety and welfare of prospective witnesses'.<sup>399</sup>

#### *Committee comment*

**6.52** When Operation Prospect was first established, the Chair of this committee was assured by the government that a report would be available within six months. Clearly the Ombudsman is an independent officer and is entitled to conduct a thorough and comprehensive inquiry. As a result of our inquiry, the committee better understands the complexity and volume of the material surrounding the matters referred to him.

**6.53** Nevertheless, the secrecy provisions under which the Ombudsman is working meant that it is essential that proper communication occurs. A brief appearance before a joint oversight committee does not address the serious concerns that have arisen due to the delays. Thankfully this inquiry has provided an opportunity for the Ombudsman to explain in detail the extensive nature of the work undertaken. To that extent this inquiry has strengthened confidence in the Ombudsman's work, despite the significant criticisms detailed below. However if the Ombudsman had produced an interim report, even only consisting of his evidence to this inquiry on the process of what has been undertaken, there would have been considerably less concern about the length of time taken to report.

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<sup>396</sup> Evidence, Mr Barbour, 3 February 2015, p 2.

<sup>397</sup> Evidence, Mr Barbour, 3 February 2015, pp 2-3.

<sup>398</sup> Evidence, Mr Barbour, 3 February 2015, p 13.

<sup>399</sup> Correspondence from Mr Barbour to Chair, 19 November 2014, Attachment 1, p 4.

*Perceived focus on the leaking of confidential documents*

**6.54** A major concern of a number of inquiry participants, who were either named on warrants or had written news stories about the matter, is that Operation Prospect hearings appeared to spend large amounts of time on questions regarding the leaking of confidential documents in 2012 rather than on the warrants themselves. This led to three complaints: first, that the leaks should never have been a term of reference in the first place; second, that it appeared to take priority over finding out the truth about what happened during the Mascot/Florida investigation; and third, that it made people who consider themselves to be victims in this affair feel like the accused.

**6.55** Mr Mercer argued that it was the person's duty to shine a light on the alleged wrongdoing:

Why wouldn't an aggrieved person want to make [the documents] public? Why wouldn't an honest police officer or former officer want a full and open inquiry after so long? Isn't it their duty to draw attention to possible wrong-doing? Apparently not in NSW.<sup>400</sup>

**6.56** An inquiry participant whose name appears on the Bell warrant suggested that the person who leaked the documents should be considered a hero rather than cast as a villain:

It is however cause for concern that a part of the reference is to identify the human sources of documents that have assisted in finally blowing the whistle – unless they are going to give them a medal – such is the significance of corruption detection and prevention in bringing such public malfeasance to light. Such a reference appears to be against the spirit of public interest disclosure legislation in the State of New South Wales ...<sup>401</sup>

**6.57** Mr Steven Barrett was of the view that the person who leaked the documents was left with very little choice if they wanted the matter to be brought to light and finally addressed:

The dilemma confronting the so called whistle blower was who could he turn to. The very agencies whose duty it was to investigate criminal offences were prima facie compromised at the highest levels. ... This was a classic example as to 'who will guard the guards'. ... Accordingly, the only practical and logical solution facing the whistle blower was to expose the criminality ... and in the circumstances the only avenue was to 'leak' the information to the outside world.<sup>402</sup>

**6.58** Mr Phillip Bradley, former Crime Commissioner, argued that the leaking of documents is in the public interest if it does uncover that the warrants were obtained improperly, and thought that an inquiry focusing on the leaking would be unhelpful:

If it is true that the drafters of the list of names were wrongly motivated, as opposed to discharging their duty to advance the public interest, then the 'leaking' of information to reveal that conduct seems justified, even if technically in breach of statutory secrecy provisions. In my submission, a focus on alleged leaking, rather than the alleged greater mischief, would be unproductive...<sup>403</sup>

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<sup>400</sup> Submission 3, Mr Neil Mercer, p 7.

<sup>401</sup> Submission 14, Name suppressed, p 17.

<sup>402</sup> Submission 18, Mr Steven Barrett, p 8.

<sup>403</sup> Submission 10, Confidential, p 2 (quoted by resolution of the committee).

- 6.59** Mr Mark Morri, Crime Editor, *Daily Telegraph*, expressed his dismay that the Ombudsman had asked him to reveal confidential sources at a 'secret inquiry', describing it as 'a dangerous path to go down':<sup>404</sup>

The Office of the Ombudsman and, for that matter, all government agencies, should appreciate that our democracy is stronger when journalists are able to operate without the fear of having to divulge the identity of their confidential sources. I should not have been put in that position. No journalist should ever be put in that position.<sup>405</sup>

- 6.60** Mr Harding argued that it appeared the 'wrongdoers' that obtained the original warrants had 'been successful in having the Ombudsman respond to their complaints' and shift the focus of the investigation into an inquiry about the whistleblower(s).<sup>406</sup> Mr Harding was asked some questions during Operation Prospect about his experience regarding affidavits, but the focus of the hearing was squarely on how he had obtained confidential documents.<sup>407</sup>

- 6.61** Mr Kaldas stated that when he gave evidence he was not asked many questions about his complaint, only about how confidential documents had found their way into the public domain:

Probably the vast bulk of the day was delving into how the documents came to be released, who discussed them, who saw them, who I discussed them with, who had complained to me and who I had complained to. ... I do not recall any real meaningful questions being asked at all—I might stand corrected, there might have been one or two but certainly I do not recall any questions about what my complaint was actually about.<sup>408</sup>

- 6.62** Mr Barrett made a similar complaint, and noted that the questions he was asked appeared to be in disconnect to the call for information he had initially responded to:

The Ombudsman initially advertised for the victims to come forward to assist Operation Prospect. I came forward and provided material on that basis. I was not asked one question when I was subject to a compulsory examination by the Ombudsman about my complaint; rather, the questioning focused on how I came into possession of the documents.<sup>409</sup>

- 6.63** For Mr Kaldas, this approach by the Ombudsman was completely intolerable as 'accepted set-in-cement basics for any major investigation' are that 'you must hear from the witnesses and the victims about what they say happened to them, their perceptions, the impact on them'.<sup>410</sup>

- 6.64** Mr Kaldas also noted that the manner of the compulsory examination made him feel like he was being attacked, when he should have been considered a victim:

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<sup>404</sup> Submission 20, Mr Mark Morri, p 1.

<sup>405</sup> Evidence, Mr Mark Morri, Crime Editor, *Daily Telegraph*, 30 January 2015, p 92.

<sup>406</sup> Evidence, Mr Harding, 29 January 2015, p 27.

<sup>407</sup> Evidence, Mr Harding, 29 January 2015, p 28.

<sup>408</sup> Evidence, Mr Kaldas, 30 January 2015, pp 5-6.

<sup>409</sup> Evidence, Mr Barrett, 29 January 2015, p 3.

<sup>410</sup> Evidence, Mr Kaldas, 10 February 2015, p 30.

I attended to face an onslaught, a concerted attack on my integrity and credibility and I did not leave the hearing until around 6.30 p.m. An enormous amount of material was put to me and yet again my emails, phone records, diary, notebooks, et cetera, were invaded and quoted to me. I felt that the horrors of Mascot Florida were happening all over again. It felt to me like this was a well-planned attack to silence me as one of the main complainants.<sup>411</sup>

**6.65** Further, Mr Kaldas asserted 'that the questioning was inconsistent with the public interest disclosure legislation and the protection it affords'.<sup>412</sup>

**6.66** During his second appearance before the committee, Mr Kaldas concluded that there is a fundamental conflict in the way the Ombudsman has conducted his inquiry. Even if it was necessary for the Ombudsman to investigate the leaking of documents, he should have gone about it in a different way and he has prolonged an already protracted investigation:

First, investigating the alleged leaks can only be making a lengthy investigation take even longer. Secondly, there is a fundamental conflict between one person investigating wrongdoing and then that same person investigating alleged leaks which led to the uncovering of the alleged wrongdoing in the first place. Even if you were to accept from the Ombudsman that he should be investigating these leaks, it is my submission that the way he is going about it is simply not right; it is wrong. At the very least he should have investigated the original wrongdoing in Operation Mascot/Florida first, made some findings and then perhaps looked at the leaks later on in the context of the very serious misconduct or corruption, systemic problems, that the first leg of the investigation would have revealed. Only then should any investigation into the alleged leaks have been commenced...<sup>413</sup>

**6.67** The committee received correspondence from Mr Kaldas's solicitor on 2 February 2015, following his appearance before the committee on 30 January 2015. In that letter it was observed that:

What occurred during the examination [by the Ombudsman] had the effect, on our instructions, of Deputy Commissioner Kaldas believing he had been 'ambushed' and him believing that Operation Prospect was miscarrying in the sense that it would not identify and expose the wrongdoing.

These tactics and this line of inquiry had the effect that Deputy Commissioner Kaldas found it impossible to cope with the examination of the Ombudsman – particularly in the afternoon and early evening. Deputy Commissioner Kaldas had given assurances to [name withheld] that he would not inform anyone in relation to documents he received from the NSW Crime Commission and initially in his examination before the Ombudsman he gave a partial, incomplete and incorrect account. By the end of the day, this information was provided to the Ombudsman but in the context of a sustained attack on the credit of Deputy Commissioner Kaldas.<sup>414</sup>

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<sup>411</sup> Evidence, Mr Kaldas, 30 January 2015, p 4.

<sup>412</sup> Evidence, Mr Kaldas, 30 January 2015, p 4.

<sup>413</sup> Evidence, Mr Kaldas, 10 February 2015, p 29.

<sup>414</sup> Correspondence, William Roberts Lawyers on behalf of Mr Nick Kaldas to Chair, 2 February 2015, pp 2-3.

*Ombudsman's response to concerns*

- 6.68** In addressing concerns that he was not taking the allegations regarding the legality of warrants seriously, the Ombudsman stated:

First, it is very important for me to state with absolute clarity that I understand the nature of the complaints that have been made and the impact that these matters have had on individuals. I am very mindful of that in everything I do and I have gone to great lengths in my examination of witnesses to explain that so that they understand.<sup>415</sup>

- 6.69** The Ombudsman assured Mr Kaldas during his evidence to Operation Prospect that he was dealing with Mr Kaldas' concerns:

In the case of Deputy Commissioner Kaldas, for example, he was assured at the outset of his hearing that the detailed letters of complaint that he prepared for the Police Integrity Commission Inspector and for the benefit of the Ombudsman had been delivered and were being dealt with. They related to the substance of the allegations around Mascot.<sup>416</sup>

- 6.70** To clarify the weight he had placed on the legality of the warrants compared to the leaks, the Ombudsman provided some quantitative information from his inquiry:

The degree of vigour of the testing to which evidence has been subjected has been appropriate to the issues that have been raised. To illustrate this in numerical terms by reference to the two deputy commissioners who have given evidence, Deputy Commissioner Kaldas was examined for one day, while Deputy Commissioner Burn was examined for four days. These raw figures are sufficient to indicate the primary focus of the inquiry. I do not expect that Deputy Commissioner Kaldas nor the journalists who have given evidence would be aware of the duration of the examination of other witnesses nor of the focus of those other examinations. But the conclusions that they have drawn from the duration and subject matter of their own investigations are baseless. I would note that Mr Barratt appeared before me for one hour and 13 minutes, Mr Harding for 47 minutes, and Mr Mercer for two hours and 39 minutes.<sup>417</sup>

- 6.71** Although the Ombudsman recognised the concerns regarding the warrants, he argued that it was not necessary to question individuals named on the warrants about these matters, as it would be better to direct these questions to the officers who were involved in obtaining the warrants:

I recognise and I understand the concern that complainants have about their names being placed on warrants. But if they are unable to assist by providing information about what information holdings or material might have been available to Operation Mascot, clearly those questions are best directed to those people who were involved in Operation Mascot and a detailed analysis of the information holdings of Operation Mascot. We endeavoured to assure those complainants that simply because we were not asking them further questions about those matters did not mean that they were

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<sup>415</sup> Evidence, Mr Barbour, 3 February 2015, p 26.

<sup>416</sup> Evidence, Mr Barbour, 3 February 2015, p 3.

<sup>417</sup> Evidence, Mr Barbour, 3 February 2015, p 3.

not being looked at and were not being looked at thoroughly and were the subject of considerable investigation by us.<sup>418</sup>

- 6.72** The Ombudsman specifically addressed Mr Kaldas' statement that the Ombudsman's questioning was 'inconsistent with the public interest disclosure legislation and the protection it affords':<sup>419</sup>

[a] claim by a person that they are a whistleblower requires careful consideration against the relevant legislation. Internecine struggles within police forces are not new and selective release of information to selected journalists is a technique sometimes deployed in such struggles. Persons who are genuine whistle blowers have nothing to fear from inquiries into such matters because they have the protections provided by this parliament however this parliament has required that some kinds of information not be disclosed and had provided penalties for those who breach that requirement. My task is to apply the law as it has been set down by the parliament, not value judgements. To suggest that my inquiry has focused on targeting whistle blowers is quite simply false.<sup>420</sup>

- 6.73** The Ombudsman was adamant that examining the unlawful release of information was an appropriate and necessary part of his inquiry:

The possible removal by staff of the Crime Commission, the NSW Police Force or the Police Integrity Commission of confidential records from their computer systems and/or files and the dissemination of that material to people who are not by law entitled to receive it is clearly a matter that must be investigated. There have been multiple complaints by people about unlawful access to and release of information. It not only breaches secrecy provisions but it potentially breaches privacy provisions and it is clearly a serious issue that must be addressed by careful investigation.<sup>421</sup>

- 6.74** To support this view, the Ombudsman noted that statutory secrecy provisions under the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996* prevent the disclosure of some information, and penalties are in place for breaching these requirements. The Ombudsman's role is to apply the law, not pass value judgements.<sup>422</sup>

- 6.75** However, the Ombudsman did state that '... public scrutiny in relation to these issues definitely assisted in their proper inquiry being undertaken but what I do not agree with is the fact that there was an exchange of confidential and highly sensitive information amongst so many people for no reason'.<sup>423</sup> The Ombudsman went on to further state:

Mr BARBOUR: Many of the documents that have been circulated do not further the issue of whether or not this matter ought be investigated. They have been circulated for other reasons.

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<sup>418</sup> Evidence, Mr Barbour, 3 February 2015, p 4.

<sup>419</sup> Evidence, Mr Kaldas, 30 January 2015, p 4.

<sup>420</sup> Evidence, Mr Barbour, 3 February 2015, p 4.

<sup>421</sup> Evidence, Mr Barbour, 3 February 2015, p 4.

<sup>422</sup> Evidence, Mr Barbour, 3 February 2015, p 4.

<sup>423</sup> Published extract of *in camera* evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 4.

Mr DAVID SHOEBRIDGE: If they had not been circulated there never would have been an inquiry.

Mr BARBOUR: No—

Mr DAVID SHOEBRIDGE: That is the key conundrum.

The Hon. TREVOR KHAN: Let the witness finish, because he is making a point.

Mr BARBOUR: I am agreeing with you and I am saying that is definitely one of the issues in relation to the exchange of documents but what I am going on to say is that there has been a whole lot of documentation which did not assist with that which did not require circulation and which has been circulated for alternative reasons and purposes. At the end of the day I am focused on what the law says and the law requires and I am doing my best to follow that.

I have set out in my submissions to the Committee the very real issues around the handling of whistleblowers and the handling of information under the Public Interest Disclosures Act. Deputy Commissioner Kaldas made a public interest disclosure to the Commissioner of Police when he made his complaint in September 2012. He copied that. We have told him that is a public interest disclosure. He is aware of that. We raised it in our first meetings with him and we confirmed that with him. In relation to him we have absolutely followed all of the necessary requirements that are set out in the public interest disclosures legislation but that does not mean we should not ask him questions about these very important issues, and that is what we have done.<sup>424</sup>

- 6.76** The Ombudsman gave an insight into the extent of the documents which have apparently been unlawfully or improperly disseminated, by noting that ‘inquiries to date indicate that over 20,000 pages of confidential hard copy and digital material has been released into the public domain. This is a conservative estimate as it is likely that documents are in the possession of individuals who have not come forward to Operation Prospect’.<sup>425</sup> However, the committee noted that it has no way of knowing how the Ombudsman has calculated this estimate, or whether the estimate includes multiple copies of the same document.
- 6.77** For a list of the 61 leaked documents, as identified by the Ombudsman in his inquiry, see Appendix 8 at page 143.

***Committee comment***

- 6.78** The committee is of the view that the Ombudsman is conducting a proper, thorough and hopefully conclusive investigation into a matter that is both incredibly important and incredibly complex. To this end, the committee acknowledges the hard work and dedication of the Ombudsman, his deputy and his staff.
- 6.79** The committee is satisfied with the explanation provided by the Ombudsman regarding his intention to properly investigate the propriety of listening device warrants obtained as part of

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<sup>424</sup> Published extract of *in camera* evidence, Mr Barbour, 3 February 2015, p 5.

<sup>425</sup> Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 24.

the Mascot/Florida investigation and that his inquiry is not merely a witch-hunt to track down the person or persons who brought this matter to light.

- 6.80** As previously noted in this report, the Ombudsman's letter to Mr Scipione, dated 10 October 2012, was tabled before General Purpose Standing Committee No. 4 during a budget estimates hearing. Some members of this committee were present on the committee on that date.
- 6.81** Our committee concludes that neither the Ombudsman nor members of parliament perceived the complexity of the inquiry to be undertaken nor the vast volume of documents (said to be over 1 million pages) that would form part of his inquiry.
- 6.82** Although the committee supports the Ombudsman in his investigation, it is very clear that the two matters: the allegations that warrants were illegally obtained; and the leaking of relevant documents 12 years later, should have been considered as separate matters, either as separate inquiries, or through the release of an interim report or a series of reports.
- 6.83** The Ombudsman offered this committee no acceptable justification for combining these matters into one investigation. The committee notes the following two negative consequences of the Ombudsman conducting Operation Prospect in the manner that he has:
- first, it has added a layer of complexity to an already complicated inquiry causing it to run longer than it should have done, and
  - second, it created a confusing situation whereby persons involved in the investigation were treated as both complainants and as perpetrators or colluders. This matter was made even more confusing for participants due to secrecy provisions preventing them from finding out what had been asked of other witnesses.
- 6.84** From the isolated standpoint described above it is highly reasonable that Operation Prospect participants considered that the Ombudsman was focusing more on the leaks than on the warrants and was considering them as perpetrators, rather than victims.
- 6.85** These individuals have spent years caught in a tangled web of secrecy provisions. Operation Prospect was supposed to be an opportunity for individuals to air their concerns and have them addressed, not have the bulk of their time spent being asked questions about whether they had leaked information or which journalists they may or may not have spoken with. The committee considers it unacceptable for a complainant to be called to give evidence to the Ombudsman under summons without knowing if they are being questioned as a witness regarding their substantive complaint, or as a perpetrator.
- 6.86** If the Ombudsman had separated the two matters in question into different investigations, there may not have been any need for the establishment of this Select Committee. Our inquiry is a by-product of the serious concerns held by long-suffering individuals central to the Ombudsman's investigation.
- 6.87** For this reason, the committee believes that the Ombudsman should not have conducted an investigation that incorporated both the legality of warrants and the leaking of information, as it meant that inquiry participants were considered as both complainants and perpetrators, and has delayed the completion of the inquiry.

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**Finding 10**

That the NSW Ombudsman should not have incorporated both the legality of warrants and the leaking of confidential information into a single inquiry. Combining these two issues has resulted in participants being considered both complainants and perpetrators, and has delayed the completion of the inquiry.

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- 6.88** Further to this, the committee echoes the concerns raised by inquiry participants that they were not questioned by the Ombudsman regarding their substantive complaints. The committee believes the Ombudsman's approach was problematic, especially in light of the additional material he provided to this committee, of which complainants were unaware of at the time of making submissions to our inquiry. A thorough examination of complainants would have shed valuable light on their grievances.
- 6.89** The committee also submits that complainants are well within their rights to know, and be allowed to respond to, information that the Ombudsman possesses about them. Not taking these steps to listen to complainants and communicate with them is highly problematic. While the Ombudsman made general statements to note that complainants' concerns are being investigated, we are of the view that this was not enough. The committee assumes that the failure to put these matters to complainants is due to the fact the Ombudsman accepts their version of events without qualification.
- 6.90** Finally, the observations by the Ombudsman regarding whistleblowers will no doubt cause significant concern to potential whistleblowers across New South Wales who will believe they are acting in the public interest to uncover wrongdoing, but are not considered by the Ombudsman to be 'genuine'.
- 6.91** The committee considers it appropriate that, following Ombudsman's delivery of his Operation Prospect report, a review be undertaken by the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission into the *Ombudsman Act 1974*, with particular emphasis on Part 3 of the Act, titled investigations and conciliations.
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**Recommendation 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.

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- 6.92** The conduct of Operation Prospect is a cautionary tale. Important lessons should be learned from this process, not only by the Ombudsman, but by any oversight agency that may undertake such an enormous and important investigation in the future.
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## Chapter 7 Beyond Prospect

... this matter started in the last decade of the last century and that it is still being agitated, not least by two officers who, notwithstanding the apparent controversy are the protagonists or antagonists ... have reached the exalted rank of deputy commissioner in the meantime ... I just find this continuing controversy extraordinary.<sup>426</sup>

This final chapter considers two key themes of the inquiry relevant to a post Operation Prospect future: issues concerning the leadership of the NSW Police Force; and the efficacy of existing police oversight arrangements.

### Leadership

**7.1** The controversy surrounding the legality of warrants issued during the Mascot/Florida have given rise to two issues regarding the leadership of the NSW Police Force. The first is a lack of leadership by successive Commissioners of Police, who many believe have placed this matter in the 'too hard basket', and allowed it to fester for 15 years. The second is that this inaction has created a toxic atmosphere in the NSW Police Force executive, with two of its deputy commissioners at loggerheads over this controversy.

#### Lack of leadership

**7.2** The President of the Police Association of NSW, Mr Scott Weber, noted the 'huge impact that the lack of resolution of these complaints has had on the morale and health' of the NSW Police Force and the functioning of the organisation at all levels.<sup>427</sup>

**7.3** Mr Weber asserted that it was 'unacceptable' for such serious grievances to remain outstanding for so long, with the consequences being breakdowns in relationships, dysfunction and 'embarrassment to the organisation':

The concerns that were raised should never have been allowed to fester and allowed to cause so much harm to the functioning and reputation of the NSWPF and our members.<sup>428</sup>

**7.4** Deputy Commissioner Nick Kaldas APM called for leadership on this issue so that people can move on with their lives:

I guess what I have craved and longed for is for leadership to be shown on this topic, to have the hard conversations, to deal with the issue. We should have done it 10 years ago. We would not be here today otherwise. I guess all I am really seeking is to

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<sup>426</sup> Evidence, the Hon David Levine AO RFD QC, Inspector, Police Integrity Commission, 30 January 2015, p 54.

<sup>427</sup> *In camera* evidence, Mr Scott Weber, President, Police Association of NSW, 29 January 2015, p 34. Evidence published by resolution of the committee.

<sup>428</sup> Submission 12, Police Association of NSW, p 13.

actually deal with the issue properly, put it behind us so we can all get on with our lives.<sup>429</sup>

**7.5** Deputy Commissioner Catherine Burn APM echoed these views, stating that is it a 'completely unsatisfactory position we all find ourselves in' and that 'these matters should have been resolved 12 years ago'.<sup>430</sup>

**7.6** The Commissioner of Police, Mr Andrew Scipione APM, defended criticism that he has not shown leadership in resolving these issues, explaining that when he assumed the role of Commissioner in 2007 he was advised that 'this matter had been finalised' and that 'Commissioner Moroney had done what he had to do and that there was nothing that had changed since that time'.<sup>431</sup> We note the substantial discussion regarding this matter in paragraph 4.45.

**7.7** Former Commissioner of Police, Mr Ken Moroney AO APM, stated he was unable to resolve the issues because of a lack of access to documents due to statutory secrecy provisions and that this would have been communicated to the Police Minister:

I would reasonably believe that I would have advised him as to the state that the Emblems report had reached; that we had had external and internal legal advice; that it would appear that we could not go any further. What action that then Minister took, without the benefit of documentation I am not sure.<sup>432</sup>

### **Tensions between Deputy Commissioners Kaldas and Burn**

**7.8** Concerns have been expressed about the organizational impact of having two of its most senior officers, Deputy Commissioners Kaldas and Burn, embroiled in this ongoing controversy.

**7.9** Mr Kaldas admitted that these unresolved issues have created tensions and that it can be difficult to work in a collegiate way: 'There are tensions there; there is no denying there have been tensions there'.<sup>433</sup>

**7.10** The Police Association was critical of the Commissioner and the steps he has taken to address these matters:

Commissioner Scipione did not make a proper inquiry or inform himself or take any positive steps to resolve the conflict between Deputy Commissioner Burn and Deputy

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<sup>429</sup> Evidence, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, 30 January 2015, p 17.

<sup>430</sup> Evidence Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations NSW Police Force, 10 February 2015, p 3.

<sup>431</sup> Evidence, Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force, 4 February 2015, p 51.

<sup>432</sup> Evidence, Mr Ken Moroney AO APM, former Commissioner of Police, NSW Police Force, 4 February 2015, p 75.

<sup>433</sup> Evidence, Mr Kaldas, 30 January 2015, p 22.

Commissioner Kaldas until the situation became of such public concern that it could not be ignored.<sup>434</sup>

- 7.11** The Police Association argued that 'obvious dysfunction within [the] senior management team' is having a detrimental impact on the Force and beyond:

[Commissioner Scipione] has allowed his Senior Executive Team to deteriorate into a toxic state which we are now seeing being played out very publicly. He has failed as a leader and not managed the situation and has permitted this issue to deteriorate to a point where the reputation of individuals and the NSW Police Force, oversight and the government are being adversely impacted.<sup>435</sup>

- 7.12** The Association also asserted that the Commissioner must take responsibility for the state of the relationship between Deputy Commissioners Kaldas and Burn:

Surely [Commissioner Scipione] must take some responsibility for the state of the relationship between Deputy Commissioner Kaldas and Deputy Commissioner Burn. To deny the hostility between them as he has done publicly has to surely affect his credibility. The divide that exists between these two Senior Executive members is widely known and can no longer be denied. Something must be done to deal with this ongoing dysfunctionality.<sup>436</sup>

- 7.13** Mr Scipione acknowledged that the matter has caused conflict between these Deputy Commissioners but he did not believe such conflict was impacting upon the executive teams' effectiveness:

I am well aware that this matter has caused conflict between Deputy Commissioners Kaldas and Burn. That conflict has been felt by my executive team. For that reason at the very least, this matter needs to be thoroughly investigated, the findings made public and the matters dealt with once and forever. That said, I am satisfied that individually and collectively the executive team is meeting and exceeding the expectations of the community and of the Government .... Deputy Commissioners Kaldas and Burn are both highly experienced officers of considerable ability. To their credit, they have committed themselves to their commands and to the officers who work to them and more importantly, to the people of New South Wales.<sup>437</sup>

### *Committee comment*

- 7.14** It is abundantly clear to the committee that a culture of secrecy, legal threats and inaction breeds distrust, rumour and division. We note that the Government, and especially the Attorney General, were vehemently opposed to the establishment of this committee. We can only hope that they have now realised the benefit of clearly identifying problems. This committee, aided by the witnesses who appeared before us, has highlighted very real concerns with the NSW Police Force. It is now the job of the executive government to get on and fix them.

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<sup>434</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, p 10.

<sup>435</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, p 10.

<sup>436</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, pp 14-15.

<sup>437</sup> Evidence, Mr Scipione, 4 February 2015, p 39.

- 7.15** Despite assurances from Commissioner Scipione and Deputy Commissioners Kaldas and Burn, the committee is concerned that these matters are having a negative impact on the NSW Police Force executive. The Minister and Premier must ensure that the obvious tensions are not impacting on the effective operation of the NSW Police Force.
- 7.16** Both Deputy Commissioners have assured the committee of their professionalism and ability to continue to work together. The committee can only accept these assurances – it is too far removed from the situation to assess how the senior executive works together. However both at the conclusion of this inquiry and particularly after the reporting of Operation Prospect it is crucial that the Police Minister meet with the Police Commissioner to assess whether and how the two Deputy Commissioners are able to continue to work as part of the Senior Executive Team. The situation should not be left to drift and it is important the leadership specifically addresses any problems it may have.
- 7.17** This inquiry has brought the problem into the spotlight. The assurances of a professional working relationship must be assessed and confirmed by the Minister and the Commissioner. It is vital for the effective operation of the NSW Police Force and all the citizens of the state.

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### **Recommendation 5**

That the Premier of New South Wales and the Minister for Police and Emergency Services demonstrate to the community that Deputy Commissioners Kaldas and Burn can maintain a professional relationship, pending the Ombudsman's report expected in June 2015.

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## **Oversight of police**

- 7.18** During the inquiry, several participants expressed concerns about the system to oversight police complaints in New South Wales, including the multiple number of agencies involved in the investigation and oversight of police conduct, and the conflict of interest inherent in a system in which police oversight their own colleagues.

### **Shortcomings of a multiple agency approach**

- 7.19** Several inquiry participants criticised the existing arrangements for police oversight, with multiple agencies playing a role in investigating police complaints or conduct depending on the circumstances.
- 7.20** The NSW Police Force, the Ombudsman, the Police Integrity Commission, the Coroner, the Independent Commission Against Corruption and WorkCover all play a role in overseeing police.<sup>438</sup>
- 7.21** The Police Association asserted that conflicting findings by multiple agencies has resulted in the loss of confidence of members of the NSW Police Force:

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<sup>438</sup> Submission 12, Police Association of NSW, p 15.

In a system where there are multiple oversight agencies, a matter may be assessed by one or more agencies as not warranting further investigation, only for another agency to launch a full investigation. In such cases, justice is put at risk and important questions are raised about the reasons for the differing decisions and the appropriateness of the decision to investigate where more than one agency declined to do so.<sup>439</sup>

**7.22** The Police Association noted the 2013 *Review of Oversight of Police Critical Incidents*, where the NSW Police Commissioner reported that ‘oversight agencies collide in a way that was not intended’, which at times can ‘impede police investigations’.<sup>440</sup>

**7.23** It also suggested that the current system is operationally problematic, leading to skill deficits and imperfect outcomes:

Dividing the functions, resources, expertise and organisational knowledge across multiple agencies has led to poor investigative practices and fragmentation of best practices and proficiencies.<sup>441</sup>

**7.24** The Police Association described the current model of multiple agencies involved in overseeing police as ‘no longer fiscally responsible’ in an environment of economic restraint.<sup>442</sup>

**7.25** It submitted that the cost of the Police Integrity Commission to taxpayers was considerable (amounting to \$106.6 million over a five year period) and that this did not represent value for money, as only a small number of its investigations resulted in police convictions.<sup>443</sup>

**7.26** The Police Association also noted that each of the investigative oversight agencies was allocated a considerable budget by the state government for the 2014/2015 financial year:

- \$21.4 million to the Police Integrity Commission
- \$34.3 million to the Independent Commission Against Corruption
- \$29.9 million to the Ombudsman.<sup>444</sup>

**7.27** The committee notes that there are no published figures on the amount spent by the NSW Police Force on its own internal handling of complaints.

**7.28** Further, the Association claimed that over \$1.2 million a year is spent on the salaries of the Commissioner of the Police Integrity Commission, the Commissioner of the Independent Commission Against Corruption, and the Deputy Ombudsman – Police and Compliance.<sup>445</sup>

<sup>439</sup> Submission 12, Police Association of NSW, p 24.

<sup>440</sup> Submission 12, Police Association of NSW, p 16.

<sup>441</sup> Submission 12, Police Association of NSW, p 16.

<sup>442</sup> Submission 12, Police Association of NSW, p 23.

<sup>443</sup> Submission 12, Police Association of NSW, p 20.

<sup>444</sup> Submission 12, Police Association of NSW, p 23.

<sup>445</sup> Submission 12, Police Association of NSW, p 23.

- 7.29** Mr David Porter, a solicitor with experience in police complaints, also considered that the involvement of several agencies in an investigation is not ideal and could be counterproductive to its success.<sup>446</sup>
- 7.30** Mr Porter, in the context of the current controversy, noted that involvement by multiple agencies such as the Crime Commission and the Police Integrity Commission showed a 'predominant failure of the multiple agency system in this case'.<sup>447</sup>
- 7.31** Mr Scott Weber, President of the Police Association, concurred with this view: "The history of attempts to resolve the complaints demonstrates that the current oversight structure does not work. Structural change is required".<sup>448</sup>
- 7.32** Mr Andrew Scipione APM, Commissioner of Police, echoed concerns about the current multi-agency approach, agreeing that it would be best for a single agency to provide police oversight:

I think in terms of the failure, for the failure here is we had three agencies trying to do the work of what should have been a single agency. ... My view is this should have been a single agency that had carriage of this investigation. When there are matters involving police, allegations of police impropriety or, worse, corruption, my belief is that you have a single agency. Why? So that you do not get this. It is very difficult when you have got three agencies, with all the goodwill in the world, with one steering the bus, one using the break, and one using the accelerator. That does not work.<sup>449</sup>

- 7.33** In response to further questioning, Mr Scipione agreed that the establishment of an independent police complaints authority was worth considering:

Mr SCIPIONE: You know, look, I am not sure that I am the right person to ask because I am a police commissioner so you are going to get a view that may well be police-centric. But what I can say is this: I have given this a lot of thought over many, many years from a position whereby I was once the commander of the internal affairs branch through to today as the commissioner. I do not want to enter into who it is that should be in charge, but unless you have someone charged exclusively with carriage of these matters, you are potentially going to get a repeat of this problem. My view would be that it needs to be some independent. Perhaps it is time to have a look at something like an independent police complaints authority.

Mr DAVID SHOEBRIDGE: Like the United Kingdom has?

Mr SCIPIONE: Indeed.<sup>450</sup>

- 7.34** Similarly, Mr Kaldas, Deputy Commissioner of Field Operations, expressed his personal views about the problems with the current approach:

I believe in external oversight; I think it is essential. But it needs to be in a rational, structured way ... The framework that we have has sprung up in an ad hoc fashion

<sup>446</sup> Submission 27, Mr David Porter, p 2.

<sup>447</sup> Submission 27, Mr David Porter, p 2.

<sup>448</sup> *In camera* evidence, Mr Weber, 29 January 2015, p 35.

<sup>449</sup> Evidence, Mr Scipione, 4 February 2015, p 55.

<sup>450</sup> Evidence, Mr Scipione, 4 February 2015, p 55.

out of various scandals; it is not a structured, thought-through process, it is simply we have reacted to something and we have said we will need another body to do that and so on. What we have now is a patchwork ...<sup>451</sup>

### **Calls for a single agency approach**

**7.35** Many critics of the current system for police oversight called for a single agency to be established to investigate complaints related to police conduct.

**7.36** The Police Association supported this approach, suggesting that there should be one single agency for investigation of serious cases of police corruption and misconduct. Mr Weber stated that police officers want to see the current model of multiple agencies and inquiries replaced:

We want a one-stop shop so that police officers are not dragged through multiple jurisdictions and subjected to multiple inquiries where their information and statements can be picked apart because they are going through three or four years of investigations. They may say 'and' instead of 'that' or 'we' instead of 'I', and all of a sudden they are accused of saying the wrong things.<sup>452</sup>

**7.37** However, the Police Association was of the view that the NSW Police Force should internally deal with less serious matters:

Most allegations of misconduct or corruption by police could be investigated by the NSW Police Force with an appropriate external agency monitoring the investigation where necessary and serious allegations could go to an oversight agency that also dealt with other matters beyond policing.<sup>453</sup>

**7.38** Mr Kaldas agreed there are benefits to a single agency approach and noted that most complaints now come from within as 'police are no longer tolerating corrupt colleagues'. He suggested an 'overarching corruption body with a segment or section that is focused on police issues'.<sup>454</sup>

**7.39** Mr Porter disagreed with this idea, asserting that this arrangement is 'strikingly similar to the joint NSW Police Force, NSW Crime Commission and Police Integrity Commission investigation that got us here in the first place'.<sup>455</sup>

**7.40** The Police Association proposed that the NSW Ombudsman and the Police Integrity Commission be amalgamated with the Independent Commission Against Corruption to form one external oversight agency for serious matters.<sup>456</sup>

**7.41** The Police Association argued that amalgamation of these agencies into one oversight body would 'see a reduction in the costs of senior executives', however they also noted that 'the

<sup>451</sup> Evidence, Mr Kaldas, 30 January 2015, p 21.

<sup>452</sup> *In camera* evidence, Mr Weber, 29 January 2015, p 35.

<sup>453</sup> Submission 12, Police Association of NSW, p 23.

<sup>454</sup> Evidence, Mr Kaldas, 30 January 2015, p 21.

<sup>455</sup> Submission 27, Mr David Porter, p 4.

<sup>456</sup> Submission 12, Police Association of NSW, p 2.

global Independent Commission Against Corruption budget would need to be proportionally increased to perform the police oversight function'.<sup>457</sup>

**7.42** Mr Weber emphasised that a single oversight agency could reduce costs. He also highlighted the importance of an agency in being independent, fair and objective:

A single oversight agency would see a reduction in the costs and a return to stability. The police and the community need to trust oversight to be competent, balanced, objective and fair. Importantly, we should be able to trust those providing oversight to produce sound recommendations that can be relied upon. Oversight should be brutally objective and independent and beyond politics and self-interest. Oversight should also be subject to review and scrutiny, not just token arrangements, for example, part-time inspectors who lack resources.<sup>458</sup>

### **An Independent Police Complaints Commission?**

**7.43** In discussing a single agency approach for police oversight, the committee considered whether there is an argument to establish an agency similar to the Independent Police Complaints Commission in the United Kingdom.

**7.44** The Independent Police Complaints Commission is an independent body in England and Wales that is separate to the police. While the majority of complaints against police officers in the United Kingdom are dealt with internally, the Independent Police Complaints Commission manages serious cases, in addition to considering appeals from people who are dissatisfied with the way their complaint has been resolved by police.<sup>459</sup>

**7.45** While Commissioner Scipione expressed support for the establishment of a single independent police complaints body similar to that of the United Kingdom,<sup>460</sup> the Police Association asserted that this model is not the solution as it is 'far from an ideal model of oversight'.<sup>461</sup>

**7.46** The Association referred to a report from the House of Commons Home Affairs Committee in 2013 which was critical of the police complaints oversight system in the United Kingdom. In particular, the Association noted the committee's statement that the 'public do not fully trust the Independent Police Complaints Commission' and that 'too often the work of the Commission seems to exacerbate public mistrust, rather than mend it'.<sup>462</sup>

**7.47** In April 2013, the United Kingdom Government responded to the committee's report, agreeing with criticisms of the commission. The Association noted that since then, the Government has 'actively sought to rectify the deficiencies'.<sup>463</sup>

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<sup>457</sup> Submission 12, Police Association of NSW, p 23.

<sup>458</sup> *In camera* evidence, Mr Weber, 29 January 2015, p 34.

<sup>459</sup> Independent Police Complaints Commission, *About us*, (accessed 13 February 2015), <<https://www.ipcc.gov.uk/>>

<sup>460</sup> Evidence, Mr Scipione 4 February 2014, p 55.

<sup>461</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, p 1.

<sup>462</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, p 2.

<sup>463</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, p 2.

7.48 The Association contended that adopting the United Kingdom's model of police oversight is not an effective solution and that 'it would mean that New South Wales would be replacing its broken oversight system with a system in an equal or greater state of disarray'.<sup>464</sup>

*Committee comment*

7.49 The committee acknowledges that there are several agencies with responsibility for investigating police actions, conduct or corruption in New South Wales. This multi-agency approach can be confusing and has the potential to undermine each agency's findings.

7.50 It is also problematic when police have to investigate their own, particularly given the conflict of interest between officers' obligations to their colleagues and the public. Most police complaints are indeed managed internally and the committee believes that this conflict of interest is both inappropriate and counterproductive.

7.51 The committee accepts the thrust of the submissions from within and outside the NSW Police Force that a single well-resourced oversight body would be a far preferable structure to the current system of multiple agencies with overlapping responsibilities. The fact that the allegations arising from Operation Mascot more than 15 years ago have failed to be addressed by the current system is clear evidence of its dysfunction. It is important to note that the delays and lack of resolution impact as seriously on police, who are the subject of unresolved allegations and inordinately delayed investigations, as they do on the public. Both the public and police have a right to expect that if a complaint is made against police then it will be dealt with quickly, fairly and independently. The existing system largely fails on all three of these measures.

7.52 However, given the committee took limited evidence on what the ultimate structure of a single oversight body would look like, it is necessary that this matter be addressed in more detail at the earliest opportunity in the new Parliament. The committee therefore recommends that the Legislative Council Standing Committee on Law and Justice inquire into and report on options to reform the management of police complaints in the 56th Parliament, with a view to establishing a single, well-resourced police oversight body that deals with complaints quickly, fairly and independently.

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**Recommendation 6**

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.

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<sup>464</sup> Answers to questions on notice, NSW Police Association, 11 February 2015, p 2.



## Appendix 1 Submissions

No	Author
1	Mr Clive Small ( <i>partially confidential</i> )
2	Mr Ken Desmond
3	Mr Neil Mercer
4	Ms Catherine Burn
5	Police Integrity Commission
6	Name suppressed
7	Confidential
8	Name suppressed
9	Confidential
10	Confidential ( <i>excerpts published in report</i> )
10a	Confidential
11	Confidential
12	Police Association of NSW
12a	Police Association of NSW
13	Confidential
14	Confidential ( <i>excerpts published in report</i> )
15	Name suppressed
15a	Confidential
16	Mr Brian Harding ( <i>partially confidential</i> )
17	Confidential
18	Mr Steven Barrett
19	NSW Privacy Commission
20	Mr Mark Morri
21	Mr Nick Kaldas APM
22	Mr Malcolm Brammer APM ( <i>partially confidential</i> )
22a	Mr Malcolm Brammer APM
23	Confidential
24	Name suppressed
25	Mr John Giorgiutti ( <i>partially confidential</i> )
25a	Mr John Giorgiutti
26	Confidential
27	Mr David Porter

The conduct and progress of the Ombudsman's inquiry "Operation Prospect"

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<b>No</b>	<b>Author</b>
<b>28</b>	Confidential

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## Appendix 2 Witnesses

Date	Name	Position and Organisation
<b>Thursday 29 January 2015</b> <b>Parliament House</b>	Mr Steven Barrett	Journalist, Seven Network Australia
	Mr Mark Galletta	Former Commander, NSW Police Force
	Mr Brian Harding	Former Detective Superintendent, NSW Police Force
	Mr Scott Weber	President, Police Association of NSW
	Witness C	
<b>Friday 30 January 2015</b> <b>Parliament House</b>	Mr Nick Kaldas APM	Deputy Commissioner, Field Operations, NSW Police Force
	Mr Neil Mercer	Freelance Journalist
	The Hon David Levine AO RFD QC	Inspector of the Police Integrity Commission
	Ms Catherine Burn APM	Deputy Commissioner, Specialist Operations, NSW Police Force
	Mr Mark Morri	Crime Editor, <i>The Daily Telegraph</i>
<b>Tuesday 3 February 2015</b> <b>Parliament House</b>	Mr Bruce Barbour	Ombudsman, NSW Ombudsman
	Ms Linda Waugh	Deputy Ombudsman, NSW Ombudsman
	Mr Peter McErlain	Detective Superintendent, NSW Police Force
	Mr Brett McFadden	Superintendent, NSW Police Force

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Wednesday 4 February 2015 Parliament House</b>	Mr John Giorgiutti	Former Solicitor, Crime Commission
	Mr Malcolm Brammer APM	Former Commander, Special Crime and Internal Affairs, NSW Police Force
	Mr Andrew Scipione APM	NSW Police Commissioner, NSW Police Force
	Mr Clive Small	Former NSW Assistant Police Commissioner, NSW Police Force
	Mr Ken Moroney AO APM	Former NSW Police Commissioner, NSW Police Force
<b>Tuesday 10 February 2015 Parliament House</b>	Ms Catherine Burn APM	Deputy Commissioner, Specialist Operations, NSW Police Force
	Mr Nick Kaldas APM	Deputy Commissioner, Field Operations, NSW Police Force

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## Appendix 3 Tabled documents

**Thursday 29 January 2015**

**Parliament House**

1. Report to the Crime Commission Management Committee - *Strike Force Emblems*, undated, p 8, *tendered by Mr David Shoebridge MLC*

**Friday 30 January 2015**

**Parliament House**

2. Letter from the Premier to Mr Levine, dated 25 May 2012, *tendered by The Hon David Levine AO RFD QC, Inspector, Police Integrity Commission*
3. Letter from the Minister of Police and Emergency Services, dated 11 May 2012, *tendered by The Hon David Levine AO RFD QC, Inspector, Police Integrity Commission*

## **Appendix 4 Answers to questions on notice**

The committee received answers to questions on notice from the following:

- Mr Steven Barrett
- Mr Brian Harding
- Mr Scott Weber, President, Police Association of NSW
- The Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission
- Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force
- Mr Bruce Barbour, NSW Ombudsman
- Mr Andrew Scipione APM, Commissioner of Police, NSW Police Force
- Mr Neil Mercer.

## Appendix 5 Mr Bret Walker SC January 2015 opinion

**PARLIAMENT OF NEW SOUTH WALES – LEGISLATIVE COUNCIL**  
**SELECT COMMITTEE ON OMBUDSMAN'S "OPERATION PROSPECT"**

**OPINION**

I am asked to advise the Clerk on behalf of the Select Committee on certain questions generally concerning secrecy provisions in the *Ombudsman Act 1974* (NSW) as they may affect the course of the Committee's inquiry.

2 I note that the resolution of the Legislative Council establishing the Select Committee itself asserted the view of the House that these secrecy provisions do not affect the powers of the Select Committee to require answers to lawful questions. The principle upon which that assertion was based is stated in the resolution of the House to be supported by, among other "authorities", two Opinions of mine dated 2<sup>nd</sup> (and 9<sup>th</sup>) November 2000 and 12<sup>th</sup> November 2012.

3 I confirm that my view of the relevant parliamentary law and statutory interpretation remains the same as it was in 2000 and 2012, and for the same reasons explained in those earlier Opinions.

4 I answer the questions I have been asked, as follows.

5 There is nothing specific in the provisions of the *Ombudsman Act 1974*, the *Police Integrity Commission Act 1996* (NSW) or the *Crime Commission Act 2012* (NSW), or any of them as amended by the *Ombudsman Amendment Act 2012* (NSW),

that supports a conclusion different from those I reached in 2000 and 2012 concerning statutory secrecy and committee inquiries.

6 It remains the case that there are no words or necessary implication to be seen in these statutory provisions that amount to the abrogation by Parliament of this aspect of parliamentary privilege – meaning, in this case, that aspect of the power of the democratic institution to investigate matters in the discharge of its function in our system of responsible government.

7 In particular, the following provisions of the *Ombudsman Act* rather suggest to the contrary, ie that Parliament does not intend that the Executive or executive agencies be paramount over one of its Houses (or its committees) with respect to the assessment of the public interest in obtaining and publishing information about official activities. The provisions of subsecs 19A(2) and 19B(1) cannot sensibly be read as substituting the Ombudsman as an authority superior to the Legislative Council concerning the publication of evidence. The provisions of sec 31 and particularly 31(2) concerning the Ombudsman's special reports to Parliament and their publication are couched in terms that acknowledge the prerogative of the House to determine those matters, in the ordinary course. The same is true of sec 31AA.

8 The provisions of sec 31AC are highly specific and therefore significantly lack any reference to a House or its committees.

9 The provisions of Part 4A concerning the Joint Committee are also quite inapt to impose a restriction on the power of the House to inquire into such matters. The statutory device of instituting a committee jointly of both Houses simply cannot be

understood to have detracted from the authority of each House: the creation of a special delegate does not diminish the power of the principals. Hence the provisions of sec 31H concerning secret or confidential matter before the Joint Committee does nothing to detract from the parliamentary privilege to compel the provision of information as the Select Committee sees fit (subject to resolution otherwise by the Legislative Council itself, of course). Equally, the limits placed by subsec 31B(2) on the authority or mandate of the Joint Committee do not, expressly or by implication, touch the anterior and superior powers of the Legislative Council or the Select Committee as its delegate.

10 It follows, in my opinion, that the provisions of sec 34 of the *Ombudsman Act* do not prevent the provision of information to the Select Committee, nor authorize a person otherwise bound by them to refuse to answer questions before the Select Committee or to provide documents to it.

11 As I advised in 2012, the constitutionally fundamental aspect of parliamentary privilege, being the power to obtain information concerning public affairs, and a proper approach to statutory interpretation combine to render the same approach equally applicable regardless whether a person is answering questions under compulsion or doing so voluntarily.

12 There are, in my opinion, certainly no legal and most likely no policy reasons (from a parliamentarian point of view) why the Select Committee should not generally seek to compel either the attendance or the answering of questions, by summons. There are, as noted by the Clerk, practical and logistical reasons for this not to be standard practice. A policy reason in favour of resort to it is the clarity it gives to the compulsion exerted on persons who would otherwise not be permitted to answer questions or

provide information. On balance, I strongly favour the service of a summons before any substantive questioning.

13 There is no reason to doubt that communications with the Secretariat of the Select Committee are just as protected by parliamentary privilege as formal submissions received and evidence provided at a hearing of the Select Committee. My reasoning remains as in 2000 and 2012, together with common sense.

14 Refusals by witnesses to answer questions on the ground of self-incrimination will raise matters of profound importance to those individuals, and of real systemic significance to the Legislative Council and its procedures. In my opinion, but in the absence of any directly applicable authority, parliamentary proceedings are by their special nature an exception to the general common law rule that renders the privilege against self-incrimination a substantive immunity protecting a person against all kinds of compulsory questioning. That is why legislation sufficiently clear to do so is necessary to abrogate that common law privilege.

15 There is no such wording in the (non-exhaustive) New South Wales legislation directed to evidence in parliamentary proceedings, viz the *Parliamentary Evidence Act 1901* (NSW). But this does not signify the availability of that privilege in parliamentary proceedings, not least because that statute is by no means to be seen as the source or origin of the parliamentary privilege to compel the provision of information.

16 Although New South Wales lacks a House of Commons equivalency provision (such as sec 49 of the *Commonwealth Constitution*), and although its colonial history marked its Parliament as a so-called inferior legislature, the nature and function of the

Houses of Parliament themselves, recognized in *Egan v Willis* (1998) 195 CLR 424 and *Egan v Chadwick* (1999) 46 NSWLR 564, justify cautious resort to the precedents at Westminster. It was clear by 1828 that the House of Commons had the power, being an aspect of parliamentary privilege, to compel questions to be answered and documents to be produced notwithstanding a claim of self-incrimination of a kind that would have provided a privilege to refuse to answer or produce, had the question or demand been made in or for the purposes of a court of law.

17 I say "by 1828" above, because in that year Hansard recorded a privileges debate where Members spoke to this effect, and in terms redolent of an assertion of established prerogative and power, rather than in terms of any novelty. The debate arose in the course of considering the East Retford Disfranchisement Bill, and is reported in *Parl Deb* (1828) 18, c 966-975. I rely especially on the persuasive speech of the then Mr Robert Peel, Leader of the House (later, of course, baronet and twice Prime Minister). That statesman regarded the non-existence of the privilege as clear, "... for if the witness could refuse to answer any question put to him, no investigation by that House could take place". He called to memory a case that would have attracted legal professional privilege in a court of law, where, as Mr Peel remembered, "the House declared that the rules of the law courts did not apply; but for the ends of public justice it was necessary that he should answer, he being protected from the consequences".

18 Thus, there is no privilege against self-incrimination before the Select Committee by force of law. On the other hand, it is to be expected that any such claim should be regarded with utmost care, lest the interests of an individual be unnecessarily damaged.

19 As a matter of law, Art 9 of the *Bill of Rights* will prevent any self-incriminating statement made to the Select Committee being used against the person in question, on my understanding of the proper ambit of the protection afforded by that 17<sup>th</sup> century enactment. There is sufficient controversy about that proposition, the scholarly details of which would be otiose for present purposes, to justify the Select Committee being rather less confident than the Speaker in the House of Commons at Westminster was in the same debate as Mr Robert Peel dominated, in 1828. Certainly, the Art 9 protection was an explicit part of the parliamentary understanding displayed in that debate, to justify or ameliorate the non-existence of the common law privilege against self-incrimination.

20 I am also asked about attempted refusals to answer on the ground of a potential impact of the proposed evidence on future legal proceedings. Obviously, given that such a ground is of manifestly less moment than feared self-incrimination, it provides no basis in law to refuse to answer questions or produce information before the Select Committee.

21 But both self-incrimination and the lesser embarrassment of legal proceedings are cases calling for a judicious delicacy on the part of the Select Committee. For example, checking (and inviting argument, perhaps) whether the question or information is really necessary as opposed to merely desirable would be one way to recognize the vulnerability of a person bereft of an enforceable privilege and perhaps facing adverse public comment if not adverse legal outcomes.

22 The other obvious expedient for the Select Committee is to consider orders for the non-publication of certain evidence or references to it, so as to protect such

individuals without detracting from the Select Committee's capacity to investigate relevant matters.

23 The fact sheet provided by the Secretariat of the Select Committee to so-called stakeholders, and published on its web page, concisely notes the position of the Legislative Council concerning statutory secrecy provisions that may arise in the course of the Select Committee's proceedings. It also notes that "any decision to breach statutory secrecy provisions is a serious matter" and counsels the seeking of legal advice by any individual considering doing so.

24 With respect, I have only one minor criticism of this wording. I do not think the word "breach" in the passage quoted above is quite right, to convey the Legislative Council's position. That is, there is no "breach" because the provisions do not extend to this forum. But this is more a debating point than a matter of accuracy, and I do not think it warrants anything in the nature of correction.

25 In my opinion, the statement of the Legislative Council's position about these secrecy provisions, and the encouragement to seek legal advice, are very fair and appropriate.

Fifth Floor St James' Hall

14<sup>th</sup> January 2015



Bret Walker

## Appendix 6 Key players

Barbour, Bruce	Current NSW Ombudsman (appointed 2000)
Bradley, Phillip	Former Commissioner, NSW Crime Commission (during Operation Mascot/Florida)
Brammer, Malcolm	Former Commander, Special Crime and Internal Affairs, NSW Police Force (1997-2001)
Burn, Catherine APM	Current Deputy Commissioner, Specialist Operations, NSW Police Force (appointed 2010)  Acting Commander, Special Crimes and Internal Affairs, NSW Police Force (in 2002)  Former Detective Inspector and Team Leader, Special Crimes and Internal Affairs, NSW Police Force (during 1998 – 2000)
Carey, Paul	Assistant Commissioner, Professional Standards Command, NSW Police Force (in 2011)
Carroll, John	Former Acting Assistant Commissioner, Professional Standards Command, NSW Police Force
Dobson, Garry	Assistant Commissioner and Commander Strike Force Emblems, NSW Police Force (in 2004)
Dolan, John	Former Detective Superintendent, Special Crimes and Internal Affairs, NSW Police Force (during Operation Mascot/Florida)
Finlay, Mervyn, QC	Former Inspector of the Police Integrity Commission (in 2002)
Galletta, Mark	Former Detective Inspector, Strike Force Emblems, NSW Police Force (in 2003/4)
Giorgiutti, John	Former Solicitor and Director, NSW Crime Commission (1990 – 2011)
Howell, Bradley	Detective Inspector and Professional Standards Manager, Executive Complaint Management Team, NSW Police Force (in 2003)
Kaldas, Nick APM	Current Deputy Commissioner, Field Operations, NSW Police Force (appointed 2007)
Levine, David, QC	Current Inspector of Police Integrity Commission

M5/Sea	Informant and undercover operative for the NSW Police Force (during Operation Mascot/Florida)
Madden, Dave	Former Deputy Commissioner, NSW Police Force (in 2004)
McErlain, Peter	Former Detective Inspector, Strike Force Emblems, NSW Police Force (in 2003/4)
McFadden, Brett	Current Superintendent, NSW Police Force  Former Detective Inspector, Special Crimes and Internal Affairs, NSW Police Force (in 2001)
Moroney, Ken AO APM	Former Commissioner, NSW Police Force (2002 – 2007)
Reith, Brian	Former Commander, Special Crimes and Internal Affairs, NSW Police Force (in 2002)
Remfrey, Peter	Secretary, Police Association of New South Wales (in 2004)
Ryan, Peter	Former Commissioner, NSW Police Force (1996 – 2002)
Scipione, Andrew APM	Current Commissioner, NSW Police Force (appointed 2007)  Former Commander, Special Crimes and Internal Affairs, NSW Police Force (2001 – 2002)
Standen, Mark	Former Assistant Director (Investigations), NSW Crime Commission (during period of Operation Mascot/Florida)
Trayhurn, Glenn	Former Detective Sergeant, Special Crimes and Internal Affairs, NSW Police Force (in 2000) [Deponent of listening device warrant application and affidavit, 266/2000]
Waugh, Linda	Deputy Ombudsman, Police and Compliance, NSW Ombudsman (appointed 2011)
Weber, Scott	Current President, Police Association of New South Wales

## Appendix 7 Memorandum regarding warrant 266/2000

Highly Protected

### ISSUE

Operation Mascot / Florida - Listening Device Warrant 266/2000 Dated 14 September 2000.

### BACKGROUND

In December 1998 an officer of the New South Wales Police (now known as M5) provided extensive information to the New South Wales Crime Commission (NSWCC) about his involvement in and knowledge of corruption within the Police dating back to the early 1980's. He also provided information implicating current and former police in crime and corruption. The range of criminality, both actual and alleged, included assaults, drug supply, theft, extortion, perjury, money laundering, hinder investigation and public justice offences. Other areas included compromises of systems and procedures (eg. search warrants), inadequate supervision, false recording of exhibits, leaking of confidential information, inadequate complaint investigation and lack of compliance with legislation and policy.

On 9 February 1999 the Management Committee of the NSWCC granted a Reference to investigate the allegations of M5 and an arrangement was made with the Commissioner of Police that officers from the Special Crime Unit would form a task force to assist in that investigation. The Reference is codenamed Mascot. M5 was registered as an informer to the NSWCC and provided extensive covert, undercover assistance to the investigation whilst maintaining the role of an operational police officer. M5's assistance since the granting of the Reference disclosed numerous further instances of both actual and alleged crime and corruption.

The scope of the Mascot investigation has been defined by the highly secretive and long-term nature of the investigation. It was undertaken in this fashion to gain as much electronic and other corroborative evidence as was possible to support the allegations of M5, so that criminal and managerial proceedings could be successfully pursued. The intention was to corroborate these allegations. The alternative was to have unsubstantiated allegations which could not be sustained as occurred at the end of the Royal Commission.

The Commissioner of the Police Integrity Commission (PIC) was informed of the matter at an early stage. In June 2000 a Memorandum of Understanding (MOU) between the Commissioners of the New South Wales Police Service, the PIC and the NSWCC came into existence. The MOU outlines the agreement by the three parties to jointly pursue the allegations of M5. The matters discovered under the Mascot Reference are the subject of continuing hearings before the PIC (Florida). So far there have been 28 days of public hearings at the PIC.

### COMMENT

Special Crime Unit officers debriefed M5 over an extensive period in early 1999. About 100 instances of criminal activity and corruption were identified. These allegations and instances of crime and corruption have been distilled into a document called the "Schedule of Debrief" (SOD). During the course of investigating these allegations further matters were identified that were added to the Schedule. As of today there are 231 SODs, with adverse allegations made against numerous current and former NSW Police.

M5 remained in the field wearing a listening device for two and a half years months in an undercover role gathering evidence corroborative of his initial allegations and of current crime and corruption. As of September 2000 there were 184 SODs comprising adverse mentions relating to 113 current police officers and 109 former officers. During the course of Mascot, many listening device warrants were sought through the Court. The use of electronics to gain corroborative evidence was paramount to the Mascot operation. This approach was considered essential in order to gain evidence to ensure that criminal allegations reached a prima facie level, that other matters reached a point where further investigation would not be warranted, or where the allegations would reach a standard which

would enable the use of the Commissioner's Confidence provisions under the Police Service Act.

With regard to listening device warrants, it was procedure at the Special Crime Unit and the NSWCC to 'rollover' warrants every 21 days in order to ensure that M5 had continued authority to engage targets and suspects in recorded conversations in order to obtain evidence of crime and corruption and corroborate his allegations. It was the procedure to include on the warrant names of people who were likely to be spoken to by the informer whether they were targets, suspects or persons of interest. This did not extend to every person the informer would come in contact with, just those where it was likely the conversation would be recorded (eg. At a function). In this way, it was ensured the Judge would be aware of the scope of the operation and the number of people M5 would be likely to engage in recorded conversations.

Many Police who have been recorded in this way have 'rolled over' and confirmed their involvement in crime and corruption. Already 160 charges have been laid against 6 police and 40 civilians and there are more to come.

As of September 2000, thirty-six listening device warrant applications had been made to the Court in respect of M5's activities. Several others had been sought for other aspects of the operation. The affidavit (MALD0502) that relates to Listening Device Warrant 266 of 2000 has been examined and a detailed outline of this is contained in Annexure A. Every name mentioned on the warrant was on the warrant for legitimate reasons.

The following statistics relating to Warrant 266 / 2000 are provided:

- 112 serving police, former police and civilians were named in this warrant
- Of the total, 66 were mentioned in the September affidavit. The majority of the remaining names were mentioned in previous affidavits.
- For all names included in the warrant it was reasonably suspected that M5 would be likely to engage those people in recorded conversations in order to corroborate his allegations, gain evidence about their corruption, gain information about their knowledge of the allegations / corruption, and / or would reasonably have been suspected of being present when M5 was going to record conversations.
- Of the total, <sup>140</sup>99 had explicit adverse mentions by M5 or were reasonably suspected of being involved in crime and corruption. Of the remaining 13, ten were reasonably suspected to have knowledge of M5's allegations and/or corruption by others, and three were persons of interest who M5 was likely to engage in recorded conversation either to corroborate allegations or who were likely to be present when M5 recorded conversations (two were from Manly Detectives office and one from Crime Agencies).

#### RECOMMENDATION

That this information be maintained as highly protected.

  
C.J. Burn  
Acting Commander  
Special Crime Unit  
13 April 2002

1. Commander, Special Crime & Internal Affairs

## Appendix 8 Extract from NSW Ombudsman letter to the committee, dated 28 January 2015

### Annexure B

#### Investigations pursuant to Operation Prospect

88. At the start of the investigation, Operation Prospect investigators assessed all of the complaints and allegations associated with the referral from the PIC Inspector, Strike Force Jooriland and received in response to the public call for information with a view to categorising them into investigative streams or lines of inquiry. This exercise involved an analysis of over 179 allegations and led to the following heads of inquiry, as identified in the summonses and other publicly available documents:
- The use of false and misleading information in warrant applications and supporting affidavits under the Listening Devices Act and the Telecommunications (Interception and Access) Act.
  - Improper targeting or investigation of individuals.
  - Mishandling of informants/undercover operatives.
  - Unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSWPF, the NSWCC and the PIC.
  - Improper interference.
  - The provision of misinformation and/or making false statements.
  - Other wrong conduct.
89. The following sections address the investigative steps, methodology and strategies that are involved in each of the above streams of inquiry.

#### **The use of false and misleading information in warrant applications and supporting affidavits under the Listening Devices Act 1984 (NSW) and Telecommunications (Interception and Access) Act 1979 (Cth)**

90. This and the category of complaints or allegations relating to 'improper targeting or investigation of individuals' have been the most resource intensive areas of investigation for Operation Prospect.
91. Operation Prospect summonses have caused the production of 99 affidavits that were sworn in support of applications for 462 listening device warrants (it should be noted in this regard that a single affidavit can and generally does support an application for multiple listening device warrants). The 99 supporting affidavits comprise, in total, approximately 3,812 pages. The shortest supporting affidavit is eight pages long (003/1999 and 022-025/1999) while the longest is 82 pages (262-268/2000). The median size of the supporting affidavits produced to Operation Prospect is 38.5 pages.
92. In addition, a total of 111 supporting affidavits in relation to 246 telephone intercept warrants have been produced. In total the 111 telephone intercept supporting affidavits produced comprise approximately 2,322 pages. The shortest affidavit that is in Operation Prospect holdings is nine pages (093/1999) whilst the longest is 40 pages (174/2001). The median size of a telephone intercept supporting affidavit is 20.9 pages.

93. To investigate the claims that false and misleading information was contained in these affidavits and applications it has been necessary to examine each paragraph of each affidavit that was the subject of an allegation and then trace that information back to its source. Apart from undertaking this task where my office had received specific complaints from individuals who were named on the two warrants in public circulation, Operation Prospect also undertook the task in other cases, where the evidence seemed unclear as to why a person was named on a warrant/s.
94. Every affidavit was required to be scrutinised in some way despite many of them being 'roll-over' warrants and containing similar information. This was because on occasion the information regarding events or persons were amended slightly or updated causing investigators to again search for the source material that led to this change. During the life of Mascot the paragraphs in many affidavits grew in length as further evidence was gathered to support that the prescribed offences listed in the warrants had been, were about to be or were likely to be committed.
95. This task involved reviewing over 488 pages of transcript of debrief with Sea and over 138,831 documents produced on summons and by request (noting that the NSWCC has cooperated by using its own powers of dissemination to provide documents upon request) so as to locate source minutes, information reports, contact advice reports, emails, surveillance reports, listening device and telephone intercept transcripts and audio and other documentation.
96. As the material was produced in a seemingly random order by agencies, and with no set naming convention, Operation Prospect investigators often had to search the document management system (containing over a million pages) using key word searches which frequently returned thousands of hits. The investigator then read each document to see if it was relevant to the allegation that false and misleading information was contained in the supporting affidavits.
97. The 11 Mascot tape logs books were also produced pursuant to summons, comprising 1,197 entries from hundreds of LD tape recordings made by Sea, ERISP interview recordings, micro cassette and video tape recordings. There are several thousand hours of recordings, and tens of thousands of pages of transcripts, that were apparently used by Mascot staff as evidence and information to support references made in paragraphs in affidavits. Operation Prospect investigators have listened to many of these tape recordings to verify the accuracy of transcripts prepared as part of Mascot as well as the paragraphs in an affidavit that referenced it.
98. Where the information was only contained on an audio cassette tape (with no corresponding transcript) the tape was digitised to a CD so that an investigator could listen to it. On many occasions investigators listened to the audio even where there was a transcript to ensure that they analysed source material rather than relying on the transcription. The investigators found the transcripts were occasionally incorrect or incomplete; part of my investigation involves examining whether this was due to genuine error or for other reasons.
99. The time required to examine each of these individual entries varied, with some of the entries containing recordings of over nine hours duration while others were less than an hour.

**Improper targeting or investigation of individuals**

100. In order to ascertain whether someone was appropriately investigated or specifically targeted in the context of the references which are the subject of investigation, Prospect investigators first identified warrants that named complainants and cross-checked each associated affidavit to establish if the affidavits provided an explanation as to why persons were named in the associated warrants. They then searched for all holdings that named the complainant to establish if they were targeted by Mascot. If they were targeted, Prospect investigators also undertook the following tasks:
- looking at how long a person was targeted;
  - what the initial allegation/s was, its age and seriousness, and whether the information about the original allegation/s matched that contained in affidavit/s;
  - identifying any corroborative evidence that may have existed at the time to support whether, at the time Mascot began its investigation, a crime associated with that person, or about which there was a reasonable basis to form a view that a person had knowledge of a crime, had in fact been committed;
  - examining all documents relating to a person: schedules, information reports, briefs, surveillance logs and reports, listening device recordings and transcripts, emails, minutes and internal reports;
  - identifying any exculpatory evidence found during the Mascot investigation that ought to have been referred to in any affidavit seeking authority to record conversations of certain persons;
  - analysing prior complaint histories of individuals, as held by Mascot, to determine if appropriate or inappropriate weight had been given to those histories;
  - examining all policies and procedures in place at the time to determine if they had been followed in the investigations associated with Mascot (both NSWCC and NSWPF policies applied to the Mascot investigation);
  - assessing whether the method of targeting the individual officer was appropriate in the circumstances.
101. These tasks involved identifying and considering a significant range of evidence that was collected by Mascot/Florida and associated investigations over a six year period between late 1998 and 2004 (by which time the investigations associated with Mascot and Florida were completed. The investigators also needed to determine if that material was held by Mascot at the relevant time of inclusion of a target's name in an affidavit or operational strategy.
102. In order for the committee to understand some of the complexities of this task I provide the following examples. It should be noted that no findings have been made on the conduct involved in the following examples and no findings will be made until all hearings have been finalised and inquiries and investigative steps completed and procedural fairness has been afforded to all involved officers.
103. Person A made a complaint to Prospect that they had been inappropriately targeted by Mascot and, due to this, their promotion was delayed over several years. Person A was named in 4,436 electronic records, some of which are one or two pages in length

while others are several hundred pages. Prospect found that Person A was adversely mentioned in ten SODs that were investigated between 1999 and 2004. Person A was named in 47 sworn affidavits that supported and obtained 177 associated warrants for both telephone intercept and listening device warrants. Person A was also named within a paragraph in a small number of affidavits without being a person named as the subject of the associated warrant applications. This person was the subject of one planned meeting with Sea and one integrity test.

104. Person A was interviewed in the course of Mascot and Volta in relation to allegations of "conspiracy to pervert the course of justice, perjury, assault, verbals and loads, bribery, theft of seized goods, failure to report, hinder investigation, improper association and other general corruption matters". In 2004 Person A was advised by Volta that 'no record of adverse finding [was made] against you' and that this would be placed on Person A's record.
105. Prospect investigated a complaint by Person B that they were improperly targeted. Person B is named in 2,362 electronic records, some of which are one or two pages in length while others are several hundred pages. Prospect has found that Person B was adversely mentioned in six SODs and parts of those allegations were investigated by Mascot (and Volta) from 1999 to 2004. Person B was named in a number of listening device and telephone intercept warrants and affidavits. Three listening device warrants named Person B with no explanation in the associated affidavit as to why he was mentioned. Sea was deployed to meet with and record conversations with Person B between August 1999 and November 2000 in relation to one of the allegations, on more than ten occasions without a warrant specifically referring to permission to record conversations with Person B. Between May 2001 and September 2001 Person B is named in several listening device warrants which is explained in seven associated affidavits. At the conclusion of the investigation Person B was subject to reviewable action under the Police Act.
106. Prospect conducted an 'own motion' investigation into the targeting of Person C. Person C is named in 2418 electronic records, some of which are one or two pages in length while others are several hundred pages. Person C was adversely mentioned in two SODs causing Person C to be named in 252 listening device warrants explained in 36 separate affidavits between February 1999 and May 2001. Person C was named in a small number of affidavits without being a person named as the subject of the associated warrant applications. Despite this, my investigation has identified that Sea was never tasked to record Person C and there is no evidence of any investigation being undertaken by Mascot staff other than basic record checks and Person C's details being entered into two related SODs. The allegations against Person C continued in affidavits despite a late correction by Sea of a misapprehension of the effect of comments about that particular officer in the January SOD.
107. Prospect conducted an 'own motion' investigation into the targeting of Person D between March 1999 and April 2001. Person D is named in 3564 electronic documents, some of which are one or two pages in length while others are several hundred pages. Person D was named in 80 listening device warrants, with Person D's inclusion explained in 29 associated affidavits. Person D was also named in four telephone intercept warrants with an explanation detailed in two associated affidavits. Mascot suspected Person D of leaking information to several Mascot targets. Person

D's inclusion in these affidavits did not relate to the investigation of any particular SOD. Person D was only adversely mentioned in one SOD which was unrelated to the reasons for the naming of person D in any of the affidavits.

108. In October 2000 Person D was the subject of an integrity test that provided Person D with an opportunity to leak information to several targets. Person D passed this test. Nevertheless Person D continued to be named in affidavits until April 2001.

#### **Mishandling of informants/undercover operatives**

109. Complaints were made about the improper use of Sea as an informant or undercover officer, including that he was given a secret payment to ensure he did not complain about the mishandling.
110. Investigation of these allegations has entailed a review of the informer policies and procedures, informant management files, review of contact advice reports, information reports, minutes of meetings, receipts for expenses, reviews of agency records including those of WitSec, a Deed of Release, inter-agency memos, medical records and reports, and a review of material involving the Australian Taxation Office which also reviewed Sca's financials. Hearings were also held with relevant witnesses.
111. The circumstance of a police officer "rolling over" so extensively and then performing undercover or field operative work for two years, was an unusual situation not previously seen in either the NSWCC or the NSWPF. Following on from this experience in 2003, the Court and Legal Services Branch of the NSWPF conducted a review of the handling of Sea and developed policies regarding 'rollover operatives similar to Sea'.
112. Prospect received several complaints which alleged impropriety in the handling of another NSWCC informant, codenamed "Paddle". An allegation has also been made that a previous complaint about this same conduct, made to the NSWPF, was not properly investigated.
113. To investigate these allegations investigators reviewed 19 boxes of information provided by the NSWCC and a range of other documents including Mascot minutes, information reports, surveillance reports, operational plans, transcripts of conversations captured by listening device, Mascot Chronology entries, court transcripts, affidavits, listening device warrants and telephone intercept warrants. Investigators also reviewed court files, the files of the Office of the Director of Public Prosecutions and the NSWCC's informant management file. In addition, investigators reviewed the Strike Force Emblems investigation report into this issue and relevant material contained in the Emblems e@gl.i brief. Taped recordings of conversations captured by Mascot listening devices were digitized and also reviewed.

114. Former Mascot officers and other persons of interest were profiled by Operation Prospect investigators and a large number of these persons were interviewed by my officers. This process included obtaining and reviewing the duty books of the involved officers. Other former Mascot officers were also questioned about their knowledge of the handling of this informant. Operation Prospect conducted approximately sixteen hearings connected to this allegation, including a hearing with the informant Paddle. This matter has also required legal research into the issues identified.
115. I am currently considering the evidence in respect of the above allegations.

**Unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSWPF, the NSWCC and the PIC**

116. Operation Prospect is also investigating allegations relating to the unlawful and/or improper dissemination of confidential material held by the NSWPF, the NSWCC and/or the PIC. Inquiries to date indicate that over 20,000 pages of confidential hardcopy and digital material has been released into the public domain. This is a conservative estimate as it is likely that documents are in the possession of individuals who have not come forward to Operation Prospect.
117. Allegations of this nature are serious. The penalty for the unauthorised public release of a NSWCC document is a maximum penalty of 50 penalty units or imprisonment for 12 months or both: NSWCC Act, s 29(2). The release of NSWPF documents is not a criminal offence but breaches cl 75 of the Police Regulation. Unauthorised release of PIC documents may attract a penalty of up to 50 penalty units or imprisonment for 12 months, or both. (Note: the sanctions may change dependent on findings as to when documents were leaked due to legislative amendments). The unauthorised provision of information relating to a telephone intercept warrant or intercept material itself is a serious Commonwealth offence under the Telecommunications (Interception and Access) Act which may attract a penalty of imprisonment for up to two years.
118. The allegations pertain to the computer systems which are accessible to, and are being examined by, Operation Prospect. They were included within the scope of Strike Force Jooriland. In making the decision to investigate these allegations I took into account the criteria outlined in s 13(4) of the Ombudsman Act and determined that there was nothing to suggest that these allegations were made frivolously, vexatiously and not in good faith.
119. To date, as part of this stream of the investigation it has become apparent that information leaked consisted of at least 61 separate documents, many of which were voluminous and contained highly sensitive and confidential information. Some documents attract legal professional privilege. The following documents (with their owner agency identified) have been disseminated publicly:
1. *Memo from Peter Ryan to NSWPF Executive re establishing SCU dated 23 December 1999 – NSWPF*
  2. *Warrant number 109/1999 dated 12 March 1999 – NSWCC*
  3. *Warrant number 266/2000 dated 14 September 2000 – NSWCC*

4. *Warrant number 95/2000 dated 4 April 2000 – NSWCC*
5. *Warrant number 403-406/2001 dated 29 June 2001– NSWCC*
6. *Unsworn affidavit re Magnum dated 1998 – NSWPF*
7. *Affidavit sworn 14 September 2000 for LD warrants 262-268 /2000 – NSWCC*
8. *Transcript of Interview between Catherine Burn and Damian Henry and Sea –8 January 1999 - NSWPF*
9. *Transcript of Malcolm Brammer departure Interview 13 June 2002 - NSWPF*
10. *Transcript of Gary Richmond Tumen Interview 21 August 2002 - NSWPF*
11. *Transcript of Paul McDonald Tumen Interview 22 October 2002 - NSWPF*
12. *Transcript of Paul Albury Tumen Interview 25 October 2002 - NSWPF*
13. *Transcript of [name] Tumen Interview 12 November 2002 - NSWPF*
14. *Transcript of John Reisp Tumen Interview 18 November 2002 - NSWPF*
15. *Transcript of Peter Moroney Tumen Interview 21 November 2002 - NSWPF*
16. *Transcript of Catherine Burn Tumen Interview 02 December 2002 - NSWPF*
17. *Transcript of [name] Tumen Interview 12 December 2002 - NSWPF*
18. *Transcript of [name] Tumen Interview 23 December 2002 – NSWPF*
19. *Transcript of Catherine Burn Emblems Interview 30 June 2003 – NSWPF*
20. *Sibutu Preliminary Report dated 21 February 2002 – NSWPF*
21. *Sibutu Final Report 18 September 2002 – NSWPF*
22. *Tumen Preliminary Report dated 21 June 2002 – NSWPF*
23. *Tumen Report Final Report 25 September 2002 – NSWPF*
24. *Emblem Preliminary Report undated and unsigned – NSWPF*
25. *Emblems Report Final Report dated 22 March 2004 – NSWPF*
26. *Brett McFadden email chain to Peter Moroney/Andrew Scipione dated 30 November 2001 - NSWPF*
27. *Report by Catherine Burn regarding Warrant 266/00 dated 13 April 2002 - NSWCC*
28. *Catherine Burn letter to PIC Inspector Finlay dated 22 April 2002 - NSWCC*
29. *Crime Commission file note regarding 266/2000 (undated and unsigned) - NSWCC*
30. *Michael Diamond report on welfare of M5/Sea dated 17 October 2002 and associated legal advice – NSWPF*

31. *Legal advice by Alan Bloomfield regarding M5/Sea dated 16 September 2003 - NSWPF*
32. *NSWCC Information Report regarding M5 being body searched dated 1 May 2001 - NSWCC*
33. *NSWCC Information Report dated regarding M5 security assessment dated 3 July 2001 - NSWCC*
34. *Mascot/Boat pseudonym list (undated) - NSWCC*
35. *Memo regarding John Dolan, Mark Standen and Sea on meeting to discuss Sea swearing false affidavit dated 5 September 2000 – NSWCC*
36. *PIC Inspector Finlay Report dated 29 April 2002 regarding Warrant 266 – PIC*
37. *Phillip Bradley letter to PIC Inspector Finlay dated 19 April 2002 - NSWCC*
38. *Peter Ryan document dated 23 December 1999 about the establishment of SCIA - NSWPF*
39. *Legal advice by Barrister Greg Hoare in relation to Tumen dated 20 January 2003 – NSWPF*
40. *PIC Inspector Finlay letter to Phillip Bradley on legality of LD warrants dated 29 April 2002 - NSWCC*
41. *Legal advice by Lionel Robberds dated 17 October 2003 – NSWPF*
42. *[name] complaint about Malcolm Brammer, Catherine Burn and John Dolan dated October 2002 - NSWPF*
43. *Minutes of meeting involved Peter Reith, Catherine Burn and others about conciliation regarding investigation of a SCIA detective dated 14 May 2002 – NSWCC*
44. *File note dated 18 June 2001 - statements on integrity testing, [name ] complaint re John Dolan, statement that John Dolan has been told details of complaint – NSWCC*
45. *File note by Phillip Bradley regarding [named officer's] possible move to National Crime Authority undated – NSWCC*
46. *Email Phillip Bradley to Mark Standen dated 23 July 2001 headed MASCOT about perceived conflict between [officer name] and [Mascot investigator name] - NSWCC*
47. *NSWCC file note, undated, by Phillip Bradley headed MASCOT. Refers to call from [named officer] on 23 July 2001 - NSWCC*
48. *Email Catherine Burn to Phillip Bradley about [named officer] concerns about his private life being known from TI material dated 09 August 2002 – NSWCC*

49. *Report by Matthew Heenan, undated, signed by Catherine Burn stating that those named were involved in or had knowledge of corruption dated 12 April 2002 - NSWCC*
  50. *Email from Phillip Bradley to Mark Standen, Catherine Burn and Matthew Heenan dated 12 April 2002 stating reasons why officers named on warrant - NSWCC*
  51. *Information Report dated 14 December 2001, authored by Greg Jewiss about suspicions and actual searches of Sea - NSWCC*
  52. *NSWCC file noted by Phillip Bradley headed MASCOT, re promotion of [name] dated 14 December 2001 - NSWCC*
  53. *Document headed "SOD 231" undated, unsigned, about Leak of information - NSWCC*
  54. *Email Phillip Bradley to Mark Standen and John Dolan re allegations against [named officer] and integrity test dated 14 June 2001 - NSWCC*
  55. *Email Phillip Bradley to Mark Standen dated 23 July 2001 headed Mascot [and other matters] - NSWCC*
  56. *NSWCC Memo Phillip Bradley to Mark Standen dated 09 May 2001 re integrity testing - NSWCC*
  57. *Report regarding Hurt on Duty application relating to Sea dated 19 September 2003 - NSWPF*
  58. *Numerous documents re informant codenamed Paddle and final Emblems Investigation regarding this matter dated 18 March 2004 - NSWPF*
  59. *Letter from PIC Inspector Levine to A/Commissioner Singleton regarding Strike Force Emblems Ministerial Reference dated 25 May 2012 - PIC*
  60. *Letter from PIC Inspector Levine to A/Commissioner Singleton regarding Strike Force Emblems Ministerial Reference dated 25 June 2012 - PIC*
  61. *Complaint by [an officer] to the NSWPF Professional Standards Command 2012 dated September 2012 - NSWPF*
120. It is apparent from the above list that classified or restricted documents from the computer systems of the NSWCC, the NSWPF and/or the PIC have been improperly accessed and disseminated, either by one or more persons attached to the investigations who had access to the records (Mascot/Florida/Emblems/Sibutu/Tumen investigators or authorised supervisors) or by persons who have subsequently been granted authority to access these particular records on one or more of these computer systems. Many of the documents contain personal and sensitive information and their dissemination represents a grave breach of the security that surrounds the relevant information systems.
121. With the exception of the documents provided to the former Emblems investigating officer, none of the above documents seem to have been provided to an investigative authority *upon receipt* by an individual. Many of them appear instead to have been handed directly to other individuals, including members of the media. This has

occurred even after public announcements about Operation Prospect and my public call for information. In many cases, a s 18 notice or s 19 summons under the Ombudsman Act was required to obtain the above documents from individuals. It cannot be said of these cases that there has been any legitimate attempt to use the protections of 'whistleblower' legislation by providing the documents to an appropriate agency.

122. It has been well publicised that there is ongoing tension in the upper echelon of the NSWPF hierarchy, due largely to one Deputy Commissioner having been involved in Mascot as an investigator and another Deputy Commissioner being named on Mascot warrants. The current Commissioner of Police was also the head of SCIA during the latter stages of Mascot and has had allegations made against him which Prospect has investigated. The tension was exacerbated by persistent rumours, from late 2012, that the Commissioner would soon be resigning his post, with one article reporting that a number of police and political sources had been privately moving to prop up their favoured candidate as a successor until the Commissioner quashed these rumours by publicly stating that he would remain in his position until 2015. Many articles have observed that the top two candidates for the position of Commissioner are the Deputy Commissioners referred to above.
123. In circumstances where the unauthorised release and subsequent disclosure to the media of sensitive confidential documents might have been motivated by self-interest on the part of particular persons or groups, or by altruistic motives, or both, I have not had regard to the motives behind such disclosure. However, allegations of improper conduct of officers involved in Mascot, Florida, Emblems, Sibutu or Tumen and associated investigations are squarely within the remit of Operation Prospect, including those relating to the improper accessing and releasing of confidential information. In order to investigate this allegation, persons who have come into contact with confidential information disseminated without authorisation must be asked what they did with the information and if they have any knowledge of who provided it. Furthermore, audits of various types must be conducted to confirm evidence given to investigators or to identify further avenues of investigation. Such actions are not only undertaken to identify the 'source' of the dissemination, they also serve to clear certain people of any suspicion that they participated in any such activities.

#### **'Whistleblowers'**

124. A number of public comments have been made describing those who have provided information to the media and others as "whistleblowers", including persons who have disclosed what might broadly be termed Operation Prospect-related information to my office, or to the media and others. It is important to briefly address this issue.
125. There are two broad groups of persons who might generally be described as "whistleblowers", within the ordinary meaning of that word. The first group comprises persons who fall within the technical legal requirements of the PID Act; that is, persons who have made Operation Prospect-related conduct complaints directly to my office, or to another public authority which has referred the matter to my office, in a capacity that meets the threshold for protection provided under the PID Act. As a matter of routine procedure, my office notifies these persons that they have

made a public interest disclosure within the PID Act (in the case of an Operation Prospect-related public interest disclosure that has been made to another agency and referred or taken over by my office, the disclosure will continue to be classified as a public interest disclosure). My office also ensures that persons who have made public interest disclosures are informed at regular intervals of the progress of the investigation of their public interest disclosure, although such updates cannot, given operational exigencies, include particulars of the evidence disclosed or the avenues to be taken by the investigation.

126. The second group of persons are those who have made disclosures which do not, for a number of reasons, fall within the requirements of the PID Act. Some comments on radio, in print media and in the Parliament have suggested that the conduct and actions of such persons should be considered to be public interest disclosures by reason, it would seem, that the information was disclosed for a 'noble cause' and involved what the person believed to be criminal conduct. However, if these persons do not meet the requirements of the PID Act my office has no power or authority to provide them with the protections of that Act.

#### **Improper interference**

127. It has been alleged that the current Commissioner of Police intervened in the investigation associated with the Mascot reference, to stop the investigation of a particular police officer and, further, that he may have provided details of the Mascot investigation to that officer.
128. There have been private hearings in respect of this allegation, and Prospect investigators have reviewed the Prospect holdings, including Information Reports, operational strategies, memos, emails, SOD reports and other reports. A Prospect officer conducted an analysis of telephone records relating to particular calls upon which the allegations were based.
129. A full review of the PIC findings regarding both these allegations was also undertaken.

#### **Provision of misinformation and/or making false statements**

130. This particular investigative stream arose from allegations that certain senior police officers had misled the public through disseminating misinformation and/or making false statements.
131. One of these allegations concerns the 60 Minutes interview conducted with the then Commissioner of Police, Peter Ryan, on 14 April 2002. Substantial work has been completed on the allegation that the Commissioner misled (or was misinformed) when he told the 60 Minutes journalist, Mr Richard Carleton, that the Mascot warrant in the public domain contained a large number of names because those people were attending a function.

132. Further allegations under this stream of investigation concern a statement made to the media by the current Commissioner. In examining those allegations, Prospect investigators have reviewed television news footage, internal NSWPF memorandum, diaries, emails (both internal and external), police notebooks, Emblems correspondence and reports. In addition, a number of hearings were conducted in relation to this allegation.

**Other wrong conduct**

133. This head of investigation was included to ensure that findings on systemic issues could be made pursuant to s 26 of the Ombudsman Act, and to ensure that where further conduct came to attention during the investigation it could be investigated. To ensure that all avenues of investigation were covered and to be able to comment on systemic issues, Prospect investigators have reviewed all relevant NSWPF and NSWCC policies and procedures. A list of the relevant policies and procedures can be found at the end of this document.<sup>ii</sup>
134. In addition, Operation Prospect has reviewed informant files, emails, duty books, diaries, extensive e@gle.i holdings and c@ts.i holdings.

## Appendix 9 Minutes

### Minutes no. 1

Monday 24 November 2014

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

Room 1153, Parliament House, 1.00 pm

#### 1. Members present

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair

Mr Khan

Mrs Maclaren-Jones

Mr Searle

Ms Voltz

#### 2. Tabling of resolution establishing the committee

The Chair tabled the resolution from the House establishing the committee.

#### 3. Procedural resolutions

Resolved, on the motion of Mr Khan: That, unless the committee decides otherwise, the following procedures apply for the life of the committee:

##### Filming, broadcasting and still photography of public proceedings

That the committee authorise the filming, broadcasting, webcasting and still photography of the public proceedings of the committee, in accordance with the resolution of the Legislative Council of 18 October 2007.

##### Publishing transcripts of evidence

That the committee authorise the publication of transcripts of evidence taken at public hearings.

##### Attachments to submissions

That all attachments to submissions remain confidential, unless otherwise published by the committee.

##### Media statements

That media statements on behalf of the committee be made only by the Chair.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### ***Received:***

- 19 November 2014 – From the Ombudsman, Mr Bruce Barbour to the Chair, providing a copy of a letter from the Ombudsman to the Chair of the Joint Committee on the Office of the Ombudsman, the Police Integrity Commission and the Crime Commission, and to the members, regarding the conduct of Operation Prospect.

Resolved, on the motion of Mr Shoebridge: That the correspondence be published on the committee website.

#### 5. Procedural briefing from the Clerk of the Parliaments

The Clerk provided a briefing to the committee on possible procedural and legal issues that may arise during the inquiry.

## **6. Conduct of the inquiry into the conduct and progress of "Operation Prospect"**

### **6.1 Closing date for submissions**

Resolved, on the motion of Mr Khan: That the closing date for submissions be Monday 12 January 2015 at 10.00 am.

### **6.2 Stakeholder list**

Resolved, on the motion of Mr Khan: That the secretariat email members with a list of stakeholders to be invited to make written submissions by close of business on Tuesday 25 November, and that members have until 12.00 pm on Friday 28 November 2014 to nominate additional stakeholders.

### **6.3 Advertising**

Resolved, on the motion of Mr Searle:

1. That the committee advertise the inquiry in the Early General News section of the Sydney Morning Herald and Daily Telegraph as well as via twitter, stakeholder letters and a media release.
2. That the newspaper advertisement be approved by the committee before it is distributed.
3. That, in addition to standard information, the advertisement must include that:
  - (a) a person may make a submission and/or submit that they would like to be considered to give evidence as a witness at a hearing,
  - (b) written submissions and oral evidence given at hearings are covered by parliamentary privilege, and
  - (c) submissions received by the committee should not be published or disclosed unless authorised by the committee and anyone who republishes a committee document other than the committee may not be protected by this privilege.

### **6.4 Hearing dates**

Resolved, on the motion of Mr Searle: That the committee hold hearings on the following dates:

- Thursday 29 and Friday 30 January 2015
- Tuesday 3 and Wednesday 4 February 2015.

### **6.5 Process for publishing submissions and determining witnesses**

Resolved, on the motion of Mr Khan: That the committee meet at 12.00 pm on Monday 19 January 2015 to discuss the publication of submissions and to determine witnesses to invite to the hearings.

### **6.6 Questions on notice and supplementary questions**

This matter is be considered at the committee meeting on Monday 19 January 2015.

## **7. Mental health protocol**

Resolved, on the motion of Mr Khan: That the secretariat confer with the Police Association regarding the committee's response to vulnerable inquiry participants with a view to adopting a Mental Health Protocol for the purposes of the inquiry.

## **8. Adjournment**

The committee adjourned at 2.05 pm, until 12.00 pm on Monday 19 January 2015.

Beverly Duffy  
**Clerk to the Committee**

**Minutes no. 2**

Monday 1 December 2014

Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect"  
Members' Lounge, Parliament House, 2.34 pm

**1. Members present**

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair (by teleconference)

Mr Khan

Mrs Maclaren-Jones (by teleconference)

Mr Searle

Ms Voltz

**2. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 1 be confirmed.

**3. Correspondence**

***Received:***

- 26 November 2014 – Email from member of the public regarding various allegations.

Resolved, on the motion of Mr Shoebridge: That the correspondence be kept confidential.

**4. Procedural briefing from the Clerk of the Parliaments**

The Clerk provided a briefing to the committee on procedural and legal issues that arose in a meeting with the Police Association about the inquiry.

Resolved, on the motion of Ms Voltz: That the committee write to the Ombudsman, the NSW Crime Commission, the Police Integrity Commission, the NSW Police Commissioner and the Police Association regarding the effect of statutory secrecy provisions on NSW Police officers seeking welfare support from mental health professionals.

Resolved, on the motion of Mr Khan: That the Clerk of the Parliaments write to Mr Bret Walker SC requesting legal advice on the following matters:

- the effect of statutory secrecy and the Ombudsman Act 1974 on parliamentary privilege,
- the voluntary provision of information in submissions,
- the desire of some participants to give evidence in response to a summons,
- parliamentary privilege and communication with the secretariat, and
- refusing to answer a question on the grounds of self-incrimination.

**5. Conduct of the inquiry into the conduct and progress of "Operation Prospect"**

**Fact sheet**

Resolved, on the motion of Mr Khan: That the inquiry fact sheet be made available on the inquiry webpage and provided to stakeholders as an attachment to the invitation letter to make a submission.

**Stakeholder list**

Resolved, on the motion of Mr Shoebridge: That the following stakeholders be invited to make written submissions to the inquiry:

- Mr Bruce Barbour, NSW Ombudsman

- Mr Peter Hastings QC, NSW Crime Commissioner
- Mr Phil Bradley, Former NSW Crime Commissioner
- The Hon Graham Barr QC, Inspector of the NSW Crime Commission
- The Hon Bruce James QC, Police Integrity Commissioner
- The Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission
- Ms Vicki D'Adam, Ministry for Police and Emergency Services
- Mr Andrew Scipione APM, NSW Police Commissioner
- Mr Scott Weber, Police Association of NSW
- Nick Kaldas, Deputy Commissioner, NSW Police
- Wayne Hayes, Detective Inspector, NSW Police
- Ken Mackay, Former Assistant Police Commissioner, NSW Police
- Paul Jones, Former Commander Homicide Squad, NSW Police
- Mal Brammer, Former Assistant Police Commissioner, NSW Police
- John Dolan, Former Acting Detective Superintendent, NSW Police
- Catherine Burn, Deputy Commissioner, Specialist Operations, NSW Police
- Paul Albury, Detective Sergeant, NSW Police
- Peter Ryan, Former Commissioner, NSW Police
- Steve Barrett, Journalist, Seven Network Australia
- Blair Comley, Secretary, Department of Premier and Cabinet
- Mr Neil Mercer, journalist
- Mr Michael Costa, former Police Minister
- Ms Megan Latham, Commissioner for ICAC
- The St James Ethics Centre
- Mr Quentin Dempster, journalist
- Deputy Commissioner David Hudson;
- Clive Small (former Assistant Commissioner)
- Peter Burgess (former Detective Senior Constable)
- Raymond Lambie (Former Detective Sergeant)
- Geoff Wegg (former Superintendent),
- Simon Hewlett-Smith (former Director of Operation Prospect)
- Linda Waugh, Deputy Ombudsman
- John Pritchard (former Commissioner of the Police Integrity Commission)
- Peter Moss (former Inspector of the Police Integrity Commission), and
- Les Tree (former CEO of the Ministry for Police and Emergency Service)
- Adjunct Professor Gary Sturgess AM, Professor of Public Service Innovation, Griffith University
- Professor Mark Findlay, Deputy Director of Institute of Criminology, University of Sydney
- Emeritus Professor David Brown, Criminology UNSW Law School
- Dr Michael Kennedy, Criminology and Policing, UWS.

6. \*\*\*  
Resolved, on the motion of Mr Shoebridge: That item 6 be redacted from the published version of Minutes No. 2.

7. **Adjournment**

The committee adjourned at 3.35 pm, until 12.00 pm on Monday 19 January 2015.

Beverly Duffy  
**Clerk to the Committee**

**Minutes no. 3**

Tuesday 20 January 2015

Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect"  
Members' Lounge, Parliament House, 10.00 am

**1. Members present**

Mr Borsak, *Chair*  
Mr Shoebridge, *Deputy Chair*  
Mr Blair  
Mr Khan  
Mrs Maclaren-Jones  
Mr Searle  
Ms Voltz

**2. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 2 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 2 December 2014 – Letter from Mr Scott Weber, President of the Police Association of NSW to Chair, regarding statutory secrecy provisions and mental health support.
- 4 December 2014 – Request for advice from the Clerk of the Parliaments to Mr Bret Walker SC, regarding matters concerning the Select Committee's inquiry.
- 5 December 2014 – Anonymous letter to the inquiry.
- 9 December 2014 – Letter from an individual regarding personal grievances with the NSW Police Force in Orange.
- 9 December 2014 – Email from Mr Scott Weber, President of the Police Association of NSW to Chair, attaching correspondence from the Police Association to the NSW Ombudsman.
- 10 December 2014 – Letter from Hon Peter J Moss QC, former Inspector of the Police Integrity Commission to Chair, raising concerns regarding the protection of inquiry witnesses.
- 10 December 2014 – Letter from Hon Graham Barr QC, Inspector of the NSW Crime Commission to Director, advising that that he will not be making a submission to the inquiry.
- 10 December 2014 – Letter from Mr Peter Hastings QC, Commissioner of the NSW Crime Commission to Chair, regarding statutory secrecy provisions and mental health support.
- 11 December 2014 – Letter from Justice Virginia Bell AC to Chair advising she will not be making a submission.
- 11 December 2014 – Letter from Mr Bruce Barbour, Ombudsman, NSW Ombudsman advising that his letter dated 19 November 2014 can serve as the office's submission to the inquiry.
- 5 January 2015 – Letter from Mr Bruce Barbour, Ombudsman, NSW Ombudsman to Chair, regarding statutory secrecy provisions and mental health support.
- 5 January 2015 – Letter from Hon Bruce James QC, Commissioner of the Police Integrity Commission to Chair, regarding statutory secrecy provisions and mental health support.
- 6 January 2015 – Email from the secretariat to the committee stating that the Chair had proposed that Mr Galletta be sent a stakeholder letter inviting him to make a submission.
- 6 January 2015 – Email exchange with an individual, regarding parliamentary privilege extending to the signing of a deed of release.
- 7 January 2015 – Letter from an individual to the committee regarding personal matters.
- 8 January 2015 – Letter from Hon David Levine QC, Inspector of the Police Integrity Commission to Chair, advising he will not be making a submission.

- 12 January 2015 – Letter from Mr David Hudson, Deputy Police Commissioner to Chair, response to letter dated 5 December 2014 regarding secrecy provisions and welfare consideration of NSW Police officers.
- 12 January 2015 – Letter from Mr Robert Ishak from William Roberts Lawyers to Chair, acting on behalf of Deputy Commissioner of Police Mr Nick Kaldas, requesting to meet with the committee's legal advisors.
- 14 January 2015 – Advice from Mr Bret Walker to the Clerk of the Parliaments, provided to the committee by the A/Clerk of the Parliaments, regarding matters concerning the Select Committee's inquiry.
- 19 January 2015 – Letter from Mr Robert Ishak from William Roberts Lawyers to Chair.

*Sent:*

- 5 December 2014 – Letter to Commissioner Andrew Scipione, Police Commissioner regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Scott Weber, President of the Police Association of NSW regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Bruce James QC, Commissioner, Police Integrity Commission regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Peter Hastings QC, Commissioner, NSW Crime Commission regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Bruce Barbour, NSW Ombudsman regarding matters relating to mental health and statutory secrecy.

Resolved, on the motion of Mr Searle: That the committee publish the following items of correspondence:

*Received:*

- 2 December 2014 – Letter from Mr Scott Weber, President of the Police Association of NSW to Chair, regarding statutory secrecy provisions and mental health support.
- 4 December 2014 – Request for advice from the Clerk of the Parliaments to Mr Bret Walker SC, regarding matters concerning the Select Committee's inquiry.
- 9 December 2014 – Email from Mr Scott Weber, President of the Police Association of NSW to Chair, attaching correspondence from the Police Association to the NSW Ombudsman.
- 10 December 2014 – Letter from Mr Peter Hastings QC, Commissioner of the NSW Crime Commission to Chair, regarding statutory secrecy provisions and mental health support.
- 5 January 2015 – Letter from Mr Bruce Barbour, Ombudsman, NSW Ombudsman to Chair, regarding statutory secrecy provisions and mental health support.
- 5 January 2015 – Letter from Hon Bruce James QC, Commissioner of the Police Integrity Commission to Chair, regarding statutory secrecy provisions and mental health support.
- 12 January 2015 – Letter from Mr David Hudson, Deputy Police Commissioner to Chair, response to letter dated 5 December 2014 regarding secrecy provisions and welfare consideration of NSW Police officers.
- 14 January 2015 – Advice from Mr Bret Walker to the Clerk of the Parliaments, provided to the committee by the A/Clerk of the Parliaments, regarding matters concerning the Select Committee's inquiry.

*Sent:*

- 5 December 2014 – Letter to Commissioner Andrew Scipione, Police Commissioner regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Scott Weber, President of the Police Association of NSW regarding matters relating to mental health and statutory secrecy.

- 5 December 2014 – Letter to Mr Bruce James QC, Commissioner, Police Integrity Commission regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Peter Hastings QC, Commissioner, NSW Crime Commission regarding matters relating to mental health and statutory secrecy.
- 5 December 2014 – Letter to Mr Bruce Barbour, NSW Ombudsman regarding matters relating to mental health and statutory secrecy.

Resolved, on the motion of Mr Searle: That the committee keep the following items of correspondence confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information and/or potential adverse mention:

- 5 December 2014 – Anonymous letter to the inquiry.
- 9 December 2014 – Letter from an individual regarding personal grievances with the NSW Police Force in Orange.
- 6 January 2015 – Email exchange with an individual, regarding parliamentary privilege extending to the signing of a deed of release.
- 7 January 2015 – Letter from an individual to the committee regarding personal matters.
- 19 January 2015 – Letter from Mr Robert Ishak from William Roberts Lawyers

#### **4. Response to concerns regarding the effects of statutory secrecy on the welfare of witnesses and the development of a mental health protocol**

Resolved, on the motion of Mr Shoebridge:

- That the committee adopt the approach proposed in the documents circulated by the secretariat to members regarding mental health/welfare concerns involving inquiry participants.
- That the Chair write to the Police Association of New South Wales to advise them of the committee's approach.

#### **5. Submissions**

The committee noted that 21 submissions have been received to date.

##### **5.1 Public submissions**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 2, 3, 5, 12, 18 and 19.

##### **5.2 Partially confidential submissions**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission no. 1, with the exception of the following information:

- two sentences in paragraph 14 on page 17 that contain adverse mention,
- page 24 to the end of the first paragraph of page 27, and
- paragraph 28 on page 33.

Resolved, on the motion of Mr Shoebridge:

- That the committee authorise the publication of submission nos. 6, 8, and 15, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author and further identifying and/or sensitive information and potential adverse mention as per the recommendation of the secretariat.
- That the committee authorise the publication of submission no. 16, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

### 5.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge:

- That the committee keep submission nos. 7, 9, 11, 13, 14 and 17 confidential, as per the recommendation of the secretariat, as they contain sensitive information and/or potential adverse mention and/or are outside the terms of reference.
- That a decision about the status of submissions nos. 10, 20 and 21 be deferred.

### 5.4 Submission no. 4

The author of submission no. 4 has requested that their submission be kept confidential.

Resolved, on the motion of Mr Shoebridge:

- That the author of submission no. 4 be asked to provide reasons in support of their request for confidentiality, by 10 am Tuesday 27 January 2015, and that if reasons are provided, the committee consider these at the next meeting.
- That the committee authorises the publication of submission no. 4 if the author does not provide reasons in support of their request for confidentiality by 10 am Tuesday 27 January 2015.

### 5.5 Invitation for Mr Trayhurn to make a submission

Resolved, on the motion of Mr Khan: That the Chair write to Mr Trayhurn inviting him to make a submission to the inquiry.

### 5.6 Attachments to submissions

The committee noted the previous resolution that all attachments to submissions are kept confidential, unless agreed otherwise.

The committee considered the attachments to submission no. 18.

Attachments A and B to submission 18 include the following documents:

- Attachment A - Warrant 095/2000 under s 16 of the Listening Devices Act 1984, dated 4 April 2000
- Attachment B - Warrant 266/2000 under s 16 of the Listening Devices Act 1984, dated 14 September 2000

Mr Shoebridge moved: That a notice be placed on the inquiry's website advising of the committee's intention to publish attachments A and B to submission 18 on Thursday 29 January 2015, subject to consideration by the committee of requests received from individuals by 10am Wednesday 28 January 2015, that their names not be published.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs McLaren Jones.

Question resolved in the affirmative.

Attachment C to submission 18 is a copy of an affidavit supporting warrant 266/2000, dated 14 September 2000

Mr Searle moved: That a notice be placed on the inquiry's website advising of the committee's intention to publish attachment C to submission 18 on Thursday 29 January 2015, subject to consideration by the committee of requests received from individuals by 10am Wednesday 28 January 2015, that their names not be published.

Mr Khan moved: That the motion of Mr Searle be amended by omitting all words and inserting instead 'That Attachment C to submission no. 18 be published with all names redacted'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs McLaren Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Amendment of Mr Khan resolved in the negative.

Original question of Mr Searle put and passed.

Resolved, on the motion of Mr Shoebridge:

- That the committee defer consideration of the publication of attachment E to submission no. 18 to a later meeting.
- That attachments F, G, K and L to submission no. 18 be published at 10.00 am on Friday 23 January 2015, subject to any objections made by committee members prior to this time.
- That the committee authorise the publication of attachments H and J to submission no. 18.

## 6. Tabled documents

\*\*\* tabled the following documents:

- NSW Police Service report by Strike Force Emblems, concerning several allegations related to listening device warrants and the conduct of certain police officers.
- NSW Police Service report by Strike Force Sibutu, dated 21 February 2000, concerning allegations of false and misleading telephone intercept and listening device affidavits and search warrant applications.

Resolved, on the motion of Mr Shoebridge: That the secretariat be authorised to make copies of the documents for distribution to committee members on a confidential basis.

Resolved, on the motion of Mr Khan: That the name of the member who tabled the documents be redacted from the public version of the minutes.

## 7. Witness requests to appear at hearings

The committee noted two statements from individuals requesting to appear before the committee.

## 8. Public hearings

The committee noted the proposed hearing schedules for 29 and 30 January 2015 as provided by the secretariat.

Mr Shoebridge moved: That the following witnesses be summonsed to appear in the following indicative order, subject to availability and requests for evidence to be provided in camera:

*Thursday 29 January 2015*

- Mr Steve Barrett (1.5 hours)
- Mr Mark Galletta (1.5 hours)
- Mr Brian Harding (1 hour)
- Mr Scott Weber, Police Association of New South Wales (1 hour)
- Mr Neil Mercer (1 hour)
- Witness C (1 hour)

*Friday 30 January 2015*

- Mr Nick Kaldas (1.5 hours)
- The Hon David Levine (1 hour)
- Ms Catherine Burn (1.5 hours)
- Mr Andrew Scipione (2 hours)

*3 or 4 February 2015*

- Mr Bruce Barbour, NSW Ombudsman.

Mr Khan moved: That the NSW Police Commissioner be removed from Mr Shoebridge's proposed list of witnesses for 30 January 2015, and that consideration for the time of his appearance be deferred until the completion of evidence on Friday 30 January 2015.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs McLaren Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Amendment of Mr Khan resolved in the negative.

Original question of Mr Shoebridge put and passed.

Resolved, on the motion of Mr Shoebridge: That committee members nominate other potential witnesses for hearings on the 3 and 4 February 2015 by email to the secretariat by 12pm Wednesday 21 January 2015.

**9. Advice from Mr Bret Walker SC regarding summoning witnesses**

The committee noted advice dated 14 January 2015, from Mr Bret Walker SC, strongly favouring the the service of a summons on witnesses for the purposes of this inquiry.

Resolved, on the motion of Ms Voltz: That all witnesses the committee resolves to give evidence be served with a summons.

Mr Searle left the meeting.

**10. Legal representation of witnesses**

The committee noted a request from Mr Barrett that the committee provide assistance with legal representation.

Resolved, on the motion of Mr Shoebridge: That the secretariat discuss the issue with Mr Barrett, and subject to his approval, forward his request to the Legal Representation Office, with a letter from the Chair asking the Legal Representation Office to give the request positive consideration.

**11. Answers to questions on notice**

The committee considered the return date for answers to questions on notice following the hearings.

Resolved, on the motion of Mr Shoebridge: That answers to questions on notice are due five calendar days following a witness's receipt of the transcript and questions.

**12. Request to the Ombudsman**

Mr Shoebridge moved: That the committee write to the Ombudsman to request copies of any letters of resignation from any employee who has worked on Operation Prospect since its commencement but has since resigned, with the response to be provided by 10 am Wednesday 28 January 2015.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs McLaren Jones.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

**13. Report deliberative**

Resolved, on the motion of Mr Shoebridge: That the committee meet at 12.00 pm on Tuesday 17 February 2015 to deliberate on the Chair's draft report.

**14. Adjournment**

The committee adjourned at 12.05 pm, until 9.00 am on Thursday 29 January 2015.

Tina Higgins

**Clerk to the Committee**

**Minutes no. 4**

Thursday 22 January 2015

Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect"  
Members' Lounge, Parliament House, 4.05 pm

**1. Members present**

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair (*by teleconference*)

Mr Khan (*by teleconference*)

Mrs Maclaren-Jones (*by teleconference*)

Mr Searle (*by teleconference*)

Ms Voltz

**2. Draft minutes**

Resolved, on the motion of Mr Searle: That draft minutes no. 3 be confirmed.

**3. Proposal to publish attachments A, B and C to submission 18**

The committee noted the following notice placed on the Inquiry web page, as per the committee's earlier resolution.

The Select Committee has resolved to publish the following documents on Thursday 29 January 2015:

- Warrant 095/2000 under s 16 of the *Listening Devices Act 1984*, dated 4 April 2000,
- Warrant 266/2000 under s 16 of the *Listening Devices Act 1984*, dated 14 September 2000,
- Affidavit supporting warrant 266/2000, dated 14 September 2000.

If you are of the opinion that your name appears on any of these documents and you do not wish for this information to be made public, please contact the committee via email on [operationprospect@parliament.nsw.gov.au](mailto:operationprospect@parliament.nsw.gov.au) by no later than 10 am Wednesday 28 January 2015. These requests will be considered by the Select Committee.

**3.1 Privacy and/ or security concerns regarding the proposal to publish attachments A, B and C to submission 18**

The Acting Clerk of the Parliaments briefed the committee on issues related to the publication of attachments A, B and C to submission 18.

**3.2 Responses received to date**

The committee noted five responses received to the notice placed on the inquiry web page about the committee's intended publication of attachments A, B and C to submission 18.

The committee agreed that these requests should be provided to the committee for consideration and that the secretariat was not authorised to advise individuals of whether their name was included in attachments A, B and C to submission 18.

Resolved, on the motion of Mr Shoebridge: That the committee defer consideration of the five requests received to date until the next meeting.

Resolved, on the motion of Mr Shoebridge: That all responses to the committee's notice regarding publication of attachments A, B and C remain confidential.

**4. Publication of the remaining attachments to submission no. 18**

The committee noted an earlier resolution to defer the publication of Attachment E to a later meeting (2 page briefing by Ms Catherine Burn, dated 13 April 2002, including 12 page attachment)

Resolved, on the motion of Mr Shoebridge: That Attachment H to submission no. 18 be published on 29 January 2015 with all instances of the name of the author of the document redacted.

At its meeting of 20 January 2015, the committee agreed that attachments F, G, K and L to submission 18 be published at 10.00 am on Friday 23 January 2015, subject to any objections made by committee members prior to this time. Subsequent emails from members suggested that the process adopted for the publication of the warrants and affidavits should be applied to the other annexures (ie. consider redacting names of people who make such a request to the committee).

Given the deadline to receive such requests is Wednesday 28 January 2015, the committee will defer consideration of the publication of the remaining attachments until Thursday 29 January 2015.

Resolved, on the motion of Mr Shoebridge: That Attachments F, G, K and L to submission no. 18 be considered at the committee's meeting on 29 January 2015.

**5. Requests to appear in camera**

Resolved, on the motion of Mr Searle: That the committee agree to the requests from two witnesses who have indicated they wish to appear in camera on 29 January 2015.

**6. Requests to be accompanied by a legal representative**

The committee noted requests from the following six witnesses who wish to be accompanied by a legal representative during the hearings:

- Mr Steven Barrett
- Witness A
- Mr Brian Harding
- Witness B
- Mr Nick Kaldas
- Ms Catherine Burn

Resolved, on the motion of Mr Searle: That the committee agree to the requests from the six witnesses who have indicated they wish to be accompanied by a legal representative during the hearings, subject to the legal representative sitting behind the witness and not taking an active role during proceedings.

**7. Ombudsman's appearance before the committee**

Resolved, on the motion of Mr Shoebridge: That the committee summons Mr Bruce Barbour to appear before the committee from 1.30 pm to 3.00 pm on Tuesday 3 February 2015.

**8. Availability of Police Commissioner Scipione to attend hearing**

Resolved, on the motion of Mr Shoebridge: That the committee summons Police Commissioner Scipione to appear before the committee from 9.30 am to 12.30 pm on Tuesday 3 February 2015.

Mr Searle left the meeting.

**9. Additional witnesses**

Resolved, on the motion of Mr Shoebridge: That the committee summons the following additional witnesses to give evidence on 3 and 4 February 2015:

- Ms Linda Waugh (in conjunction with the Ombudsman)
- Detective Superintendent Peter McErlain
- Former Detectives Jenkins and Simpson
- Mr Mark Morri, Daily Telegraph
- Former Assistant Commissioner Mal Brammer
- Superintendent Brett McFadden
- Witness D
- M5/Sea

**10. Hearing schedules**

The committee noted the hearing schedules for 29 and 30 January 2015.

**11. Adjournment**

The committee adjourned at 4.35 pm, until 8.30 am on Thursday 29 January 2015.

Tina Higgins  
**Clerk to the Committee**

**Minutes no. 5**

Thursday 29 January 2015

Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect"

Macquarie Room, Parliament House, 8.33 am

**1. Members present**

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair

Mr Khan

Mrs Maclaren-Jones

Mr Searle

Ms Voltz

**2. Previous minutes**

Resolved, on the motion of Mr Khan: That minutes no. 4 be confirmed.

Resolved, on the motion of Mr Shoebridge: That minutes no. 3 be amended to redact the names of the two witnesses who have since requested to appear in camera.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 23 January 2015 - Letter from Deputy Commissioner David Hudson to Chair, regarding welfare considerations for police officers named in affidavit who are not aware of being named
- 23 January 2015 - Email from Detective Superintendent Martin Fileman, State Technical Investigation Branch, NSW Police Force requesting a copy of the warrants to ensure names of current and past STIB operatives are not made public
- 27 January 2015 – Letter from Commissioner Peter Hastings QC, NSW Crime Commission, raising concerns regarding the committee's intention to publish affidavits and warrants
- 28 January 2015 – Mr Bruce Barbour, NSW Ombudsman to Chair declining to provide letters of resignation

- 28 January 2015 - Mr Bruce Barbour, NSW Ombudsman to Chair, regarding the conduct of the Ombudsman's inquiry including matters concerning public interest immunity, including a paragraph to be kept confidential.

***Sent:***

- 28 January 2015 – Letter from Chair to Mr Scott Weber, President, Police Association of NSW, regarding the committee's response to welfare concerns of inquiry participants.

Resolved, on the motion of Mr Shoebridge: That

- the committee authorise the publication of correspondence from NSW Ombudsman, dated 28 January 2015.
- the committee keep the paragraph attached to correspondence dated 28 January 2015 confidential, as per the request of the author and that the committee revisit the redaction after receiving evidence from Mr Bruce Barbour, Ombudsman, NSW Ombudsman.

#### **4. Submissions**

##### **4.1 Public Submissions**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 21.

Resolved, on the motion of Mr Shoebridge: That the committee defer consideration of the publication of submission no. 22.

Resolved, on the motion of Mr Searle: That the secretariat provide the memorandum and attachments to submission no. 18 on a confidential basis to the committee.

#### **5. Request for confidential document**

Resolved, on the motion of Mr Searle: That consideration of the request from Mr Brammer to access the confidential Emblems report be deferred.

#### **6. Attachments to submission 18**

##### **6.1 Responses to the committee's notice of intention to publish attachments A, B and C**

Ms Voltz moved: That:

- the committee defer consideration of the publication of attachments A and B to submission 18, in light of correspondence received.
- the committee keep attachment C confidential
- the committee authorise the secretariat to publish a notice on the inquiry webpage stating that a decision in relation to the publication of attachments A and B has been deferred and that attachment C will remain confidential.

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Blair, Mr Khan, Ms Maclaren-Jones, Mr Searle, Ms Voltz.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

##### **6.2 Consideration of the publication status of attachments E, F, G, K and L**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the two page memorandum by Ms Burn in Attachment E to submission no. 18, but that the publication of the 12 page annexure to this attachment be deferred until the committee has an opportunity to view a redacted version of the document with all of the names and identifying information removed.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of Attachment K to submission no. 18.

Resolved, on the motion of Mr Shoebridge: That the committee be provided with attachments F, G and L on a confidential basis and defer consideration of publication of these attachments.

## 7. **Unauthorised disclosure of committee's proceedings**

Mr Khan moved: That

- a) the secretariat, on behalf of the Chair, write to each member of the committee to ask whether they were responsible for the release of confidential committee deliberations (that lead to publication of an article in the Sydney Morning Herald on Friday 23 January 2015 entitled "Key police official drops bid to keep submission secret") or are able to provide information that could assist in determining the source of the disclosure.
- b) the committee members respond in writing to the letter from the secretariat within 24 hours of receipt of the letter.
- c) the issue of the release of confidential committee deliberations be further considered by the committee on 3 February 2015.

Mr Shoebridge moved: That the motion of Mr Khan be amended by omitting all words and inserting instead: 'that the committee notes with concern the release of confidential information to the SMH and affirms the obligations of committee members to maintain confidentiality.'

Amendment of Mr Shoebridge put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren Jones.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Khan moved: That the Chair at the commencement of public hearings on 29 January 2015 and then again immediately prior to the giving of evidence by Deputy Commissioner Catherine Burn make the following statement:

"On 23 January 2015 an article appeared in the Sydney Morning Herald entitled "Key police official drops to keep submission secret". The article contained confidential committee deliberations which should not have been disclosed. The committee considers this breach of the committee process to be most serious and has the potential to seriously undermine this inquiry and the committee process more generally. The committee apologises to any potential witness, and particularly Deputy Commissioner Catherine Burn for this unauthorised disclosure."

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Blair moved: That for the remainder of the inquiry, the committee not permit meetings via electronic participation.

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

## 8. Hearings

### 8.1 Witness requests to appear in camera

Resolved, on the motion of Mr Searle: That the committee agree to the requests from witnesses A and B to appear in camera.

### 8.2 Requests to be accompanied by a legal representative

Resolved, on the motion of Mr Searle: That the committee agree to the requests from the five witnesses who have indicated they wish to be accompanied by a legal representative during the hearing.

### 8.3 Allocation of questioning

Resolved, on the motion of Mr Khan: That the sequence of questions to be asked during the inquiry hearings be left in the hands of the Chair.

### 8.4 Supplementary questions

Resolved, on the motion of Mr Searle: That supplementary questions be provided to the secretariat by midday the following day of the transcript being received.

### 8.5 Webcast of proceedings and arrangements for hearings

The committee noted that the public hearings will be webcast. Arrangements have also been made to cater for large audiences attending each hearing day, including the use of an additional room if required.

## 9. Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters and a personal statement regarding his recent meeting with the Attorney General, the Hon Brad Hazzard MP.

The Chair tabled his personal statement and correspondence from the Hon Megan Latham, Commissioner, Independent Commission Against Corruption, dated 26 November 2014.

The following witness was sworn and examined:

- Mr Steven Barrett, Journalist, Seven Network Australia.

Mr Barrett tendered the following document:

- Opening statement

The evidence concluded and the witness withdrew.

The public and the media withdrew.

Mr Khan left the meeting at 11.00am.

## 10. *In camera* hearing

According to previous resolutions of the committee, the committee proceeded to take evidence *in camera*.

Persons present other than the committee: Beverly Duffy, Steven Reynolds, Tina Higgins, Sam Griffith, Emma Rogerson, Christine Nguyen, Hansard Reporters, and Mr Stephen Wilkinson, Lawyer accompanying Witness A.

Witness A was sworn and examined.

The *in camera* evidence concluded and the witness withdrew.

Mr Khan joined the meeting at 1.39pm.

**11. Deliberative meeting**

Resolved, on the motion of Mr Shoebridge: That the secretariat seek the availability of Commissioner Scipione and Mr Brammer to appear before the committee to give evidence on Wednesday 4 February 2015.

Resolved, on the motion of Mr Searle: That pursuant to sections 7-9 of the Parliamentary Evidence Act 1901, the committee reissue a summons to Mr Mal Brammer to attend and give evidence before the committee on Wednesday 4 February 2015 at 10.00 am and to issue a summons to Mr Scipione to attend and give evidence before the committee on Wednesday 4 February 2015 at 1.00 pm-2.30 pm.

Resolved, on the motion of Mr Shoebridge: That pursuant to sections 7-9 of the Parliamentary Evidence Act 1901, the committee issue a summons to Mr Clive Small to attend and give evidence before the committee on Wednesday 4 February 2015 at 2.45-4.15 pm.

Resolved on the motion of Mr Khan: That the secretariat provide a copy of Mr Brammer's submission to Mr Scipione and Mr Small by 12 midday on Monday 2 February 2015.

Resolved, on the motion of Mr Khan: That the committee not agree to Mr Brammer's request to view the Emblems report prior to his appearance.

**12. Consideration of the publication status of attachments F, G and L to submission 18**

Resolved, on the motion of Mr Searle: That the committee authorise the publication of Attachment F to submission no. 18, with certain redactions.

Resolved, on the motion of Mr Searle: That the committee authorise the publication of Attachment G to submission no. 18, with certain redactions.

Resolved, on the motion of Mr Searle: That the committee authorise the publication of Attachment L to submission no. 18, with certain redactions.

**13. Public hearing**

The public and the media were admitted.

The following witness was sworn and examined:

- Mr Brian Harding, Former Detective Superintendent, NSW Police Force

Mr Harding tendered the following documents:

- Opening statement
- Correspondence from the Ombudsman to Mr Harding's solicitor O'Brien Lawyers, dated 26 September 2013.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2.45 pm.

The public and the media withdrew.

**14. In camera hearing**

According to previous resolution of the committee, the committee proceeded to take evidence *in camera*.

Persons present other than members of the committee: Beverly Duffy, Steven Reynolds, Tina Higgins, Sam Griffith, Emma Rogerson, Christine Nguyen, Hansard Reporters and Mathew J Leighton-Daly, Barrister accompanying Witness B.

Witness B was sworn and examined.

The witness tendered the following document:

- Opening statement.

The evidence concluded and the witness withdrew.

Witness C was sworn and examined.

Mr Shoebridge tabled the following document:

- Report to the Crime Commission Management Committee - Strike Force Emblems, undated

The evidence concluded and the witness withdrew.

The *in camera* hearing concluded at 5.23 pm.

**15. Deliberative meeting**

Resolved on the motion of Mr Shoebridge: That the committee provide a confidential copy of the document tabled by Mr Shoebridge during Witness C's evidence, to Witness C with a view to seeking his views on the publication of the document.

Resolved on the motion of Mr Shoebridge: That the committee defer consideration of the publication of the document tabled by Mr Shoebridge during Witness C's evidence.

Resolved on the motion of Mr Khan: That the names of individuals from a confidential document inadvertently mentioned during Witness B's evidence be redacted from the transcript.

Resolved on the motion of Mr Shoebridge: That the names of two individuals inadvertently mentioned during Witness C's evidence be redacted.

**16. Adjournment**

The committee adjourned at 5.25 pm until Friday 30 January, 8.30 am, Macquarie Room, Parliament House (*public hearing*).

Beverly Duffy  
**Clerk to the Committee**

**Minutes no. 6**

Friday 30 January 2015

Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect"  
Macquarie Room, Parliament House, 8.36 am

**1. Members present**

Mr Borsak, *Chair*  
Mr Shoebridge, *Deputy Chair*  
Mr Blair  
Mr Khan  
Mrs Maclaren-Jones  
Mr Searle  
Ms Voltz (from 8.58 am)

**2. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 29 January 2015 - Mr Warwick Anderson, Solicitor, Anderson Boemi Lawyers on behalf of Mr Brett McFadden requesting that he be legally represented
- 29 January 2015 – Mr Warwick Anderson, Solicitor, Anderson Boemi Lawyers on behalf of Mr Brett McFadden seeking a judicial review regarding the lawfulness of Mr McFadden answering questions.

- 29 January 2015 – Mr Patrick George, Senior Partner, Kennedys on behalf of Ms Catherine Burn requesting that she be legally represented.

**3. Response to correspondence from Mr Brett McFadden's legal representatives**

Resolved on the motion of Mr Shoebridge: That the draft letter prepared by the secretariat be sent.

**4. Annexure to Attachment E of submission no. 18**

Resolved on the motion of Mr Shoebridge: That the committee publish the annexure to Attachment E of submission no. 18 with all individual names redacted with the exception of Kaldas, Barrett and Harding.

**5. Transcript of in camera evidence**

The committee considered the distribution of in camera transcripts of evidence. In camera transcripts are usually only available to members in the Clerk's Office. In addition, witnesses are asked to attend Parliament House to review their transcripts. Under the circumstances of the current inquiry, it is proposed to depart from the usual practice.

Resolved on the motion of Mr Searle:

1. That in camera transcripts be circulated to members in hard copy on yellow paper.
2. That in camera transcripts be sent by secure means to witnesses in order for them to review their evidence.

**6. Supplementary questions**

Members were reminded that they have until midday today to provide supplementary questions to the secretariat for witnesses who appeared in public on 29 January 2015.

Ms Voltz joined the meeting.

**7. Declaration**

Mr Searle advised the committee that he had professional contact with two officers referred to in one of the confidential attachments to submission 18.

**8. Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force

The Chair directed that a name inadvertently mentioned during Mr Kaldas' evidence be expunged from the transcript of evidence, that the media not publish the name and that no one in the public gallery repeat the name.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Neil Mercer, Freelance Journalist

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- The Hon David Levine AO RFD QC, Inspector of the Police Integrity Commission

Mr Levine tendered two documents:

- Letter from the Premier to Mr Levine, dated 25 May 2012
- Letter from the Minister of Police and Emergency Services to Mr Levine, dated 11 May 2012.

The evidence concluded and the witness withdrew.

The public and the media withdrew

### **8.1 Tendered documents**

Resolved, on the motion of Mr Searle: That the committee accept and publish the following documents tendered during the public hearing:

- Letter from the Premier to Mr Levine, dated 25 May 2012
- Letter from the Minister of Police and Emergency Services to Mr Levine, dated 11 May 2012.

The following witness was sworn and examined:

- Ms Catherine Burn, Deputy Commissioner, Specialist Operations, NSW Police Force

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Mark Morri, Crime Editor, *The Daily Telegraph*

Mr Morri tendered his opening statement.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.01 pm.

The public and the media withdrew.

## **9. Deliberative meeting**

Resolved, on the motion of Mr Shoebridge: That Mr Giorgiutti be summonsed to appear before the committee on Wednesday 4 February for one hour.

Resolved, on the motion of Mr Searle: That Ms Burns be asked to provide excerpts from her dutybook for the following dates: 13, 14 and 15 April 2002.

Resolved, in the motion of Ms Voltz: That Mr Ken Moroney be summonsed to appear before the committee on Wednesday 4 February for one hour.

Resolved on the motion of Mr Searle: That the summons being reissued to Mr Brammer be served on the day of the hearing.

## **10. Adjournment**

The committee adjourned at 4.11 pm until Tuesday 3 February, 11.00 am, Macquarie Room, Parliament House (*in camera hearing*).

Beverly Duffy

**Clerk to the Committee**

### **Minutes no. 7**

Tuesday 3 February 2015

Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect"

Macquarie Room, Parliament House, 10.30 am

**1. Members present**

Mr Borsak, *Chair*  
Mr Shoebridge, *Deputy Chair*  
Mr Blair  
Mr Khan  
Mrs Maclaren-Jones  
Mr Searle  
Ms Voltz

**2. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 5 and 6 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 30 January 2015 – Email from a solicitor, to the Chair, regarding listening devices and Operation Florida
- 31 January 2015 – Email from an individual to the Chair, regarding the Ombudsman's and ICACs powers to investigate police
- 31 January 2015 – Email from an individual to the Chair, providing links to videos of alleged corruption by NSW Police
- 2 February 2015 – Letter from Williams Robert Lawyers to Chair, concerning evidence provided by Ms Burn
- 2 February 2015 – Letter from Williams Robert Lawyers to Chair, providing confidential information to the committee.

***Sent***

- 30 January 2015 – Letter from the Chair to Anderson Boemi Lawyers, regarding the legality of committee questioning
- 2 February 2015 – Letter from Clerk Assistant – Committees to Witness A, regarding in camera evidence and questions taken on notice
- 2 February 2015 – Letter from Clerk Assistant – Committees to Witness B, regarding in camera evidence and questions taken on notice
- 2 February 2015 – Letter from Clerk Assistant – Committees to Witness C, regarding in camera evidence and questions taken on notice, in addition to the provision of a copy of a document the witness tabled at the hearing.

**4. Correspondence from William Robert Lawyers on behalf of Mr Kaldas**

Resolved, on the motion of Mr Shoebridge: That the committee note the correspondence received by the Chair on 2 February 2015 providing confidential information to the committee, that this correspondence remain confidential and that the secretariat write to William Robert Lawyers acknowledging receipt of the letter also advising that the committee has resolved to keep it confidential.

**5. Additional hearing**

Resolved on the motion of Mr Shoebridge: That the committee summons the following witnesses to reappear at a public hearing on Tuesday 10 February 2015 for 1.5 hour each, at a time to be determined in consultation with the Chair, in the following order:

- Ms Catherine Burn
- Mr Nick Kaldas

Resolved, on the motion of Ms Voltz: That the committee summons Mr John Dolan to appear before the committee at a public hearing on Tuesday 10 February 2015 for 1.5 hours.

## 6. Submissions

### 6.1 Public submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 20 and 22.

### 6.2 Supplementary submission

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of supplementary submission no.22a

### 6.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee defer consideration of the publication status of submission nos 23 and 24.

## 7. File note, Clerk Assistant – Committees

The committee noted a confidential file note detailing a conversation between the Chair and William Roberts Lawyers.

## 8. Unauthorised disclosure of committee proceedings

Resolved on the motion of Mr Khan: That:

- a) the secretariat, on behalf of the Chair write to each member of the committee to ask whether they were responsible for the disclosure of confidential committee deliberations (that lead to the publication of an article in the Sun Herald on Sunday 1 February 2015 by Kirsty Needham entitled “Showdown Looms as Ombudsman Claims Immunity”) or are able to provide information that could assist in determining the source of this disclosure
- b) the letter specifically address whether any member of the committee was the source of information relating to the reasons for the delay of the appearance of Commissioner Scipione
- c) the committee members respond in writing to the letter from the secretariat within 24 hours of receipt of the letter
- d) the issue of the release of confidential committee deliberations be further considered by the committee at its next available meeting following the passing of the deadline referred to in c) above.

Mr Khan moved: That:

- e) the secretariat, on behalf of the Chair write to each member of the committee to ask whether they were responsible for the disclosure of confidential committee deliberations (that lead to the publication of an article in the Daily Telegraph on Tuesday 3 February 2015 by Andrew Clennell entitled “Catherine Burn Must Reveal her Evidence”) or are able to provide information that could assist in determining the source of this disclosure
- f) the Secretariat also write to the lawyers for Deputy Commissioner Kaldas seeking advice as to whether they or their client released their letter to the Daily Telegraph
- g) the committee members and Mr Kaldas lawyers, respond in writing to the letter from the secretariat within 24 hours of receipt of the letter
- h) The issue of the release of confidential committee deliberations be further considered by the committee at its next available meeting following the passing of the deadline referred to in c) above.

Mr Shoebridge moved: That the motion of Mr Khan be amended by omitting items b and c as it relates to Mr Kaldas’ lawyers.

Amendment put and lost.

Original question put and passed.

**9. Division of question time by members during the hearing**

Resolved on the motion of Mr Shoebridge: That the time for questions to the Ombudsman be divided equally between the Opposition, Government and Cross bench members.

**10. In camera hearing**

According to previous resolutions of the committee, the committee proceeded to take evidence in camera.

Persons present other than the committee: Beverly Duffy, Steven Reynolds, Tina Higgins, Sam Griffith, Emma Rogerson, Christine Nguyen, Hansard Reporters, and Mr Mathew Leighton-Daly accompanying Witness D.

The Chair made an opening statement.

Witness D was sworn and examined.

Witness D tabled the following document:

- Opening statement
- Integrity testing guidelines.

The Chair directed that a name inadvertently mentioned during Witness D's evidence be expunged from the transcript of evidence and that it be substituted with "M5".

The *in camera* evidence concluded and the witnesses withdrew.

**11. Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Bruce Barbour, NSW Ombudsman
- Ms Linda Waugh, Deputy Ombudsman

Mr Barbour tendered the following document:

- Opening statement

**12. In camera hearing**

Resolved, on the motion of Mr Searle: That the committee proceed to take evidence from Mr Bruce Barbour and Ms Linda Waugh in camera.

The public and media withdrew.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Beverly Duffy, Steven Reynolds, Tina Higgins, Sam Griffith, Emma Rogerson, Hansard reporters and Neil Williams SC, Anna Mitchelmore, Tim Lowe, and Yenda Clifton accompanying Mr Barbour and Ms Waugh.

The evidence concluded and the witnesses withdrew.

The public and the media were readmitted.

The following witness was sworn and examined:

- Mr Peter McErlain, Detective Superintendent, NSW Police Force

The evidence concluded and the witness withdrew.

**13. Public hearing**

The following witness was sworn and examined:

- Mr Brett McFadden, Superintendent, NSW Police Force

**14. In camera hearing**

Resolved, on the motion of Mr Searle: That the committee proceed to take evidence from Mr Brett McFadden *in camera*.

The public and media withdrew.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Beverly Duffy, Steven Reynolds, Tina Higgins, Sam Griffith, Emma Rogerson, Hansard reporters, Mr Warwick Anderson and Mr Dominic Gleeson accompanying Mr McFadden.

The evidence concluded and the witnesses withdrew.

The *in camera* hearing concluded at 5.36 pm.

**15. Deliberative meeting**

**Summoning witnesses**

Mr Blair moved that: The committee defer consideration of summoning Ms Burn and Mr Kaldas until the committee receives evidence from Mr Giorgiutti.

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Shoebridge, Mr Searle, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Searle: That the committee defer consideration of inviting Mr Dolan to appear as a witness before the committee.

**16. Adjournment**

The committee adjourned at 5.56 pm until Wednesday 4 February 2015, 8.30 am, Macquarie Room, Parliament House (*public hearing*).

Beverly Duffy

**Clerk to the Committee**

**Minutes no. 8**

Wednesday 4 February 2015

Select Committee on the Conduct and Progress of the Ombudsman's inquiry "Operation Prospect"

Macquarie Room, Parliament House, 8.36 am

**1. Members present**

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair

Mr Khan

Mrs Maclaren-Jones

Mr Searle

Ms Voltz

## 1. Correspondence

The committee noted the following items of correspondence:

### ***Received:***

- 3 February 2015 – From Witness C to Chair, providing reasons for not publishing in camera transcript and answers to supplementary questions.

## 2. Submissions

### **2.1 Partially confidential submissions**

The committee considered the following submission for partial confidentiality: submission no. 25 (Mr Giorgiutti).

Resolved, on the motion of Mr Searle: That the committee authorise the publication of submission no. 25, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Shoebridge: That attachment one of submission no. 25 be sent to the Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission for consideration.

### **2.2 Confidential submissions**

The following submission nos. 23 and 24 were considered by the committee for confidentiality.

Resolved on the motion of Mr Searle: That the committee defer consideration of keeping submission nos. 23 and 24 confidential, as per the recommendation of the secretariat, as they contain sensitive information and/or potential adverse mention.

## 3. Attachments A and B to submission 18

To date, the committee has resolved to publish redacted versions of attachments E, F, G, H, K and L to submission 18 and to keep attachment C confidential.

At the meeting on 29 January 2015, the committee deferred consideration as to the publication of attachments A and B to submission 18 (the Dowd and Bell warrants).

Resolved, on the motion of Ms Voltz:

- a) That the committee keep attachments A and B to submission no. 18 confidential.
- b) That the committee place a notice on the inquiry webpage advising that the committee has resolved not to publish attachments A and B.
- c) That the secretariat respond to concerned individuals who contacted the secretariat regarding the suppression of their name from attachments A and B, advising the attachments will be kept confidential.

## 4. Evidence of Witness C

The committee has now received a submission (no. 10), in camera evidence (29 January) and answers to a supplementary question from Witness C. This witness has requested that all of these documents remain confidential.

Resolved, on the motion of Mr Shoebridge: That the committee keep Witness C's submission no. 10, in camera evidence and answers to a supplementary question confidential, with the possible exception of extracts the committee may wish to include in the report.

#### **4.1 Tendered document**

The committee to consider the publication of the document tendered by Mr Shoebridge during the in camera evidence of Witness C on 29 January 2015, to which the witness has stated he has no objection to its publication.

Resolved, on the motion of Mr Searle: That the committee accept and publish the following document tendered during in camera evidence on 29 January 2015:

- Report to the Crime Commission Management Committee - *Strike Force Emblems*, undated, p 8, *tendered by Mr David Shoebridge MLC*

#### **5. Report deliberative and timeline**

Members are reminded that the committee's report deliberative will be held on Tuesday 17 February 2015 in the Macquarie Room and the Chair's draft report will be circulated to members on Monday **16 February** 2015, one day prior to the deliberative.

#### **6. Other business**

The committee considered the publication of a document referred to in evidence of Mr Brett McFadden, Superintendent, NSW Police Force, on Tuesday 3 February 2015.

Mr Searle moved: That the committee keep confidential the memorandum from Mr Brett McFadden to Mr Andrew Scipione.

Question put.

The committee divided.

Ayes: Mr Borask, Mr Blair, Mrs Maclaren-Jones, Mr Searle, Ms Voltz

Noes: Mr Shoebridge

Question resolved in the affirmative.

Mr Searle moved: That the committee write to Premier Mike Baird reminding him of SO52 and SO53 requests and ask him to provide information to the committee on a confidential basis.

Question put.

The committee divided.

Ayes: Mr Searle, Mr Shoebridge, Ms Voltz, Mr Borsak.

Noes: Mr Khan, Mr Blair, Mrs Maclaren-Jones.

Question resolved in the negative.

#### **7. Allocation of questioning**

Resolved, on the motion of Mr Searle: That the timing of questioning for Mr Andrew Scipione's evidence be divided equally for Government, Opposition and Crossbench.

#### **8. Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr John Giorgutti, Former solicitor, Crime Commission

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Malcolm Brammer APM, Former Commander, Special Crime and Internal Affairs, NSW Police Force

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Scipione APM, NSW Commissioner of Police, NSW Police Force

The evidence concluded and the witness withdrew.

#### 9. **Deliberative meeting**

Mr Khan moved: That the committee receive evidence from Mr Clive Small *in camera*.

Question put.

The committee divided.

Ayes: Mr Khan, Mr Blair, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Shoebridge, Mr Searle, Ms Voltz.

Question resolved in the negative.

#### 10. **Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Clive Small, Former NSW Assistant Police Commissioner, NSW Police Force

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Ken Moroney AO APM, Former NSW Commissioner of Police, NSW Police Force

The evidence concluded and the witness withdrew.

The public hearing concluded at 5.00 pm. The public and media withdrew.

#### 11. **Adjournment**

The committee adjourned at 5.00 pm until 8.30 am, Tuesday 10 February 2015, Macquarie Room, Parliament House, Sydney (*public hearing*).

Beverly Duffy

**Clerk to the Committee**

#### **Minutes no. 9**

Tuesday 10 February 2015

Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect"  
Macquarie Room, Parliament House, 8.30 am

#### 1. **Members present**

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair

Mr Khan

Mrs Maclaren-Jones

Mr Searle  
Ms Voltz

## 2. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 7 be amended by omitting the word from the motion in item 8 as they relate to Mr Kaldas' lawyers.

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 7, as amended, and draft minutes no. 8 be confirmed.

## 3. Correspondence

The committee noted the following items of correspondence:

- 3 February 2015 – From Detective Sergeant John Floros, Fraud & Cybercrime Squad, State Crime Command to the secretariat, regarding certain allegations
- 4 February 2015 – From Hon Adam Searle MLC to Director, advising he is not responsible for the unauthorised disclosure of committee proceedings
- 4 February 2015 – From Hon Niall Blair MLC to Director, advising he is not responsible for the unauthorised disclosure of committee proceedings
- 4 February 2015 – From Mr Clive Small to committee, providing a selection of documents
- 4 February 2015 – From Hon Natasha Maclaren-Jones MLC to Director, advising she is not responsible for the unauthorised disclosure of committee proceedings
- 4 February 2015 – From Mr Robert Lee to the committee, providing material regarding the Ombudsman Act 1974, correspondence of personal grievances and a CD containing a transcript of court proceedings
- 4 February 2015 – From a NSW Police Force officer to the secretariat, expressing disappointment that warrant 266/2000 was not published
- 5 February 2015 – From Hon Trevor Khan MLC to Director, advising he is not responsible for the unauthorised disclosure of committee proceedings
- 5 February 2015 – From Hon Robert Borsak MLC to Director, advising he is not responsible for the unauthorised disclosure of committee proceedings
- 5 February 2015 – From Mr Mark Galletta to secretariat, requesting transcript of evidence corrections
- 5 February 2015 – From Mr Pranay Bhattacharya to the secretariat, requesting that the committee examine the reason and validity of Mr Kaldas visiting a shopping centre
- 5 February 2015 – From Mr Robert Ishak, William Robert Lawyers, to the Director responding to the unauthorised disclosure of committee proceedings
- 6 February 2015 – From Hon Lynda Voltz MLC to Director, advising she is not responsible for the unauthorised disclosure of committee proceedings
- 6 February 2015 – From Mr David Shoebridge to Director, advising he is not responsible for the unauthorised disclosure of committee proceedings
- 6 February 2015 – From Mr Patrick George, Senior Partner, Kennedys to secretariat, requesting that Ms Burn's answers to questions on notice remain confidential upon receipt
- 9 February 2015 – From Mr John Giorgiutti to secretariat, requesting a correction to his submission
- 9 February 2015 – From Mr Richard McDonald to the secretariat, requesting that the committee publish his submission
- 9 February 2015 – From Ms Natalie Buck, Senior Associate, Kennedys to secretariat, clarifying Ms Burn's answers to questions on notice and supplementary questions
- 10 February 2015 – From Mr Warwick Anderson, Anderson Boemi Lawyers to Chair, requesting Mr Brett McFadden's in camera evidence remain confidential
- 10 February 2015 – From Ms Clair Hodge, General Counsel, NSW Police Force to Director, responding to public interest immunity issues regarding answers to questions on notice provided by Ms Burn and providing a redacted version for publication

**Sent**

- 4 February 2015 – Director to Mr Robert Ishak, William Robert Lawyers, regarding unauthorised disclosure of committee proceedings concerning Daily Telegraph article dated 3 February 2015
- 4 February 2015 – Director to committee members, regarding unauthorised disclosure of committee proceedings concerning Daily Telegraph article dated 3 February 2015
- 4 February 2015 – Director to committee members, regarding unauthorised disclosure of committee proceedings concerning Sun Herald article dated 1 February 2015
- 5 February 2015 – Chair to Premier, requesting provision of documents sought under Standing Orders 52 and 53 regarding Operation Mascot and Report of Police Strike Force Emblems
- 5 February 2015 – Secretariat to 16 people confirming that the committee will not be publishing warrants 095/2000 and 266/2000 and the supporting affidavit to 266/2000
- 6 February 2015 – Chair to Joint Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission providing confidential attachments to submission no. 25.

Resolved, on the motion of Ms Voltz: That the committee publish the following documents provided by Mr Clive Small on 4 February 2015 and that the remaining documents he provided by kept confidential:

1. Memorandum from Mr Peter Ryan, Commissioner of Police, entitled 'Special Crime Unit, Internal Affairs and Special Crime', dated 23 December 1999
2. Attachment to Mr Small's summons before the Ombudsman entitled 'Advice to legal representatives in inquiries pursuant to the provisions of section 19 of the Ombudsman Act 1974', dated 7 July 2014
3. A redacted version of the NSW Crime Commission Information Report entitled 'Informant contact on 23 August 2000'.

Resolved, on the motion of Mr Khan: That the committee keep confidential the following items of correspondence as per the recommendation of the secretariat:

- 30 January 2015 – Email from Mr Green, solicitor, to the Chair, regarding listening devices and Operation Florida
- 31 January 2015 – Email from Mr Robert Lee to the Chair, regarding the Ombudsman's and ICACs powers to investigate police
- 31 January 2015 – Email from an individual to the Chair, providing links to videos of alleged corruption by NSW Police Force
- 3 February 2015 – From Detective Sergeant John Floros, Fraud & Cybercrime Squad, State Crime Command to the secretariat, regarding certain allegations
- 4 February 2015 – From Mr Robert Lee to the committee, providing material regarding the Ombudsman Act 1974, correspondence of personal grievances and a CD containing a transcript of court proceedings
- 4 February 2015 – From a NSW Police Force officer to the secretariat, expressing disappointment that warrant 266/2000 was not published
- 5 February 2015 – From Mr Pranay Bhattacharya to the secretariat, requesting that the committee examine the reason and validity of Mr Kaldas visiting a shopping centre
- 9 February 2015 – From Mr Richard McDonald to the secretariat, requesting that the committee publish his submission.

**4. Submissions**

Resolved, on the motion of Mr Searle: That the committee keep all submissions and correspondence confidential that are received after 7 February 2015, unless there are reasons for publication, and that a note to this effect be placed on the committee's website.

#### **4.1 Partially confidential submission**

Resolved, on the motion of Mr Shoebridge: That the committee authorise publication of submission no. 24 with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

#### **4.2 Supplementary submissions**

The committee deferred consideration of publication of supplementary submission nos. 10a, 12a 15a and 25a.

#### **4.3 Confidential submissions**

The committee deferred consideration of confidential submission nos 26, 27 and 28.

#### **4.5 Correction to submission no. 25 (Mr Giorgiutti)**

Mr Giorgiutti sought to correct a date on page 11 of his submission from 'May 2012' to 'May 2001'.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the insertion of a footnote to Mr Giorgiutti's submission (no. 25) stating the correction as requested by the author.

### **5. Transcripts**

#### **5.1 Publishing *in camera* transcripts**

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of Witness A's (Mr Galletta) *in camera* evidence, with certain redactions made by the secretariat.

### **6. Correspondence from legal advisors of Ms Burn and her answers to questions on notice and supplementary answers**

Resolved, on the motion of Mr Shoebridge: That at the start of her evidence, Ms Burn be provided an opportunity to appear *in camera* and explain her reasons for seeking to keep her answers to questions on notice and supplementary answers confidential.

Resolved, on the motion of Mr Khan: That the committee keep confidential the King send-off list and the names of current and former police officers on the 4 March entry in Ms Burn's duty book, that she provided in answers to questions on notice.

### **7. Answers to questions on notice and supplementary answers**

#### **7.1 Further answers received**

The committee to note that answers to questions on notice have been received from the following:

- Inspector of the Police Integrity Commission – received 4 February 2015
- Mr Steven Barrett – received 5 February 2015
- Mr Brian Harding – received 5 February 2015

Resolved, on the motion of Mr Khan: That the committee authorise the publication of answers to questions on notice received from the Inspector of the Police Integrity Commission, except for the Strike Force Emblems Final Report.

The committee deferred consideration of the following:

- publication of the redacted version of the Strike Force Emblems Final Report
- that a redacted version of the Strike Force Emblems Final Report, prepared by the secretariat, be provided to the NSW Police Commissioner for comment.

Resolved, on the motion of Mr Shoebridge: That the committee authorise publication of answers to questions on notice from Mr Steven Barrett.

## 7.2 Request for extension to provide an answer to a question on notice

Resolved, on the motion of Mr Searle: That the committee agree to the extension request of Mr Weber for an answer to a question taken on notice be provided by no later than Thursday 12 February 2015.

## 8. Unauthorised disclosures of committee proceedings

Resolved, on the motion of Mr Shoebridge: That the committee keep confidential all correspondence from the secretariat, members and Mr Robert Ishak, William Robert Lawyers, relating to the unauthorised disclosure.

## 9. Allocation of time for questioning

Resolved on the motion of Mr Khan: That the timing of questioning for today's hearing will be divided equally for Opposition, Crossbench and Government.

## 10. Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Khan: That:

- committee members provide supplementary questions to the secretariat by 9.00 am, Wednesday 11 February 2015
- witnesses be given 24 hours to return answers to questions on notice to the secretariat.

## 11. *In camera* hearing

According to previous resolution of the committee, the committee proceeded to take evidence *in camera*.

The following witness was examined on her former oath:

- Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force

Persons present other than the committee: Beverly Duffy, Steven Reynolds, Tina Higgins, Sam Griffith, Emma Rogerson and Hansard Reporters, with Mr Bruce McClintock, Ms Natalie Buck and Mr Brendan Searson accompanying Ms Burn.

The evidence concluded.

Resolved, on the motion of Mr Searle: That the committee authorise publication of the redacted version of answers to questions on notice and supplementary questions from Ms Catherine Burn as provided by the Office of General Counsel, NSW Police Force.

## 12. Public hearing

The public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined on her former oath:

- Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force.

Ms Burn tendered the following document:

- Opening statement

The evidence concluded and the witness withdrew.

## 13. Deliberative meeting

Resolved, on the motion of Mr Searle: That the committee authorise publication of correspondence from the Chair to the Premier requesting documents sought under SO 52 and SO 53 re Operation Mascot and Report of Police Strike Force Emblems.

**14. Public hearing continued**

The following witness was examined on his former oath:

- Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force.

Mr Kaldas tendered the following documents:

- Two page extract from transcript of debrief with M5
- Strike Force Emblems – information obtained from Hurt on Duty Application of M5
- Transcript of questioning
- Transcript of questioning

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.31 pm.

The public and media withdrew.

**15. Deliberative meeting**

**15.1 Tendered documents**

The committee deferred consideration of publishing documents tendered during the hearing.

**15.2 In camera transcripts**

Resolved, on the motion of Mr Shoebridge: That the committee keep confidential Mr McFadden's *in camera* evidence, subject to the committee's need to publish extracts of the evidence in its final report, in which case we will consult with Mr McFadden first.

**15.3 Supplementary submissions**

Resolved, on the motion of Mr Shoebridge: That the committee authorise publication of supplementary submission 12a.

Resolved, on the motion of Mr Shoebridge: That the committee keep supplementary submission 10a confidential as per the request of the author, in keeping with an earlier resolution of the committee to publish extracts of this witness's evidence in the report, if necessary.

Resolved, on the motion of Mr Voltz: That the committee keep supplementary submission 15a confidential due to the identifying and/or sensitive information which it contains, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Khan: That the committee authorise publication of supplementary submission 25a.

**15.4 Submission**

Resolved, on the motion of Mr Shoebridge: That the committee authorise publication of submission no. 27.

**16. Adjournment**

The committee adjourned at 4.04 pm until 12.00 pm, Tuesday 17 February, Macquarie Room, Parliament House (report deliberative).

Beverly Duffy  
Clerk to the Committee

**Minutes no. 10**

Tuesday 17 February 2015

Select Committee on the Conduct and Progress of the Ombudsman's inquiry "Operation Prospect"

Macquarie Room, Parliament House, 12.07 pm

**1. Members present**Mr Borsak, *Chair*Mr Shoebridge, *Deputy Chair*

Mr Blair

Mr Khan

Mrs Maclaren-Jones

Mr Searle

Ms Voltz

**2. Previous minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 9 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 10 February 2015 – From Mr Jim Corbett to secretariat, advising he has evidence regarding the issue of warrants and requesting assistance in getting matters investigated
- 10 February 2015 – From Anonymous to secretariat, providing information of complex issues surrounding the police bugging inquiry
- 11 February 2015 – An individual to secretariat, expressing disappointment in not being called as a witness and seeking clarification of the publication status of his submission
- 12 February 2015 - Ms Natalie Buck, Senior Associate, Kennedys to secretariat, providing further information on behalf of Ms Burn regarding grounds for reasonable suspicion
- 13 February 2015 – Ms Carly Maxwell, Director, Committee on the Ombudsman, Police Integrity Commission and Crime Commission to Chair, advising correspondence has been provided to Mr Lee Evans and will be brought to the attention of the committee in 56th Parliament

***Sent:***

- 11 February 2015 – Director to Deputy Commissioner Burn APM, apologising for the behaviour of a person in the public gallery

Resolved, on the motion of Mr Shoebridge: That the committee authorise publication of correspondence received from Ms Natalie Buck, Senior Associate, Kennedys to secretariat, providing further information on behalf of Ms Burn regarding grounds for reasonable suspicion, dated 12 February 2015.

Resolved, on the motion of Mr Khan: That the committee keep confidential correspondence from Witness D, received on 10 February 2015.

Resolved, on the motion of Mr Shoebridge: That the committee authorise publication of the following four items of correspondence received earlier by the committee relating to Ms Burn's answers to questions on notice:

- Letter from Patrick George, Senior Partner, Kennedys requesting that any questioning about the relevant answers be dealt with in camera., dated 6 February 2015
- Letter from Patrick George, Senior Partner, Kennedys requesting that answers not be published due to public interest immunity and/or confidentiality dated 9 February 2015
- Letter from Natalie Buck, Senior Associate, Kennedys clarifying annexures of answers to questions on notice, dated 9 February 2015

- Letter from Ms Clair Hodge, General Counsel, NSW Police Force, responding to public interest immunity concerns, dated 10 February 2015.

Resolved, on the motion of Mr Khan: That, subject to consultation with Mr Kaldas, the committee authorise the publication of correspondence received from William Robert Lawyers on behalf of Mr Kaldas, regarding confidential documents, dated 2 February 2015, with the exception of sensitive information.

#### **4. Confidential inquiry documents**

Resolved, on the motion of Mr Khan: That, unless otherwise specified by this committee, upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be kept confidential by the committee.

#### **5. Confidential submissions**

Resolved, on the motion of Mr Shoebridge: That given the inquiry's terms of reference and the time constraints of the inquiry, the committee keep submission nos 23, 26 and 28 confidential as per the recommendation of the secretariat.

##### **5.1 Confidential submission no. 14**

Resolved, on the motion of Mr Searle: That the committee authorise the publication of excerpts of submission no. 14, subject to the secretariat contacting its author to clarify his wishes regarding the publication of his submission and ascertain if he has sought legal advice regarding the potential impact of publication on any deed of release he may have entered into with the NSW Police Force.

#### **6. Answers to questions on notice**

Resolved, on the motion of Mr Khan: That the committee keep confidential answers to questions on notice from Mr Brian Harding, received on 5 February 2015.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of the following answers to questions on notice:

- Mr Bruce Barbour, NSW Ombudsman, received on 11 February 2015
- Mr Andrew Scipione, received on 11 February 2015
- Police Association of NSW, received on 12 February 2015.

Resolved, on the motion of Mr Blair: That the committee authorise the publication of answers to questions on notice from Mr Neil Mercer received on 11 February 2015, with the exception of sensitive information in the letter to the Ombudsman dated 30 May 2013, as per recommendation of the secretariat.

#### **7. Transcripts**

##### **7.1 Publishing in camera transcripts**

Witness B (Mr Weber) has requested that all of his evidence be made public, with the exception of two sections as follows:

- redact all of page 39 bar the final questions from Mr Shoebridge, as the matters discussed are still ongoing before the courts, and
- redact all references to Operation Rainer/Rani on page 41 as it is a clear identifier for the officer involved.

Resolved, on the motion of Mr Khan: That the committee authorise the partial publication of Witness B's (Mr Weber) in camera evidence, with the exception of two sections on pages 39 and 41 as they contain identifying/or sensitive material, as per the request of Mr Weber.

## 7.2 Transcript correction

Mr Weber (formerly Witness B) has requested to amend his evidence from 29 January 2015. On page 36 and 44 of his evidence, Mr Weber gave the answer that the 'Police Association of NSW's complaint lodged in April 2003 was to the PIC'. Mr Weber has asserted that the correct response is that the complaint was 'lodged to the Commissioner of Police'.

Resolved, on the motion of Mr Khan: That the committee authorise that Mr Weber's transcript of evidence from 29 January 2015 be amended as requested by the witness.

## 7.3 In camera evidence

Resolved, on the motion of Mrs Maclaren-Jones: That the committee keep confidential Witness D's in camera evidence.

Resolved, on the motion of Mr Searle: That the committee keep confidential Mr Bruce Barbour's in camera evidence, save for excerpts the committee may wish to quote from in the report.

## 8. Tendered documents during hearing

Mr Shoebridge moved: That the committee authorise the publication of the two page extract from transcript of debrief with M5 tendered by Mr Nick Kaldas, 10 February 2015, with the exception of sensitive material as suggested by the secretariat.

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Blair, Mr Borsak, Mr Khan, Mrs Maclaren-Jones, Mr Searle, Ms Voltz.

Question resolved in the negative.

## 9. Document tabled

Mr Khan tabled a letter dated 10 October 2012, from Mr Bruce Barbour, NSW Ombudsman to Mr Andrew Scipione, NSW Commissioner of Police, regarding the establishment of the inquiry.

## 10. Consideration of Chair's draft report

Resolved, on the motion of Mr Khan: That the committee authorise the publication of excerpts of confidential material as quoted in the report, subject to consultation with the relevant inquiry participants.

The Chair submitted his draft report, entitled '*The conduct and progress of the Ombudsman's inquiry "Operation Prospect"*', which, having been previously circulated, was taken as being read.

### Chapter 1

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 1.13:

'We note that the government strongly opposed the establishment of this committee. While the Government's opposition has not assisted the committee, it is a fact that the material uncovered by the committee and the matters addressed in this report are of significant public concern and will need to be addressed by the executive despite their initial hostility to this inquiry.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 1.32:

‘This matter is the subject of further discussion and a recommendation at 6.21.’

## **Chapter 2**

Resolved, on the motion of Mr Shoebridge: That paragraph 2.15 be amended by inserting ‘alleged’ before ‘police corruption or misconduct’.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.19 be amended by inserting at the end: ‘It has not been explained how such a large number of outstanding allegations were resolved by a single taskforce in just 12 months.’

Resolved, on the motion of Mr Khan: That paragraph 2.22 be amended by inserting ‘at approximately 2 pm’ after ‘recorded an interview’. [FOOTNOTE: Evidence, Mr Steven Barrett, Journalist, Seven Network Australia, 9 January 2015, p 9.]

Resolved, on the motion of Mr Khan: That paragraph 2.24 be amended by inserting ‘commencing at approximately 4.45 pm’ after ‘Also on 13 April 2002,’.

Resolved, on the motion of Mr Khan: That paragraph 2.24 be amended by omitting ‘had written’ and inserting instead ‘prepared’.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.24:

‘When questioned on the preparation of the briefing Ms Burn said:

From my understanding, as Mr Barrett gave in evidence yesterday, Mr Ryan was interviewed at 2 o'clock on Saturday the 13th and it was shown on the Sunday night the 14th. He was interviewed at 2.00 p.m.; I started work at 4.45 p.m. on a report for Monday, for a briefing with the Minister and the commissioner.

Mr DAVID SHOEBRIDGE: Did you speak to anybody on the Saturday prior to getting to work? I assume you did not just turn up at work for no reason.

Ms BURN: I had conversations with officers on the Saturday before I turned up.

Mr DAVID SHOEBRIDGE: Who? them?

Ms BURN: From recollection, again from my duty books after examination—do you want me to name

Mr DAVID SHOEBRIDGE: Yes.

The Hon. ADAM SEARLE: Perhaps not.

CHAIR: No.

Mr DAVID SHOEBRIDGE: What about your commander? Was that one of them?

Ms BURN: No.

Mr DAVID SHOEBRIDGE: What about people senior to you?

Ms BURN: I have a recollection—I would need to take it on notice—but potentially Mr Bradley.

Mr DAVID SHOEBRIDGE: And you gave a summary, I assume, of what you knew at the time and said, "But I will come in and put in a memorandum."

Ms BURN: If I spoke to Mr Bradley, yes.

Mr DAVID SHOEBRIDGE: What you would have said obviously would have been consistent with what went in your memorandum. You would not have said one thing on the phone and another thing in the memorandum, would you?

Ms BURN: Well, one, we are assuming that I had a conversation, so I really do not know.' [FOOTNOTE: Evidence, Ms Catherine Burn, Deputy Commissioner, Specialist Operations, NSW Police Force, 30 January 2015, p 79.]

Resolved, on the motion of Mr Khan: That the following new committee comment be inserted after paragraph 2.26:

***'Committee comment***

The evidence before the committee does not demonstrate that Ms Catherine Burn was responsible for the briefing of Commissioner Ryan prior to his interview by 60 Minutes on 13 April 2002. The committee can however conclude that both Commissioner Ryan and Police Minister Costa were briefed by Ms Burn on 15 April 2002 and that neither the then commissioner or the police minister then sought to correct the assertions made by Commissioner Ryan during his 60 Minutes interview.

This issue is discussed further at paragraph 3.33 to 3.56.'

Resolved, on the motion of Mr Searle: That the following new committee comment be inserted after paragraph 2.27:

***'Committee comment***

The committee does not agree with this conclusion. The report of the Inspector does not deal at all with the issue arising in this inquiry, namely whether there needed to be evidence of wrongdoing by persons who were targets named in listening device warrants alleged in the supporting evidence. The PIC Inspector's report was based upon a range of other matters and did not consider this important aspect. We make no criticism of the PIC Inspector. No doubt he reported on those matters upon which his view was sought.'

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 2.33:

'On 12 August 2003 the NSW Ombudsman Bruce Barbour wrote to Police Commissioner Ken Moroney, regarding Strikeforce Emblems.

He wrote:

I have been concerned from the outset that it is not appropriate for the Ombudsman to oversight this investigation. The reasons for this include the following matters:

1. The present investigation plan by NSW Police includes consideration of the conduct of officers of the NSWCC and the PIC. The conduct of both of these agencies is outside the jurisdiction of the Ombudsman- see schedule I of the *Ombudsman Act* and Part 12 of the *Police Integrity Commission Act*. I am concerned that, should my office oversight Strike force Emblems, any meaningful review would be limited by these legislative prohibitions. [FOOTNOTE: Tabled document, Correspondence from Mr Bruce Barbour, NSW Ombudsman to Mr Andrew Scipione, NSW Commissioner of Police, 10 October 2012]

The letter from the Ombudsman of 12 August 2003 demonstrates that the ombudsman was aware of the limitations of his jurisdiction and advised the Police Commission of those limitations.'

Resolved, on the motion of Mr Shoebridge: That the following new paragraphs be inserted before paragraph 2.34:

'The difficulty was though, that if not the Ombudsman, who would undertake the review given that the other police oversight agencies had been involved in the Mascot/Florida investigations and were therefore conflicted.'

Mr Searle moved: That the following new committee comment be inserted after paragraph 2.42:

***Committee comment***

Having read what the committee understands to be the final (or near final) version of the Strike Force Emblems report, the committee does not agree with the description given by Mr Levine.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.46 be amended by inserting at the end:

'On 21 September 2012 the NSWPF established Strike Force Jooriland within the Professional Standards Command to investigate the following allegations or complaints:

- That, during or before 2012, a person/s unknown supplied to journalist Neil Mercer and others an affidavit or affidavits related to Mascot contrary to s 29(2) of the NSWCC Act.
- That, during or before 2012, a person/s unknown supplied to journalist Neil Mercer and others documents related to NSWPF investigation Emblems contrary to cl 75 of the Police Regulation 2008.
- That, during and/or subsequent to 1999, a person/s attached to SCIA knowingly swore an affidavit or affidavits containing false or partly false information contrary to s 319 .Crimes Act 1900.
- That, during and/or subsequent to 1999, a person/s attached to SCIA unlawfully monitored and/or recorded conversations in the office of now Deputy Commissioner Kaldas contrary to ss 5 and 10 of the Listening Devices Act.
- That, during and/or subsequent to 1999, a person/s attached to SCIA unlawfully monitored and/or recorded conversations on the mobile telecommunications service of now Deputy Commissioner Kaldas contrary to ss 7(1) and 105 of the Telecommunications (Interception and Access) Act.
- That, during and/or subsequent to 1999, a person/s attached to SCIA unlawfully monitored and/or recorded conversations on the former home telecommunications service of now Deputy Commissioner Kaldas contrary to ss 7(1) and 105 of the Telecommunications (Interception and Access) Act.
- That, during and/or subsequent to 1999, a person/s took detrimental action against now Deputy Commissioner Kaldas substantially in reprisal for him making protected allegations contrary to s 206(2) of the Police Act.

- That, during and/or subsequent to 1999, a person/s attached to SCIA failed to comply with s7 of the Police Act in respect to the investigation of now Deputy Commissioner Kaldas and others.'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.46:

'Also on 21 September Mr David Shoebridge contacted the Ombudsman and offered to refer certain documents to him concerning the matter. In his evidence before the committee the Ombudsman stated:

Mr BARBOUR: Just before we leave the last question you asked me, I think it is very important to note in response that I explained to you as carefully and constructively as I could when you called me the limitations on my powers and why I could not do what you were asking me to do, and I recommended to you that you refer all of the material that you described to me had been provided to you to the Inspector of the Police Integrity Commission because, at that stage, he had the reference to the former police Minister.

Mr DAVID SHOEBRIDGE: Of course, that is a part-time officer with two administrative staff and no substantive resources. That would have been woefully inadequate, would it not, Mr Barbour?

Mr BARBOUR: I am not commenting on that, sir.' [FOOTNOTE: Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 22.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.47:

'During the budget estimates hearing for police the then Police Minister Michael Gallacher tabled to the committee a letter dated 10 October 2012 from the Ombudsman, Bruce Barbour to the Police Commissioner Andrew Scipione. The letter tabled in part read:

I am writing to confirm that I am conducting an inquiry into allegations that have been made about the conduct of officer of the NSW Police Force, The NSW Crime commission and the Police Integrity Commission in relation to Operations Mascot, Florida and Emblem's, and associated matters.

As you would be aware, the allegations concern a wide range of conduct that has occurred over a significant period of time. Many of these matters raise contemporary but related concerns about access to and release of highly confidential material relating to the 'Emblems' matter. In this light, it is clear that the investigation of such a wide range of related matters will be protracted and that matters going to the integrity of the investigation will, particularly at this early stage of my inquiry, be paramount.' [FOOTNOTE: Tabled document, Correspondence from Mr Bruce Barbour, NSW Ombudsman to Mr Andrew Scipione, NSW Commissioner of Police, 10 October 2012.]

Resolved, on the motion of Mr Khan: That the following new committee comment be inserted after paragraph 2.48:

***Committee comment***

It is evident from the Ombudsman's letter that it had always been the intention of the Ombudsman for operation prospect to be a wide ranging investigation.

The tabling of the Ombudsman's letter of 10 October 2012 demonstrates that the Parliament was also informed at a very early stage of his intentions.

Resolved, on the motion of Mr Shoebridge: That the first bullet point of the quote at paragraph 2.57 be amended by inserting '[Florida was a Police Integrity Commission operation]' after 'Operation Florida'.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.59:

'In the Ombudsman's correspondence to the Chair dated 28 January 2015, by way of example, on the issue of the alleged mishandling of informants/undercover operatives he observed:

Former mascot officers and other persons of interest were profiled by operation prospect investigators and a large number of these persons were interviewed by my officers. This process included obtaining and reviewing duty books of the involved officers. Other former Mascot officers were also questioned about the handling of this informant. Operation prospect included approximately 16 hearings connected to this allegation, including a hearing with the informant 'paddle'. [FOOTNOTE: Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 24.]

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after the first sentence in paragraph 2.61:

'It should be noted that section 17 of the *Ombudsman Act 1974* provides 'an investigation under this Act shall be made in the absence of the public'.

Unlike hearings before the Independent Commission Against Corruption and the Police Integrity Commission where there is an option to hold hearings in public, the Ombudsman's hearings must therefore be held in private.

Therefore, given the legislation, there can be no criticism of the Ombudsman for undertaking hearings in the absence of the public. The appropriateness of the non-disclosure provisions of the Ombudsman are discussed in chapter 6.'

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 2.63:

'The committee notes that it is essential the Ombudsman completes Operation Prospect before his term expires.'

Resolved, on the motion of Mr Searle: That the following documents be included in the report:

- Timeline of events
- Key players
- Advice from Mr Bret Walker SC to the Clerk, dated 14 January 2015.

### Chapter 3

Resolved, on the motion of Mr Searle: That paragraph 3.8 be amended by omitting 'was used to' and inserting 'in connection with some named persons' after 'was made'.

Resolved, on the motion of Mr Khan: That paragraph 3.12 be amended by omitting 'as part of Operation Prospect, he is considering 462 listening device warrants and 99 affidavits, in addition to 246 telephone intercept warrants and 11 supporting affidavits' and inserting instead:

'Operation Prospect summonses have caused the production of 99 affidavits that were sworn in support of applications for 462 listening device warrants (it should be noted in this regard that a single affidavit can and generally does support an application for multiple listening device warrants). The 99 supporting affidavits comprise, in total, approximately 3,812 pages. The shortest supporting affidavit is eight pages long (003/1999 and 022-025/1999) while the longest is 82 pages (262-268/2000). The median size of the supporting affidavits produced to Operation Prospect is 38.5 pages.'

In addition, a total of 111 supporting affidavits in relation to 246 telephone intercept warrants have been produced. In total the 111 telephone intercept supporting affidavits produced comprise approximately 2,322 pages. The shortest affidavit that is in Operation Prospect holdings is nine pages (093/1999) whilst the longest is 40 pages (174/2001). The median size of a telephone intercept supporting affidavit is 20.9 pages' [FOOTNOTE: Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 19].

Resolved, on the motion of Mr Khan: That paragraph 3.13 be amended by omitting 'It is important to note that in 2002, the Bell warrant was in public circulation and the subject of significant media attention and speculation' and inserting instead 'It is important to note that in 2002, the Bell warrant but not the affidavit dated 14 September 2000 was in public circulation and the subject of significant media attention and speculation'.

Mr Khan moved: That the following paragraphs 3.40 to 3.44 be omitted:

'Given that the supporting affidavit did not contain grounds to support the inclusion of 46 of the individuals listed on the Bell warrant, the committee asked Ms Burn why she did not draw a conclusion in her memorandum that there was a serious problem with the evidence upon which the Bell warrant was issued. She responded:

There is an issue. I have not said otherwise. There is an issue that the evidence or the allegations were not mentioned in that affidavit. They might have been, as is said there, mentioned in previous affidavits. However, for whatever reason, they were not mentioned in the September affidavit.

Ms Burn also acknowledged that her only recommendation in the memorandum was that the information be 'maintained as highly protected'.

While it might be reasonable to assume that Ms Burn's memorandum would have been provided to the Commissioner before his television appearance, the committee noted evidence from Mr Barrett that the 60 Minutes interview was actually recorded on 13 April 2002 at approximately 2.00 pm.

Ms Burn also told the committee that she started work on the 13 April 2002 at approximately 4:45 pm, and that her document was prepared for the Commissioner and the Minister for a meeting on Monday 15 April 2002.

During the Strike Force Emblems investigation, Ms Burn was questioned about the Commissioner's explanation. When asked by the investigator why the Commissioner had said people named on the warrant were included because they were attending a function, Ms Burn stated 'I have no idea why he said it, I'd say he wasn't briefed'.

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.50 be amended by omitting 'insinuated' and inserting instead 'suggested'.

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.52:

'No explanation, however, was provided by Ms Burn as to why a number of persons, including those named above, were referred to as being connected to the Mascot/Florida operation in this way when they were never invited to the event in question.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Blair: That paragraph 3.54 be amended by omitting 'Although Ms Burn informed the committee that she made sure her memorandum and report were discussed at a subsequent briefing with the Commissioner and others, it is unclear what further steps were taken' and inserting instead 'Although Ms Burn informed the committee that she made sure her memorandum and report were discussed at a subsequent briefing with the Commissioner and others, it is unclear what further steps were taken by her superiors'.

Mr Khan moved: That the following paragraphs 3.54 and 3.55 be omitted:

'Although Ms Burn informed the committee that she made sure her memorandum and report were discussed at a subsequent briefing with the Commissioner and others, it is unclear what further steps were taken. When asked what was done to ensure the public record was corrected, Ms Burn stated 'this [the memorandum] is documented and this is passed up the chain, so you will definitely need to ask this chain of command and others.

When the committee pressed Ms Burn as to what has been done to redress the injustice, she referred to the review by Mr Finlay in 2002:

An inquiry was conducted by a justice, Mr Finlay, into this matter, and ...[f]rom my memory, it was justifiably sought is what he had said. In terms of what you are talking about in terms of how this could happen, it is clear that a mistake was made. There is no doubt at least a mistake was made, and I have said if a mistake was made that was not my mistake and in fact I had warned people about correctness and quality of affidavits if a mistake was made. If there were false representations and illegalities I was not aware of them. In terms of what we did, there was a review. A justice came in and reviewed it. There was visibility at the chain of command about this and we were reviewing internal procedures.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.55 be amended by omitting 'When the committee pressed Ms Burn as to what has been done to redress the injustice, she referred to the review by Mr Finlay in 2002' and inserting instead 'When the committee pressed Ms Burn as to what has been done to redress the injustice to those improperly placed on the warrant, she referred to the review by Mr Finlay in 2002'.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 3.55:

'For reasons which are touched on at 2.28 above, the committee is of the view that reliance placed on the Finlay review is misplaced. The Finlay report appears to be focused on whether non- targets should be listed on warrants and on the importance and success of Operation Mascot and not on the issue that arises in this inquiry, and does not assist.'

Resolved, on the motion of Mr Shoebridge: That paragraph 3.56 be amended by:

- a) omitting 'The committee is troubled by the Police Commissioner's interview on *60 Minutes* in 2002 and the misconception he provided publicly as to the circumstances of the Bell warrant' and

inserting instead 'The committee is troubled by the then Police Commissioner's interview on *60 Minutes* in 2002 and the misconception he provided publicly as to the circumstances of the Bell warrant'.

- b) inserting at the end of the paragraph 'As we note later in this report the explanation is implausible as the "King send-off" occurred more than 2 months before the September 2000 warrant was issued.'

Resolved, on the motion of Mr Khan: That paragraph 3.57 be amended by omitting 'This has been shown not to be the case, as detailed by Ms Burn in the memorandum she drafted close to the time of the Commissioner's interview' and inserting instead 'This has been shown not to be the case, as detailed by Ms Burn in the memorandum she prepared close to the time of the Commissioner's interview'.

Resolved, on the motion of Mr Khan: That paragraph 3.59 be amended by omitting 'While Ms Burn passed her memorandum up through the chain of command, the committee is troubled by the fact that more was not done to correct this misconception, by either Ms Burn, or her superiors, including the Police Minister' and inserting instead 'While Ms Burn passed her memorandum up through the chain of command, the committee is troubled by the fact that more was not done to correct this misconception'.

Mr Khan moved: That the following Finding x be omitted:

**'Finding x**

That the NSW Police Force executive and successive police ministers have never corrected the record by publicly acknowledging the erroneous explanation provided by Commissioner Ryan.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That the Finding 3 be amended by omitting 'That the NSW Police Force executive and successive police ministers have never corrected the record by publicly acknowledging the erroneous explanation provided by Commissioner Ryan' and inserting instead 'That no one in a position of authority who was aware of the error ever corrected the record by publicly acknowledging the erroneous explanation provided by Commissioner Ryan'.

Question put.

The committee divided.

Ayes: Mr Shoebridge

Noes: Mr Borsak, Mr Blair, Mr Khan, Mrs Maclaren-Jones, Mr Searle, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That Finding 3 be amended by omitting 'That the NSW Police Force executive and successive police ministers have never corrected the record by publicly acknowledging the erroneous explanation provided by Commissioner Ryan' and inserting instead 'That the NSW police has never corrected the record by publicly acknowledging the erroneous explanation provided by Commissioner Ryan'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.66 be amended by omitting 'In his report, the Inspector stated that the 'minor irregularity of the omission of those two names was clearly inadvertent and is, in my view, of no substantial consequence' and inserting instead 'In his report, the Inspector stated that the 'minor irregularity of the omission of those two names was clearly inadvertent and is, in my view, of no substantial consequence', in light of the material considered above, Mr Finlay's conclusion is unsustainable'.

Mr Blair moved: That the following paragraphs 3.67 and 3.68 be omitted:

‘Yet, Ms Burn, in her memorandum, dated two weeks before the Inspector’s report, outlined that only 66 people were mentioned in the affidavit, although she noted that the ‘majority of the remaining names were mentioned in previous affidavits’.

When Ms Burn was asked about this serious deficiency and what steps were taken to redress it, she acknowledged that ‘the September warrant did not have evidence against all the people named in the warrant’. She agreed that the matter was ‘shocking’ and ‘serious’ and that the warrant was not legal.’

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That the following paragraph 3.68 be amended by inserting at the end: ‘The issue of who was responsible for preparing the warrants and affidavits is considered at 3.91’.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.75:

‘Applications for listening device warrants are not heard in open court. They are usually considered in a closed hearing in a judge’s chambers with only the judge, the law enforcement agency and its lawyers present. Because there is no other party present to contradict the material put by the agency, this places an obligation on the agency to be frank with the judge and include material that both assists their case (inculpatory material) and detracts from their case (exculpatory material).’

Resolved, on the motion of Mr Shoebridge: That paragraph 3.76 be amended by inserting at the end:

‘On the limited material we have before us, and noting that these applications are usually considered in chambers, it is most likely that the decision to issue the listening device was based on the evidentiary material contained in the affidavit supporting the application..

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.77:

‘Not only did the NSW Governor, on the advice of the Government, fail to provide information central to the work of this committee requested by the Legislative Council, but a request for this same material made by the committee itself to the Premier has also not resulted in the material being provided. [FOOTNOTE: Correspondence from Chair to The Hon Mike Baird, Premier, 5 February 2015] Not explanation or reply from the Premier has been provided.’

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Searle: That paragraph 3.81 be amended by omitting ‘wonders how’ and inserting instead ‘is deeply concerned that’.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.81 be amended by inserting at the end: ‘Judicial oversight is discussed further at paragraph 3.136’.

Mr Khan moved that the following paragraph 3.82 be omitted:

‘The committee is also concerned that Mr Finlay, in his review of the Bell warrant in 2002, only noted one ‘minor irregularity’ and that the warrant was found to have complied with the legislation.’

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.82 be amended by inserting at the end: 'As noted above Mr Finlay's conclusion in unsustainable'.

Resolved, on the motion of Mr Searle: That paragraph 3.84 be amended by inserting at the end:

'As the Ombudsman also noted in his evidence both warrants and their supporting affidavits should clearly identify who is a target and who may be incidentally recorded. Without this information being provided to an authorising judge, it is difficult to see how the requirements of the legislation could be met.' [FOOTNOTE: Evidence, Mr Bruce Barbour, Ombudsman, 3 February 2015, p 8.]

Resolved, on the motion of Mr Shoebridge: That paragraph 3.88 be amended by:

- a) omitting 'The committee agrees that a comprehensive review is needed, so as to improve the integrity of affidavits submitted in support of warrants and to prevent the unjustified intrusion of an individual's privacy. Therefore, the committee also recommends that the NSW Government review the current system for granting surveillance device warrants, with the aim of strengthening integrity checks on affidavits submitted in support of warrants.'
- b) inserting 'The fact that 46 people were the subject of a listening device warrant with no evidence presented against them in that application shows a substantial failure in the checks and balances in the system. This failure extends from the investigating officers who were obliged to present cogent material to support the application, the lawyers who were required to review, draft and present the final application and the Court itself which failed to ensure that the legislative prerequisites were met before so many people's civil liberties were infringed'

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.88:

'Our court system is based on adversarial proceedings where judges assess the relative merits of the arguments put by two or more parties before them in open court. This system is not well suited to deal with closed hearings with only one party present so that there is no one testing the evidence or merits of the application being made'.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 3.88:

'The committee suggests that one way to address this is through having an Office of Independent Counsel, to ensure that independent legal representatives are available to act as a contradictor in proceedings for listening device and telephone intercept warrants. These counsel would, without being connected to or acting on behalf of persons to be subject to the warrants, be able to test the evidence and assertions of law enforcement agencies that seek the warrants before judicial officers'.

Resolved, on the motion of Mr Shoebridge: That paragraphs 3.136 to 3.150 on judicial oversight be inserted earlier in the chapter.

Resolved, on the motion of Mr Shoebridge: That

- a) recommendations 1 and 2 be omitted:

**'Recommendation 1**

That the NSW Government review the current system for granting surveillance device warrants, with the aim of strengthening integrity checks on affidavits submitted in support of warrants.

## Recommendation 2

That the NSW Government implement a scheme to monitor ongoing compliance by law enforcement agencies with their legislative responsibilities under the Surveillance Devices Act 2007.

b) the following new recommendation be inserted instead:

### 'Recommendation x

That the NSW Government establish an open and independent inquiry to review the current system for granting surveillance device warrants, with the aim of establishing necessary reforms to ensure that legislative requirements are complied with and the system operates with sufficient checks and balances to maintain its integrity.'

Resolved, on the motion of Mr Shoebridge: That paragraph 3.90 be amended by:

- a) omitting 'To ensure ongoing compliance with legislation, we recommend that the NSW Government implement a scheme to monitor ongoing compliance by law enforcement agencies with their legislative responsibilities under the *Surveillance Devices Act 2007*.'
- b) inserting at the end 'Section 48 of the Surveillance Devices Act 2007 required the Ombudsman to, 'from time to time', inspect the records of each law enforcement agency (other than the Australian Crime Commission) to determine the extent of compliance with this Act. [FOOTNOTE: Surveillance Devices Act 2007, s 48(1)] Section 49 of the Act stipulates that the Ombudsman must make a written report to the Minister at 6 monthly intervals on the results of an inspection under section 48. The report must be laid before both Houses of Parliament. [FOOTNOTE: Surveillance Devices Act 2007, s 49]

Resolved, on the motion of Mr Searle: That Recommendation 1 be amended by inserting at the end: 'As part of this review, the NSW Government should consider instituting an Office of Independent Counsel to ensure independent legal representatives are able to test the evidence and assertions made by law enforcement agencies seeking surveillance device warrants.'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 3.91:

'In answers to supplementary questions Ms Burn was asked: who were her superiors from the NSW Police Force and the NSW Crime commission at least at 29 June 2001?

NSWPF

Superintendent Dolan, Commander Special Crime Unit

Assistant Commissioner Scipione, Special Crime & Internal Affairs

Deputy Commissioner Moroney

Commissioner Peter Ryan

NSWCC

Assistant Director Mark Standen

Director I Solicitor John Giorgiutti

Commissioner Phillip Bradley [FOOTNOTE: Answers to questions on notice and supplementary questions, Ms Catherine Burn, Deputy Commissioner, Specialist Operations, NSW Police Force, 9 February 2015, p 6.]

Mr Khan moved: That the following new paragraph be inserted after paragraph 3.93:

'It is notable that no member of the committee put to Mr Brammer that his evidence with respect to reliance upon NSW crime commission legal officers was incorrect.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That the paragraph 3.95 be amended by:

- a) omitting 'In attempting to determine what level of responsibility Ms Burn may have had in relation to the preparation of documents, the committee asked her a series of questions about her role as Team Leader, Special Crimes and Internal Affairs'.
- b) inserting instead 'In attempting to determine what level of responsibility Ms Burn may have had in relation to the preparation of documents, the committee asked her a series of questions about her role on Operation Mascot'.

Resolved, on the motion of Mr Searle: That paragraph 3.103 be amended by omitting 'While the deponent and solicitor clearly have a legal and professional responsibility in relation to the material, the committee wonders whether supervisors and managers are more broadly accountable for quality control mechanisms' and inserting instead 'Both the deponent and the solicitor clearly had a legal (and in respect of the solicitor an ethical) responsibility in relation to the material. However, in relation to the September 2000 warrant, there was clearly a lack of checks and balances of Special Crimes and Internal Affairs and the Crime Commission, for which senior officers in both organisations were responsible.'

Resolved, on the motion of Mr Searle: That the paragraph 3.103 be amended by inserting at the end of the paragraph: 'The committee notes that although the investigator in question reported to Ms Burn through the chain of command, he did not do so in connection with the preparation of the warrant or the material in support, reporting instead directly to Superintendent Dolan and the Assistant Director of the Crime Commission, Mr Mark Standen. On Ms Burn's evidence, the responsibility for the warrants and affidavit material rests with them.'

Resolved, on the motion of Mr Searle: That the paragraph 3.106 be amended by:

- a) omitting 'According to Ms Burn, the Team Leader of Special Crimes and Internal Affairs at the time, Operation Mascot focused on serious allegations of crime and corruption, predominantly based on allegations made by M5, the corrupt police officer who had 'rolled over' and was covertly working to corroborate such allegations.'
- b) inserting instead 'According to Ms Burn, a Team Leader at the time, Operation Mascot focused on serious allegations of crime and corruption, predominantly based on allegations made by M5, the corrupt police officer who had 'rolled over' and was covertly working to corroborate such allegations.'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 3.106:

'The Ombudsman observed:

In December 1998 a police officer approached the NSWCC and disclosed his knowledge of and involvement in organised crime and police corruption spanning over fifteen years whilst he performed criminal investigation duties in various locations. The disclosures he made implicated a large number of former and serving police as well as civilians. This police officer became a NSWCC registered informant and was codenamed "Sea". Each disclosure he made, and each allegation regarding others being involved, was recorded in a document called a Schedule of Debrief ("SOD") and was allocated a number. There were initially 86 SODs. This increased over time to 231.' [FOOTNOTE: Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 12]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 3.107:

'The Ombudsman also observed:

From January 1999 until late 2001 Sea was covertly deployed to prompt and record discussions with current and former officers to corroborate some of his original

disclosures and to capture any additional evidence that persons or their associates may have engaged, may be engaging, or may be about to engage in the specified criminal activities. Other investigative activities were also undertaken during this period to investigate the allegations under the Mascot reference and other informants, including serving police officers, provided assistance to Mascot.

In 2000 a Memorandum of Understanding was entered into by the NSWCC, the PIC and the NSWPF outlining the agreement between the three organisations to jointly pursue the allegations and matters being investigated under the Mascot reference.' [FOOTNOTE: Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 12].

Resolved, on the motion of Mr Khan: That paragraph 3.109 be amended by inserting at the end of the paragraph:

'The Hon. TREVOR KHAN: These were the meetings that actually, in a sense, ran Operation Mascot. Is that the case?

Mr GIORGIUTTI: They were meetings to keep the whole team across what had happened over the previous week and what was proposed to happen in the next week, two weeks, three weeks and so forth. Most people would have known what was discussed at the meetings anyway because they had access to computer systems and so forth, but it was just in case you were not across what might have happened—you might have been on leave or something—and also if you want to have input into a proposed strategy and allow analysts or monitors of the devices or the police or anyone to give input into the proposed operational strategy.

The Hon. TREVOR KHAN: How many people attended these meetings?

Mr GIORGIUTTI: Initially, probably less than a dozen and then the Mascot work increased. There were more police. I do not know if we put on more commission staff, but at the end maybe 20—maybe. Also, as time went on, the Police Integrity Commission would have people at some of those meetings: so maybe 20 at the end.' [FOOTNOTE: Evidence, Mr John Giorgiutti, former cc, NSW Crime Commission, 4 February 2015, p 9.]

Mr Searle moved: That the following new paragraph be inserted after paragraph 3.111:

'In her record of interview with Strike Force Emblems on 2 December 2002, Ms Burn described working on Operation Mascot under Mr Dolan. She described an intimidatory and authoritarian workplace with Mr Dolan in control [FOOTNOTE: Submission 18, Mr Steven Barrett, Annexure F, p X.] She was also clear in this interview that it was known at the time he was targeted that there was a conflict between Mr Kaldas and Mr Dolan [FOOTNOTE: Submission 18, Mr Steven Barrett, Annexure F, p X]. This emerges more clearly in the 2003 interview:

Q161: Can you recall at any of the management meetings whether Mr Dolan or Mr Brammer had an overt influence on trying to persuade people or trying to persuade the management meeting to target specific officers?

A: Very much so, well, they ran the place, they ran it like it was their influence, their direction, also, not just that, also Mr Bradley, he had a lot of input into it, so for instance, people like [suppressed], Nick Caldass [Nick Kaldas], especially, I know there was a lot of friction there because people would, some people would say, John Dolan has had fall-outs with these people, you know, and it just won't look good or there's a perception here or whatever. Now, they tried to address that with the people at the time, so whether or not it's a perception thing I don't know, but it wasn't that it was like a real shock, it's not, this isn't a shock. Maybe they should

have put other things better, more in place because of a perception of a conflict of interest. So, well, you're saying there may have been some conflict of interest.

Q162: So, well, you're saying there may have been some conflict of interest. Was it declared by Dolan or Brammer?

A: Definitely, it was well-known, it was well-known. Dolan, I mean, whether or not he was just playing a game I don't know because he's quite a manipulative man but he would say, I've had a fall-out with Caldass [Kaldas], I've had a fall-out, sorry, not with Caldass [Kaldas], with [suppressed]. He doesn't like me, etcetera, etcetera, so I don't really want to have too much on the ground to do with this person, but he still had influence in sort of the, you know, direction. Now, [suppressed], for instance, it doesn't really matter. Allegations were made against him. They were quite strong allegations and we pursued it as we did with other people. Nick Caldass [Nick Kaldas], he, he, it was, I didn't know about it but it was quite widely known in the unit that Caldass [Kaldas], and Dolan had had a fall-out, I didn't know anything about it. From other people I'd heard that it was a pretty bad fall-out. Dolan would negate that and say he didn't think it was a bad fall-out but nevertheless it would still be, you know, could be still a conflict.

Q163: Did you know what the fall-out was over?

A: I never really took much notice but it was something to do with when they were involved in the, I think the undercover unit, the New South Wales Police undercover unit, relating to a document that somebody was supposed to have authored and I think they had a physical, a verbal argument but I don't know. [FOOTNOTE: Extract from Submission 18, Mr Steven Barrett, Annexure G pp 41-42].

It is clear she is speaking about what was known at the time Kaldas was targeted.

However, Ms Burn's evidence to this committee is contradictory about whether she was aware of that in 2000:

Mr DAVID SHOEBRIDGE: You were under the direction of Mr Dolan, is that right?

Ms BURN: That is right.

Mr DAVID SHOEBRIDGE: You knew that Mr Dolan did not like Mr Kaldas? He did not keep that a secret.

Ms BURN: Post 2002 it became more widely known that Mr Dolan and Mr Kaldas did not like each other. At the time I did not know the extent of their dislike. [Emphasis added. Her answer presupposes/concedes she was aware of their dislike at least to some degree.]

Mr DAVID SHOEBRIDGE: You knew they did not like each other. That is clearly the case, is it not, Ms Burn? You knew that they did not like each other.

Ms BURN: I do not necessarily think in around 2000 that I had that view in 2000.

Mr DAVID SHOEBRIDGE: What view did you have?

Ms BURN: I do not know if I particularly had a view, but I do not know if I had that view particularly. [Retreating from her earlier answer that she was aware to a degree of the dislike of Kaldas by Dolan.] To the degree that you are talking about, I do not know the degree of their conflict and what happened about that.

[FOOTNOTE: Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 30 January 2015, pp 59-60].

Ms Burn gives no evidence of taking steps about this matter, on learning of that prior conflict between Dolan and Kaldas and the implications this may have for Mascot/Florida (ie that it may have tainted the operation). Ms Burn's later evidence was that she became aware of this animosity in late 2001.

Mr DAVID SHOEBRIDGE: Did Mr Dolan ever declare anything to you?

Ms BURN: I cannot remember specifically in relation to Mr Kaldas.

Mr DAVID SHOEBRIDGE: Did Mr Brammer ever declare anything to you?

Ms BURN: Yes, he did, at a later time.

Mr DAVID SHOEBRIDGE: What did he—sorry.

Ms BURN: Sorry, I am just trying to remember when. It was, I think, late 2001.

Mr DAVID SHOEBRIDGE: What was the effect of what Mr Brammer said to you in late 2001?

Ms BURN: Well, it was really he was setting out issues between Mr Dolan and Mr Kaldas that were— their history.

Mr DAVID SHOEBRIDGE: Do not be coy, Ms Burn; just say what it was.

Ms BURN: It was about their history.

Mr DAVID SHOEBRIDGE: You do not have to be concerned about setting out the detail of it. Feel free to put it on the record. What was it?

Ms BURN: I do not have a great recollection. It was a document I saw when I was being examined by the Ombudsman. I do not have that document, but I do recall when I looked at that document—but I do not have a great recollection—that he did set out that there was history between them. That is really all I can recall.

Mr DAVID SHOEBRIDGE: In 2001, Mr Brammer set out in a document the personal animosity or a version of the personal animosity between Mr Dolan and Mr Kaldas? Is that what you are saying?

Ms BURN: I would need to take that on notice about the exact date, but I believe it was late 2001 and it was about their history.

Mr DAVID SHOEBRIDGE: It was not a neutral history, was it; it was a history of conflict between them?

Ms BURN: There was conflict.

She also does not concede in her evidence to the committee the obvious impropriety of Dolan sanctioning surveillance of a person with whom he is in a relationship of conflict.

Ms Burn in her evidence has clearly tried to downplay the state of her knowledge about the Kaldas/Dolan conflict at the time Kaldas was targeted by Operation Mascot [FOOTNOTE: Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 10 February 2015, pp19-20.] Her evidence to the committee was contradictory, and it was in conflict with

her record of interview with Strike Force Emblems. The committee finds that Ms Burn was well aware of the conflict between Mr Kaldas and Mr Dolan at the time Operation Mascot determined to target Kaldas. There is no evidence of what steps, if any, were taken to address this conflict and ensure it did not taint the investigation.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Mr Khan moved: That the following new paragraph be inserted after paragraph 3.115:

'It is notable that no questions were asked of Ms Burn with regards to her suspicion or belief with any other persons named on the warrant including Mr Harding, Mr Barrett, Mr Mercer or Mr Morri'.

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraphs be inserted after paragraph 3.123:

'There was evidence before the committee was the admitted perjury of M5 in the obtaining of a warrant by Mascot. This perjury was detailed in a record of conversation between M5, Detective Superintendent Dolan and Mr Standen at covert premises on 23 August 2000. In that document M5 is recorded as saying:

He stated that time was running out near 4.00 p.m. when the local magistrate completed work and he was aware that the principle of swearing the false information was authorised''

The document notes that both Dolan and Standen informed M5 not to do this again. There is no evidence as to what if any substantive investigation occurred in relation to this serious crime. Ms Burn's evidence was the matter was reported to PIC. What is not in issue is that this admitted perjury by M5 during Mascot's operations did not stop him being relied upon in further affidavits. It appears that Mascot did not disclose their key witness's perjury in any later proceedings. It goes without saying that the fact of the perjury is a matter that very substantially impacts on the witness's credit.'

Resolved, on the motion of Mr Shoebridge: That paragraph 3.127 be amended by inserting at the end of the paragraph 'It has not been suggested that there was any personal animosity between Mr Kaldas and Ms Burn at the time these investigations were undertaken'.

Mr Khan moved: That the paragraph 3.130 be amended by omitting:

- a) 'the case study below discusses claims Mr Kaldas has made about the reason he was targeted during Operation Mascot and Ms Burns response to these claims.'
- b) the case study, entitled 'Case study – Was Deputy Commissioner Kaldas inappropriately targeted during Operation Mascot?'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.130 be amended at paragraph 2 of the case study by inserting the following footnote after 'the committee' on the third line: Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, Answers to Supplementary Questions, 9 February 2015, pp 2-3; Ms Burn, Evidence, 10 February 2015, p 9.

Resolved, on the motion of Mr Searle: That paragraph 3.130 be amended by inserting the following words at the end of paragraph 2 of the case study:

'The Emblems report also refers to this and in addition mentions that a number of those subject to this surveillance had had conflict with Dolan and/or Brammer'. [FOOTNOTE: NSW Police Force, *Strike Force Emblems*, 22 March 2004, pp 16-21.]

Mr Shoebridge moved: That the second paragraph in the case study be amended by inserting at the end: 'The evidence of Mr Kaldas and Mr Giorgiutt is that this allegation was raised and dismissed in the District Court proceedings when the offender was convicted of armed robbery.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative

Resolved, on the motion of Mr Searle: That the following words be inserted at the end of the third paragraph in the case study: 'The committee was persuaded by *in camera* evidence that it is inappropriate to contact Mr Dolan, even if he could be located'.

Resolved, on the motion of Mr Shoebridge: That the second last paragraph in the case study be amended by omitting: 'if there was any stain on his record' and inserting instead 'if there were any outstanding concerns about this character'.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted following the case study and before 3.131:

'The basis of Ms Burn's 'reasonable suspicion' of Kaldas is set out in her answers to supplementary questions, pages 2-3, and on page 9 of the 10 February 2015 transcript.

The Hon. ADAM SEARLE: Supplementary questions—answers to your supplementary questions, and this is the document that had been redacted. Pages 2 and 3 appear to me to set out the substance of what you say gave rise to the reasonable belief against Mr Kaldas. One of them appears to relate to the allegation of planting a firearm. Do you see that? It is at the top of page 2. That is one of the three matters, is it not?

Ms BURN: There are three matters I make reference to.

The Hon. ADAM SEARLE: One of the matters is the planting of a firearm?

Ms BURN: There is more than that. I am happy to read it all out if you would like, but it is more than that.

The Hon. ADAM SEARLE: And the alleged fabricated admissions in a notebook in connection with that?

Ms BURN: Yes, that is outlined; that is right.

The Hon. ADAM SEARLE: That is one allegation. We have received evidence that that matter was dealt with in a court proceeding; it was referred to the PIC and nothing further came of that matter. Is that your understanding of the situation?

Ms BURN: I do not know. I do not have any of that understanding whatsoever.

The Hon. ADAM SEARLE: But that is one of the three matters that you set out in your supplementary answers as giving rise to the reasonable belief.

Ms BURN: That is one matter, but there is a lot more to it, if you would like me to read it out.

The Hon. ADAM SEARLE: I think this document will be published. The second matter is something to do with alleged theft of money, but you do not recall any details. Is that correct?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: The third matter, I think it is on page 3, is the suspicion that Mr Kaldas was the source of a leak concerning M5 and whether or not he was conducting a covert operation. That is the third matter?

Ms BURN: It is about a leak involving M5, yes.

The Hon. ADAM SEARLE: So those are the three matters that you say gave rise to the reasonable belief?

Ms BURN: That is correct.

The Hon. ADAM SEARLE: And there is nothing else, as far as you can recall at this point in time?

Ms BURN: Not at this point in time.' [FOOTNOTE: Answers to questions on notice and supplementary questions, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 9 February 2015, pp 2-3; Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 10 February 2015, p 9.]

Resolved, on the motion of Mr Searle: that the following new paragraphs be inserted after the above insertion:

‘The firearms planting issue is dealt with in the evidence of Mr Kaldas and Mr Giorgiutti.

The second issue involving money is not specified, other than by Kaldas.

The third issue was simply that Mr Kaldas thought he was being set up by Mr Dolan and subject to surveillance, a matter on which he complained to the Crime Commission as set out in the affidavit in support of a TI warrant. Even if Kaldas told another police officer that he thought M5 was wired up and would record them if they went to the lunch, we do not see how this would constitute a criminal offence.

Mr Searle moved: That the following new paragraph be inserted after the above insertion:

‘Also, the committee finds it difficult to accept that Ms Burn has no recollection of a range of important matters in this inquiry.

Ms BURN: Yes, Mr Searle, as I said, there was an issue. There was an issue.

The Hon. ADAM SEARLE: You have told us that you could not remember who on the operations committee suggested that Mr Kaldas be targeted. You have said you have no independent recollection about M5 admitting perjury or the incident report, and you have also said that you no longer have any independent recollection of the debrief conducted by you and another officer of M5. Given the importance of M5 to the Mascot/Florida operation, and given the importance of the matters that the operation was undertaking, I suggest to you that it is not believable that you would not now have any recollection of at least those three matters?

Ms BURN: Well, I take absolute exception to that, absolutely, and could we just go through those once again?

The Hon. ADAM SEARLE: Sure ....

Ms BURN: I simply do not have a recollection one way or another. But as I have also given in evidence, Mr Kaldas was not central to this investigation. I do not necessarily think that that is unusual. M5 mentioned hundreds of police, many of them who were serving. Mr Kaldas was not central and I do not believe that you can then say to me that I am giving evidence that is not believable.

The Hon. ADAM SEARLE: I thought I had to put it to you as a matter of fairness, Ms Burn.

Ms BURN: Thank you.[FOOTNOTE: Evidence, Ms Catherine Burn APM, Deputy Commissioner, Specialist Operations, NSW Police Force, 10 February 2015, pp 20-22.]

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Searle: That paragraph 3.131 be amended by omitting 'The committee can understand the lingering concerns' and inserting instead 'The committee shares the concerns'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.132 be amended by omitting 'critical' before 'documentation' and inserting instead 'all the'.

Mr Khan moved: That the following paragraphs 3.133 and 3.134 be omitted:

'In Mr Kaldas' case, the committee acknowledges concerns that he was the target of such intense surveillance for a sustained period of time. While Ms Burn outlined the allegations against Mr Kaldas, it is difficult to understand how these matters can justify 80 warrants having been issued during the course of Operation Mascot. Indeed, if exculpatory evidence is required to be included in affidavits, one has to question why the documentation would not have included information showing that no evidence of wrongdoing was ever obtained from Mr Kaldas during his initial exchanges with M5.

Additionally, given the nature of two of the allegations against Mr Kaldas, and the fact that those issues arose many years before Operation Mascot started, it is difficult to accept that such matters would justify a prolonged covert investigation into his conduct. From all the evidence

put before us, the committee considers that Mr Kaldas was targeted inappropriately by Operation Mascot.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved on the motion of Mr Searle: That paragraph 3.133 be amended by:

- a) inserting 'based on the material the committee has' following 'allegations against Mr Kaldas'
- b) omitting 'can' before 'justify 80 warrants' and inserting instead 'could'
- c) omitting 'Indeed, if exculpatory evidence is required to be included in affidavits, one has to question why the documentation would not have included information showing that no evidence of wrongdoing was ever obtained from Mr Kaldas during his initial exchanges with M5.'

Resolved, on the motion of Mr Khan: That paragraph 3.135 be amended by omitting: 'so it is unable to reach a final conclusion as to the motives for certain individuals to be targeted'.

Mr Searle moved: That the following sentence be inserted after the first sentence of paragraph 3.135: 'In addition, the history of conflict between the two of them, outlined in Mr Kaldas' evidence, and corroborated in the evidence of Ms Burn [FOOTNOTE: Evidence, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, 30 January 2015, pp 59-60.] and also in her records of interview with Task Force Emblems [FOOTNOTE: Submission 18, Mr Steven Barrett, Annexure E, p 10 and Annexure F, p 33] is strongly suggestive of an improper motive in targeting Mr Kaldas at least insofar as Mr Dolan had input into the decision.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That paragraph 3.135 be amended by inserting the following new sentence at the end: 'However, the committee has also not had access to the extensive documentation available to the ombudsman including, amongst other things the 210 affidavits supporting the listening device warrants and telephone intercept warrants.'

Mr Shoebridge moved: That the following new paragraphs and findings be inserted after paragraph 3.135:

'On the material before this committee it is difficult to accept that there was legitimate basis to expose Mr Kaldas to one listening device warrant, let alone the 80 warrants that he was subjected to. The level of intrusion on his professional, social and family life was extreme. This level of targeting cannot be properly explained by the insubstantial and uncorroborated allegations made against him during the Mascot inquiry. Mr Kaldas is deserving of an apology.'

#### **Finding x**

That on the evidence before this inquiry there is a compelling case to make a specific apology to Mr Kaldas, which we now do and we call on the NSW government to do the same.

Even taken at their highest the allegations against Mr Barrett are that, as an experienced investigative crime reporter, he had access to a video tape(s) of police activities and he was conversant with both police and criminals. This is the very job of an investigative reporter. The committee believes strongly that independent journalism is essential to maintain our democracy. Covert surveillance of journalists for simply doing their job is a fundamental attack on this necessary independence.

**Finding x**

That on the evidence before this inquiry there is a compelling case to make a specific apology to Mr Barrett, which we now do and we call on the NSW government to do the same.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 3.135:

'Ms Burn does not come to these matters cold after more than a decade. She was questioned extensively on them by the Ombudsman in 2014. Furthermore, as her record of interview with Strike Force Emblems in 2002 and 2003 shows, she well knew the significance of Mr Kaldas in the investigation. Her explanation that she did not recall details pertaining to him because he *'was not central'* to the investigation does not sit comfortably with her earlier interviews with Strike Force Emblems.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Mr Khan moved: That the following paragraph 3.143 be omitted: 'Mr Barrett questioned the effectiveness of the system when he stated "The Government needs to know why judges of the Supreme Court of New South Wales have been duped'.

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 3.146:

Mr Giorgiutti further said:

CHAIR: You had the opportunity to go through and collate the documents, as you did.

Mr GIORGIUTTI: That is right, which is what I started and which is what the Ombudsman is doing. But what could have happened over the years is that back in the day when you had people like Gordon Lever—who again, I knew more of him than knew him—he might have been doing one application a week and he was doing the whole lot. He was getting the original source material and had evidence of that. It is not like that nowadays. The NSW Crime Commission has four to six lawyers, full time, churning out warrant applications, different types of warrants. You heard Mr Levine say they are inundated—it comes like floods. In that environment it is not like it might have been when the legislation passed in 1985, where you were doing one a week and one practitioner could turn his mind to every source document and make sure the I's were dotted and the T's were crossed. That is what I think the committee should look at, to see the reality, that what Mascot is highlighting and all these allegations highlight is that there is some bigger problem out there.' [FOOTNOTE: Evidence, Mr John Giorgiutti, former solicitor, Crime Commission, 4 February 2015, p 19.]

Mr Khan moved: That the flowing paragraph 3.150 be omitted: 'However, it is troubled by comments from Mr Levine about his 'idiosyncratic' methods of checking documentation, in addition to evidence the committee received that indicates such warrants are rarely refused. These matters have done nothing to reassure the committee that applications are being scrutinised to the extent necessary.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

#### Chapter 4

Resolved, on the motion of Mr Searle: That paragraph 4.5 be amended by inserting at the end: 'The sources were working in Special Crime and Internal Affairs (SCIA). Mr McFadden was 'well satisfied with the credibility of the sources and with their motivations'. [FOOTNOTE: In camera evidence, Mr Brett McFadden, Superintendent, NSW Police Force, 3 February 2015, p 12. Evidence published by resolution of the committee.] Further, they were 'engaged in operations where the issues were live.' [FOOTNOTE: In camera evidence, Mr Brett McFadden, Superintendent, NSW Police Force, 3 February 2015, p 13. Evidence published by resolution of the committee] The inability to have their concerns addressed within their command led to this approach to Mr McFadden.'

Mr Shoebridge left the meeting.

Resolved, on the motion of Mr Khan: That the following paragraph 4.6 be omitted: 'Mr Scipione advised Mr McFadden to put his concerns in writing, which he did in a detailed email to Mr Scipione that evening, and he arranged for Mr McFadden to discuss the allegations with the then Deputy Commissioner, Ken Moroney.' [FOOTNOTE: Evidence, Mr Andrew Scipione, Police Commissioner, NSW Police Force, 4 February 2015, pp 40-41], and the following new paragraph be inserted instead:

'Mr Scipione said:

It is always good to put these things in context, so if I might take you back. I indicated that these matters had been raised with me. The then Inspector McFadden came to me on 28th November and brought to me a series of concerns that he had regarding some supposed or alleged activities within the Special Crime Unit that he had been made aware of by members of that unit. I dealt with those seriously. I thought—and still believe to this day—that those matters that were raised with me were very, very serious. I immediately caused a range of things to happen, as I said. First and

foremost, I spoke with Brett. He took me through the allegations. I then thought so much of it that I contacted, by phone from my office, the then Deputy Commissioner and informed him of what I had just been told.

The Hon. ADAM SEARLE: That was Mr Moroney?

Mr SCIPIONE: Mr Moroney. I made arrangements for Brett, and I think a support person to go down with him, to let him talk to the Deputy Commissioner himself face-to-face, so that he could get a sense of just how serious this was. Brett returned, indicated he had been spoken to and been given a very generous amount of time to talk through the issues. Upon returning I said, "Brett, I now need you to document these because to formalise these complaints I would like to have a record". He did that that afternoon and in formalising them, he sent to me that day an email—it was later that night—an email indicating just exactly what it was that he had formally advised me of earlier in the day. I immediately turned that around on coming to work on 30 November and that was made available to the Deputy Commissioner.

I indicated to the Deputy Commissioner at the time that I would not be launching an investigation within Special Crime and Internal Affairs because of the Operation Dresden protocols. It would have been inappropriate to have an Internal Affairs investigator conducting an investigation into an Internal Affairs officer over some of the most serious allegations that you could have made against you as an officer in Internal Affairs. For me to have used my resources to do that would have been wrong and I was not going to allow it to happen. I can assure you that Ken Moroney took it seriously. I understand that he registered it, allocated it to a command outside Internal Affairs and brought in Chief Superintendent Brian Reith at the time. That is my recollection. Again, from that point forward I was not consulted or engaged. We basically handed everything over.' [FOOTNOTE: Evidence, Mr Andrew Scipione, Police Commissioner, NSW Police Force, 4 February 2015, pp 40-41]

Mr Shoebridge re-joined the meeting.

Resolved, on the motion of Mr Khan: That paragraph 4.10 be amended by omitting: 'Mr Scipione assumed that Mr McFadden's November 2001 complaints were eventually investigated as part of Emblems, although he was unable to explain the two year gap between his referral of the matter to Mr Moroney and the commencement of Strike Force Emblems. FOOTNOTE: Evidence, Mr Andrew Scipione, Police Commissioner, NSW Police Force, 4 February 2015, p 42.], and inserting instead: 'Mr Scipione assumed Mr McFadden's November 2001 complaints were fully investigated.

'When asked about Mr McFadden's complaint, Mr Scipione said:

Mr DAVID SHOEBRIDGE: So how do you know it was fully investigated then?

Mr SCIPIONE: Only from the notion that, when I was told—I assume, because I excluded myself from this investigation. I assumed that it would have been rolled up and become part of what was ultimately known as Emblems.

Mr DAVID SHOEBRIDGE: So you are speculating?

Mr SCIPIONE: No, I have since read Emblems, remember? I got a copy of Emblems sent to me, certainly by Mr Levine, and I had read it earlier in 2012. So I was not speculating because a number of those matters that I understand were the subject of those complaints by Mr McFadden were caught up, in fact, in matters that were looked at as part of the Emblems investigation.

Mr DAVID SHOEBRIDGE: So when you say "fully investigated", you say "fully investigated by Strike Force Emblems"?

Mr SCIPIONE: Well, Strike Force Emblems would have done as much as they possibly could, bearing in mind they were under terrible constraints with those restrictions that were placed on them regarding secrecy provisions of the Crime Commission. But my understanding was that Mr Reith had conducted a full and thorough investigation.

Mr DAVID SHOEBRIDGE: You say "full and thorough"—how do you know? You know he was being tasked with an investigation but how do you manage to say to us it was fully investigated and full and thorough? That is purely speculation on your behalf.

Mr SCIPIONE: What I did say, in response to three questions ago was, it might be appropriate that you ask Mr Moroney.

Mr DAVID SHOEBRIDGE: But you told us, in your evidence, that it had been fully investigated.

Mr SCIPIONE: Well that is my understanding. I know the calibre of Mr Reith; I know how committed Ken Moroney was to resolving these matters; and I know that certainly it was something that he took very seriously.

Mr DAVID SHOEBRIDGE: So when you said to Mr Moroney in that regard, "I will have the matter handled personally by the manager SASC and provide you with advice accordingly", in your email to Mr Moroney on 30 November, what advice did you provide him with accordingly?

Mr SCIPIONE: I do not know what document you are referring to and I am happy to have a look at any document.

The Hon. ADAM SEARLE: Getting back to your evidence, when you say "fully investigated", that is an assumption you make based on your knowledge of Mr Reith?

Mr SCIPIONE: Yes and wrongly of me to assume that.

The Hon. ADAM SEARLE: There was a two-year gap between your referral of those matters to Mr Moroney that had been raised with you by Mr McFadden and Strike Force Emblems being asked to look into it. Do you know why there was that gap before the matter was looked at more thoroughly?

Mr SCIPIONE: Sir, I have no idea. I was not consulted and rightly, I was excluded, as I indicated in my earlier evidence.

The Hon. ADAM SEARLE: Even to this day you do not actually know why there was that delay?

Mr SCIPIONE: No.' [FOOTNOTE: Evidence, Mr Andrew Scipione, Police Commissioner, NSW Police Force, 4 February 2015, pp 41-42]

Mr Khan moved: That paragraph 4.13 be amended by omitting: "The committee regrets that more than a decade later he is one of dozens of dedicated current and former officers who continue to be entangled in the unresolved Emblems affair."

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones Mr Searle, Ms Voltz.

Noes: Mr Borsak.

Question resolved in the affirmative.

Resolved, on the motion of Mr Searle: That paragraph 4.30 be amended by inserting at the end: 'More than perplexing, the views attributed to Mr Moroney in the Bradley briefing note are inconsistent with Mr Moroney's evidence on oath to this committee about his views of the Emblems investigation.' [FOOTNOTE: Evidence, Mr Ken Moroney, AO APM, Former Commissioner of Police, NSW Police Force, 4 February 2015, p 70]

Resolved, on the motion of Mr Khan: That the paragraph 4.32 be amended by omitting: 'It also sounds as if the strike force did not get off to a good start at least in the eyes of the Crime Commissioner, telling NSW Police Force colleagues at a meeting in September 2003 that' and inserting instead: 'In a report to the NSW Crime Commission Committee Mr Bradley stated, in respect of Strike Force Emblems'.

Resolved, on the motion of Mr Shoebridge: That the paragraph 4.33 be amended by omitting 'wonders' and inserting instead 'speculated'.

Resolved, on the motion of Mr Searle: That paragraph 4.39 be amended by inserting at the end: 'It was the evidence of Mr Galletta that no concerns about his investigation or the Emblems report, its quality or integrity, were ever raised with him, from with the NSW Police Force or any other source'.

Resolved, on the motion of Mr Khan: That paragraph 4.43 be amended by inserting at the end: 'He gave the following evidence; ' On commencing as the Commissioner of Police in September 2007, I was of the belief that the matter had been finalised. I had been advised in 2005 by Commissioner Moroney that the matter had been finalised and that no further action could be taken. I am aware that on 15 June 2011 the Ministry for Police and Emergency Services requested advice on behalf of the Minister's office regarding the outcomes of the strike force and what actions had been taken in response to its recommendations. As per the usual protocols of my office, the Office of the Commissioner provided that advice on 16 June 2011, and then further advice on 20 June 2011. I was out of the country on business at that time.' [FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, p 38.]

Followed by:

Mr DAVID SHOEBRIDGE: So when did you eventually read the Strike Force Emblems report?

Mr SCIPIONE: Having some understanding that you may ask that question I have turned my mind to it. I am thinking that it was probably around June of that year but I have no formal record. It was as a result of what was happening in and around that time that it became apparent that I needed to look at it, bearing in mind that, as I have indicated in my evidence, I was told by the former commissioner that this matter, Strike Force Emblems, had gone as far as it could.

Mr DAVID SHOEBRIDGE: What did that mean—that it had gone as far as it could?

Mr SCIPIONE: That it had been investigated—that the Strike Force Emblems staff, under very difficult circumstances, had investigated all of the matters that were before them. The problem seemed to be getting access to material from another agency. In seeking that material, it was not provided. I know that the Strike Force Emblems investigators sought to get that material on a number of occasions through a number of different means. Commissioner Moroney was advised accordingly, and from my

memory of what I have read he tried on a number of occasions in a number of different ways to get this resolved as well.

Mr DAVID SHOEBRIDGE: Meaning to get the information from the Crime Commission of NSW so as you could find answers?

Mr SCIPIONE: Yes, so that he could get access to the information for those investigators because he believed clearly—I should let him talk for himself. So in attempting to do that I was advised, and I know, that he sought advice from, if you like, the head of our police legal services branch. The matters had been referred to the Director of Public Prosecutions for the consideration of any prosecution. He had engaged people like Ian Temby to get involved in the negotiation for the information that was required. He took advice from people like Mr Bartley, who was a practising barrister at the time and I understand is now a magistrate, with regards to getting access to that very information.

Mr DAVID SHOEBRIDGE: And he told you all of this in 2007?

Mr SCIPIONE: No, I am aware of this now because I have read the material. It was all part of what was in the report that was provided by Mr Levine to me in 2012.

Followed by

The Hon. ADAM SEARLE: In terms of your knowledge, in 2005 when you say Commissioner Moroney told you that the matter had gone as far as it could you were aware then that it had not been resolved. You were aware that the matter had not been fully and thoroughly investigated and the truth gotten to as to whether the surveillance of officers and others was legal or proper or not. That fundamental issue had not resolved.

Mr SCIPIONE: That is true.

The Hon. ADAM SEARLE: You knew that in 2005?

Mr SCIPIONE: I think I may have been advised, to use the terminology—again I am really testing my memory here—it was something along the lines of it was an incomplete investigation.

Resolved, on the motion of Mr Shoebridge: That reference be made to two ministerial briefings from June 2011.

Mr Khan moved: That paragraph 4.44 be amended by omitting 'But by 2012 the matter became a priority after Operation Mascot/Florida documents started leaking to the media' and inserting instead 'Commissioner Scipione gave further evidence however.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 4.47:

'With respect, this is not the full story. The view of the then Minister, Mr Costa, was clearly influenced by the report of the then PIC Inspector, Mervyn Finlay QC, whose report in essence gave a clean bill

of health to the listening device warrants. The Finlay report was before the Emblems report. Mr Scipione conceded that the advent of the Emblems investigation and report 'placed a very different complexion on these matters', yet in the wake of Emblems there were no proposals from Police to properly and thoroughly get to the heart of the matter'. [FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, p 50.]

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 4.47:

'The solution to the legislative impediment of the Crime Commission secrecy provisions that had blocked any effective investigation was suggested in the correspondence from Mr Finlay to Mr Moroney (discussed at paragraph x). Mr Moroney gives no clear evidence why he made no recommendation for legislative change. Mr Barbour later made similar suggestions.'

Mr Searle moved: That the following new paragraph be inserted after paragraph 4.50:

'Mr Scipione's evidence why he did not make any recommendations for legislative change to facilitate an investigation of these matters was: he believed from his conversations with Mr Moroney that the matter had "been finalised" (p51), he thought the Minister of the day was aware of the existing legislative arrangements and that it was a matter for government to change legislation (FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, p 51.). Further, he assumed 'the Crime Commission may have briefed him [the Minister] because that was in the same portfolio'. (FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, p 56.). He also expressed the view that he did not see proposing legislative change of this kind as his role. (FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, p 56.)) Given the frequency and number of legislative changes proposed by the Police over the years, this is hard to accept.'

Mr Blair moved: That the motion of Mr Searle be amended by omitting 'Given the frequency and number of legislative changes proposed by the Police over the years, this is hard to accept.)

Amendment of Mr Blair put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz

Question resolved in the negative.

Original question of Mr Searle put and passed.

Mr Searle moved: That the following new paragraph be inserted after paragraph 4.50:

'Given the controversy involved allegations of serious wrongdoing by police and the possible improper or illegal targeting of persons for surveillance, including many police officers, and that these matters had already reflected poorly on the police force force, it is hard to credit that the Police Commissioner did not see it as his role to find and propose a solution to this long running issue. ('...I did not believe it was my job to be telling government about legislation that they should be enacting to give the Ombudsman some special powers to do what the Ombudsman may have needed to do. That was not my job, I did not see.' [FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, pp 56 – 57].')

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 4.51:

'It is clear from his evidence that Mr Scipione thought the issue had been dealt with so far as it could be, given the legal constraints, and had gone away. However, once he finally read the Emblems report in 2012 - after it had once again become an issue of public controversy - 'I realised ... that there more that needed to be done, but that could only be done if there was a change to the legislation and the authority was given to the Ombudsman allowing him to get those records'. [FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015 p 52.] The committee is of the view that if the Commissioner had availed himself of the report contents earlier, he would have appreciated the need for action at an earlier time as well. It is regrettable he did not do so.'

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Mr Khan moved: That the following paragraphs 4.55 to 4.61 be omitted:

***'Committee comment***

The Emblems report was signed off by the police executive and the investigators were praised for their work. Mr Galletta had every reason to believe that the weight of the hierarchy was behind his efforts to address the serious concerns about the Special Crime Unit uncovered by the strike force. As Mr Moroney told the committee, he had no reason to doubt the competence of the investigators and their commander: 'they took the report as far as they could'.

But the Emblems report and its recommendations would always be susceptible to criticism so long as the Crime Commissioner refused to provide crucial documents to complete the investigation. The failure of the Crime Commissioner to co-operate with the strike force, partly due perhaps to embarrassment over its own role in the complaints being examined, ensured a medium-sized problem for the NSW Police Force expanded exponentially, leaving the police hierarchy seeking to address the original injustice with an incomplete Emblems report as their weapon.

Mr Bradley's decision in 2003 not to release documents to the Emblems team has had far-reaching consequences. While Mr Bradley told us that the leaking of documents was one of his motivations in not co-operating with Emblems, it is ironic that many of these documents eventually found their way to the media in a steady stream of leaks, feeding speculation and misunderstanding, and undermining confidence in our crime fighting agencies. As a result of Mr Bradley's lack of cooperation, this saga has been drawn out for an inordinate amount of time at huge financial and emotional cost.

Mr Levine's review of the Emblems report was a waste of time and money. Everyone knew that there was a significant gap in the evidence available to Strike Force Emblems and the matter could never be fully resolved by simply releasing the report. Mr Levine's harsh assessment of Emblems only served to cast aspersions on the Emblems team and to further delay justice for the complainants.

While the failure to resolve the allegations that led to the establishment of Strike Force Emblems continues to resound, the disparagement of the report and investigation has had a profound impact on the investigators. These officers did their utmost to ensure the serious issues that were revealed by their strike force were documented. They deserve thanks for their persistence and commitment, not the dismissive attitude expressed by some people in positions of responsibility.

The failure of the police executive and successive police ministers to resolve the serious allegations identified by Strike Force Emblems continues to reverberate within the NSW Police Force and beyond. In a somewhat prescient indication of what lay ahead, a disgruntled group of complainants who had been told that the Emblems investigation could go no farther because of the Crime Commissioner's stance, advised they would use 'alternate' means to pursue their complaints 'which might likely include media, legal avenue and Parliament.

This is precisely why we are here today, examining a matter 'from the last decade of the last century', which should have been taken out of the too hard basket and dealt with by the leadership a long time ago.'

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.54 be amended by:

- a) Inserting 'or more' after 'a duty judge signing off on one'
- b) Inserting at the end of the paragraph 'In coming to this conclusion, Mr Levine was influenced by a Court of Criminal Appeal case where objection was taken to a judge sitting on the bench because the judge had some months or years before issued a listening device warrant in relation to the appellant's case. To his recollection, the court declined to have the judge disqualify himself.' [FOOTNOTE: Evidence, Mr David Levine, Inspector PIC, 30 January 2015, p 43.]

Resolved, on the motion of Mr Searle: That paragraph 4.56 be amended by omitting 'leaving the police hierarchy seeking to address the original injustice with an incomplete Emblems report as their weapon' and inserting instead 'leaving the police hierarchy with an incomplete Emblems report'.

Moved by Mr Searle: That paragraph 4.58 be amended by inserting 'and we think unwarranted' before 'assessment of Emblems'.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Moved by Mr Shoebridge: That paragraph 4.59 be amended by inserting at the end 'Indeed, their conclusions have been given further force by the disclosure in 2012 of the affidavit supporting the Bell warrant'.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Mr Khan moved: That the following findings be omitted following paragraph 4.61:

**'Finding x**

That the failure of respective police commissioners and ministers to demonstrate leadership in overcoming the barriers confronted by Strike Force Emblems, has compounded the grievances of the complainants

**Finding x**

That the committee commends the members of Strike Force Emblems for conducting a thorough and professional investigation of serious allegations regarding police misconduct, including their pursuit of material necessary to complete their investigation.'

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 4.60 be amended by:

- a) inserting '(until Minister Gallacher)' after 'successive police ministers'
- b) inserting 'The evidence to this committee does not inform us about what if any knowledge successive police ministers had regarding the detail of these matters. It is clear that from 2007 until 2011, Mr Scipione provided no information to his Ministers on the matter' after 'NSW Police Force and beyond'.

Resolved on the motion of Mr Searle: That Recommendation 6 be amended by omitting 'and ministers'.

## Chapter 5

Mr Khan moved: That paragraph 5.33 be amended by omitting 'with very little done to address their complaints. Many have had their privacy unjustifiably intruded, without apology, explanation or even acknowledgment. Others have endured criticism of their professional abilities' after 'a decade'.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 5.33 be amended by omitting 'Many have had their privacy unjustifiably intruded, without apology, explanation or even acknowledgment' before 'Others have endured criticism of their professional abilities'.

Mr Blair moved: That the following paragraphs 5.35 to 5.37 and Recommendation x be omitted:

'While the fallout from these events is unmistakable, one has to wonder why the NSW Police Executive has not done more to resolve these issues.

The committee is disappointed that several Premiers and Commissioners of Police have not shown leadership over the past 12 years to address these matters. The individuals involved deserve finality and many are entitled to an apology, for the experience they have endured and for the failure of government to resolve these matters sooner.

The committee therefore recommends that the Premier of New South Wales and Commissioner of Police publicly apologise to the individuals affected by issues associated with Operations Mascot and Florida, particularly those inappropriately named on listening device and telephone intercept warrants issued by Special Crimes and Internal Affairs.

### Recommendation x

That the Premier of New South Wales and Commissioner of Police publicly apologise to the individuals affected by issues associated with Operations Mascot and Florida, particularly those inappropriately named on listening device and telephone intercept warrants issued by Special Crimes and Internal Affairs.'

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 5.36 be amended by omitting 'several Premiers and' before 'Commissioners of Police'.

Resolved, on the motion of Ms Voltz: That paragraph 5.37 and recommendation x be amended by omitting 'That the Premier of New South Wales and Commissioner of Police publicly apologise to the individuals affected by issues associated with Operations Mascot and Florida, particularly those inappropriately named on listening device and telephone intercept warrants issued by Special Crimes and Internal Affairs' and inserting instead 'That the Premier of New South Wales and Commissioner of Police publicly apologise to any person found by the Ombudsman to have been inappropriately named on listening device and telephone intercept warrants issued by Special Crimes and Internal Affairs'.

## Chapter 6

Resolved, on the motion of Mr Khan: That paragraph 6.4 be amended by omitting 'would' and inserting instead 'could'.

Resolved, on the motion of Mr Shoebridge: That paragraph 6.6 be amended by omitting 'Thirdly, on 13 September 2012, eight days before the formation of Strike Force Jooriland, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force,' and insert instead 'Thirdly, in September 2012, before the formation of Strike Force Jooriland, a series of complaints were made to the NSW Police Force, including by Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, who'.

Resolved, on the motion of Mr Shoebridge: That paragraph 6.6 be amended by inserting at the end: 'In early October, the matters that were the subject of Strike Force Jooriland were taken over by the Ombudsman as part of Operation Prospect.'

Mr Khan moved: That the following paragraph be inserted after paragraph 6.7:

'The Ombudsman in his letter dated 28 January 2015 explained the genesis of Operation Prospect as follows:

- A broad referral from the Inspector of the PIC on 11 October 2012, which included matters referred to him in May 2012 by the then Minister for Police in relation to Strike Force Emblems (which was established in 2003 to investigate matters associated with the Mascot references) and "at least" three other related police operations: Operation Florida, and Strike Forces Sibutu and Tumen.
- Matters which, as at October 2012, were under investigation by NSW Police Force Strike Force Jooriland, including "all current complaints about the conduct of officers of the NSW Police Force in relation to the Operations Mascot, Florida and Emblems and associated matters" (which Operation Prospect took over pursuant to s 156(1) of the *Police Act 1990* because it was related to the same or overlapping subject matters).
- A large number of complaints made under s 12 of the Ombudsman Act, Part 8A of the Police Act, and the Public *Interest Disclosures Act 1994*, including in response to a public call for information by the Ombudsman.

The referral from the PIC Inspector and Strike Force Jooriland included complaints and allegations both about the conduct of investigations under Mascot and Mascot II, and the improper dissemination of confidential information from the computer systems and/or physical files of the NSWCC, the NSWPF and the PIC. Once established Operation Prospect received complaints within both of these categories.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 6.7 be amended by inserting 'paragraphs X to X in' after 'As discussed'.

Resolved, on the motion of Mr Khan: That following paragraph be inserted after paragraph 6.13:

'In evidence before the committee, the Ombudsman observed that '... on the basis of our analysis thus far we estimate that we have approximately 140,000 documents and those documents comprise well in excess of 1 million pages of information'. [FOOTNOTE: Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 14.]

Mr Khan moved: That the following paragraph 6.30 be omitted:

'The Ombudsman has not made it clear to his inquiry participants when or if they are required to seek a variation to a non-disclosure order for the purposes of obtaining counselling or medical treatment. The extract from the summons letter provided above is proof that this matter is ambiguous. An individual may make use of the confidential counselling service offered by the Ombudsman, but what are they allowed to actually say during that session? Can an individual speak freely, or must they be granted an amendment to a non-disclosure direction before they reveal that they have even been called before the Ombudsman?'

Question put and negated.

Resolved, on the motion of Mr Shoebridge: That:

- a) the following recommendation be omitted: 'That the NSW Ombudsman include in any non-disclosure direction for his inquiry into Operation Prospect and any future inquiry, an automatic exception for publication to a medical practitioner, psychologist, or counsellor for the purposes of medical treatment.'
- b) the following recommendation be inserted instead:

**'Recommendation x**

That the NSW Government amend statutory secrecy provisions in 19A of the *Ombudsman Act 1974*, and similar provisions in the *Crime Commission Act 2012*, the *Police Integrity Commission Act 1996* and the *Independent Commission Against Corruption Act 1988*, to provide for an automatic exemption to non-disclosure directions for publication to a medical practitioner, psychologist, or counsellor for the purposes of medical treatment.'

Mr Shoebridge left the meeting.

Mr Khan moved: That paragraph 6.49 be amended by omitting 'Justice delayed is justice denied. This is compounded when an inquiry is held in secret, with no meaningful reporting of progress. When Operation Prospect was first established the Chair of this committee was assured by the government that a report would be available within six months'.

Mr Searle moved: That the motion of Mr Khan be amended by omitting the deletion of: 'When Operation Prospect was first established the Chair of this committee was assured by the government that a report would be available within six months'.

Amendment of Mr Searle put:

The committee divided.

Ayes: Mr Borsak, Mr Searle, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Original motion of Mr Khan, as amended, put and passed.

Mr Khan moved: That the following paragraph 6.50 be omitted:

‘Nevertheless, the secrecy provisions under which the Ombudsman is working meant that it is essential that proper communication occurs. A brief appearance before a joint oversight committee does not address the serious concerns that have arisen due to the delays. Thankfully this inquiry has provided an opportunity for the Ombudsman to explain in detail the extensive nature of the work undertaken. To that extent this inquiry has strengthened confidence in the Ombudsman's work, despite the significant criticisms detailed below. However if the Ombudsman had produced an interim report, even only consisting of his evidence to this inquiry on the process of what has been undertaken, there would have been considerably less concern about the length of time taken to report.’

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Ms Voltz.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Searle moved: That the following new paragraphs be inserted after paragraph 6.56:

‘Mr Barbour himself stated that ‘... public scrutiny in relation to these issues definitely assisted in their proper inquiry being undertaken but what I do not agree with is the fact that there was an exchange of confidential and highly sensitive information amongst so many people for no reason’. [FOOTNOTE: *In camera* evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 4.]

He also expressed the view that some of the disclosure of documents was ‘circulated for alternative reasons and purposes’ other than bringing about a resolution of these long-running issues. How and why the Ombudsman has drawn these conclusions will, we assume, be outlined in his report. However, the committee does not believe that this should be the present focus of his inquiry, as we discuss later in this chapter. [FOOTNOTE: *In camera* evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 5.]’

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Shoebridge returned to the meeting.

Resolved, on the motion of Mr Khan: That the following paragraphs be inserted after paragraph 6.63:

‘The committee received correspondence from Mr Kaldas’s solicitor on 2 February 2015, following his appearance before the committee on 30 January 2015. In that letter it was observed that:

What occurred during the examination [by the Ombudsman] had the effect, on our instructions, of Deputy Commissioner Kaldas believing he had been ‘ambushed’ and him believing that Operation Prospect was miscarrying in the sense that it would not identify and expose the wrongdoing.

These tactics and this line of inquiry had the effect that Deputy Commissioner Kaldas found it impossible to cope with the examination of the Ombudsman – particularly in the afternoon and early evening. Deputy Commissioner Kaldas had given assurances to [name withheld] that he would not inform anyone in relation to documents he received from the NSW Crime Commission and initially in his examination before the Ombudsman he gave a partial, incomplete and incorrect account. By the end of the day, this information was provided to the Ombudsman but in the context of a

sustained attack on the credit of Deputy Commissioner Kaldas.' [FOOTNOTE: Correspondence, William Roberts Lawyers on behalf of Mr Nick Kaldas to the Chair, 2 February 2015, pp 2-3.]

Mr Khan moved: That the following paragraph be inserted after paragraph 6.63:

'The committee acknowledges that the evidence of Mr Kaldas with respect to the progress of the Ombudsman's inquiry may be flavoured by his perception that he will be criticised in the final report by the Ombudsman for giving false and misleading evidence.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Khan moved: That the following paragraphs be inserted after paragraph 6.63:

**'Ombudsman's response**

As noted above, Mr Kaldas asserted that the questioning by the Ombudsman was 'inconsistent with the public interest disclosure legislation and the protection it affords'. [FOOTNOTE: Evidence, Mr Nick Kaldas APM, Deputy Commissioner, Field Operations, NSW Police Force, 30 January 2015, p 4.]

The Ombudsman specifically addressed this issue during his opening address to the committee when he gave evidence. He said that

'[a] claim by a person that they are a whistleblower requires careful consideration against the relevant legislation. Internecine struggles within police forces are not new and selective release of information to selected journalists is a technique sometimes deployed in such struggles. Persons who are genuine whistle blowers have nothing to fear from inquiries into such matters because they have the protections provided by this parliament however this parliament has required that some kinds of information not be disclosed and had provided penalties for those who breach that requirement. My task is to apply the law as it has been set down by the parliament, not value judgements. To suggest that my inquiry has focused on targeting whistle blowers is quite simply false'. [FOOTNOTE: Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 4.]'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Borsak.

Question resolved in the affirmative.

Mr Shoebridge moved: That the following paragraph be inserted into the committee comment at paragraph 6.70:

'The observations by the Ombudsman regarding whistleblowers will no doubt cause significant concern to potential whistleblowers across New South Wales who may believe will be acting in the public interest to uncover wrongdoing, but are not considered by the Ombudsman to be 'genuine'.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the following paragraph be inserted after paragraph 6.68:

‘The Ombudsman gave some insight into the extent of the documents which have apparently been unlawfully or improperly disseminated, by noting that ‘inquiries to date indicate that over 20,000 pages of confidential hard copy and digital material has been released into the public domain. This is a conservative estimate as it is likely that documents are in the possession of individuals who have not come forward to Operation prospect’. [FOOTNOTE: Correspondence from Mr Bruce Barbour, NSW Ombudsman, to Chair, 28 January 2015, Statement, p 24.]

Resolved, on the motion of Mr Searle: That directly following the above insertion after paragraph 6.68, the following sentence be inserted: ‘The committee has no way of knowing how the Ombudsman has calculated this estimate, or whether the estimate includes multiple copies of the same document’.

Mr Shoebridge moved: That directly following the above insertion after paragraph 6.68, the following sentence be inserted: ‘We note that the substance of some documents have been published in media reports, but the documents themselves are not readily available’.

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Blair, Mr Borsak, Mr Khan, Mrs Maclaren-Jones Mr Searle, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That directly following the above insertion after paragraph 6.68, the following sentence be inserted: ‘For a full list of the leaked documents see Appendix X’.

Resolved, on the motion of Mr Searle: That the following be omitted from paragraph 6.68:

‘A claim by a person who releases information that they are a whistleblower requires careful consideration against the relevant legislation. Internecine struggles within police forces are not new and selective release of information to selected journalists is a technique sometimes deployed in such struggles.’

Mr Khan moved: That the following paragraphs be inserted after paragraph 6.71:

‘As previously noted in this report the Ombudsman’s letter to Mr Scipione dated 10 October 2012 was tabled before General Purpose Standing Committee No. 4 during a budget estimates hearing on 11 October 2012.

Some members of this committee were present on the committee on that date.

The letter from the Ombudsman set out the extensive terms of inquiry, including as they related to the leaking of documents.’

Mr Searle moved: That the motion of Mr Khan be amended by omitting the following paragraph:

‘The letter from the Ombudsman set out the extensive terms of inquiry, including as they related to the leaking of documents.

Amendment of Mr Searle put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Original motion of Mr Khan, as amended, put and passed.

Mr Khan moved: That the following paragraphs be inserted after paragraph 6.72:

‘The committee concludes neither the Ombudsman nor members of parliament perceived the complexity of the inquiry to be undertaken nor the vast volume of documents (said to be over 1 million pages) that would form part of his inquiry.

Whilst suggestions may now be made that it may have been better to divide the inquiry into discrete sections, such suggestions are made entirely with the benefit of 20/20 hindsight.’

Mr Searle moved: That the motion of Mr Khan be amended by omitting the following paragraph:

‘Whilst suggestions may now be made that it may have been better to divide the inquiry into discrete sections, such suggestions are made entirely with the benefit of 20/20 hindsight.’

Amendment of Mr Searle put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Original motion of Mr Khan, as amended, put and passed.

Ms Voltz left the meeting.

Mr Khan moved: That directly following the above insertion after paragraph 6.72 the following paragraphs be inserted:

‘The committee notes that the Ombudsman is an independent statutory officer in the midst of an inquiry that has cost many millions of dollars.

It is therefore not appropriate for this committee to seek to undermine or interfere with the Ombudsman as he performs his functions.’

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Ms Voltz returned to the meeting.

Resolved, on the motion of Mr Khan: That directly following the above insertion after paragraph 6.72, the following paragraph be inserted:

‘It is appropriate, following the delivery of his report into Operation Prospect, that a review be undertaken by the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission into the *Ombudsman Act 1974*, with particular emphasis on Part 3 of the Act, titled investigations and conciliations.’

Resolved, on the motion of Mr Khan: That directly following the above insertion after paragraph 6.72, the following recommendation be inserted:

### **Recommendation x**

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 of that Act titled investigations and conciliations'.

Mr Khan moved: That the following paragraphs 6.72 to 6.79, including finding 8 and recommendation 5, be omitted:

‘Although the committee supports the Ombudsman in his investigation, it is very clear that the two matters: the allegations that warrants were illegally obtained; and the leaking of relevant documents 12 years later, should have been considered as separate matters, either as separate inquiries, or through the release of an interim report or a series of reports.

The Ombudsman offered this committee no acceptable justification for combining these matters into one investigation. The committee notes the following two negative consequences of the Ombudsman conducting Operation Prospect in the manner that he has:

- first, it has added a layer of complexity to an already complicated inquiry causing it to run longer than it should have done, and
- second, it created a confusing situation whereby persons involved in the investigation were treated as both complainants and as perpetrators or colluders. This matter was made even more confusing for participants due to secrecy provisions preventing them from finding out what had been asked of other witnesses.

From the isolated standpoint described above it is highly reasonable that Operation Prospect participants considered that the Ombudsman was focusing more on the leaks than on the warrants and was considering them as perpetrators, rather than victims.

These individuals have spent years caught in a tangled web of secrecy provisions. Operation Prospect was supposed to be an opportunity for individuals to air their concerns and have them addressed, not have the bulk of their time spent being asked questions about whether they had leaked information or which journalists they may or may not have spoken with.

If the Ombudsman had separated the two matters in question into different investigations, there may not have been any need for the establishment of this Select Committee. Our inquiry is a by-product of the serious concerns held by long-suffering individuals central to the Ombudsman's investigation.

For this reason, the committee believes that the Ombudsman should not have conducted an investigation that incorporated both the legality of warrants and the leaking of information, as it meant that inquiry participants were considered both complainants and perpetrators, and has delayed the completion of the inquiry. The committee considers it unacceptable for a complainant to be called to give evidence to the Ombudsman under summons without knowing if they are being questioned as a witness regarding their substantive complaint, or as a perpetrator.

Accordingly, the committee recommends that the Ombudsman ceases investigating the leak until he has concluded his substantive inquiry.

### **Finding x**

That the NSW Ombudsman should not have incorporated both the legality of warrants and the leaking of confidential information in a single inquiry. Combining these two issues has resulted in participants being considered both complainants and perpetrators, and the completion of the inquiry has been delayed.

### **Recommendation x**

That the NSW Ombudsman immediately cease investigating the following line of inquiry and only resume following his provision of his substantive report into Operation Prospect to the Presiding Officers of the Parliament of New South Wales:

unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the Crime Commission and the Police Integrity Commission.

The conduct of Operation Prospect is a cautionary tale. Important lessons should be learned from this process, not only by the Ombudsman, but any oversight agency undertaking such an enormous and important investigation in the future.'

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That the following paragraphs be inserted after paragraph 6.75:

'The committee echoes the concerns raised by inquiry participants that they were not questioned by the Ombudsman regarding their substantive complaints. The committee believes the Ombudsman's approach was problematic, especially in light of the additional material he provided to this committee, of which complainants were unaware of at the time of making submissions to our inquiry.

A thorough examination of complainants would have shed valuable light on their grievances. In addition, the committee submits that complainants are well within their rights to know, and be allowed to respond to, information that the Ombudsman possesses about them. Not taking these steps to listen to complainants and communicate with them is highly problematic. While the Ombudsman made general statements to note that complainants' concerns are being investigated, we are of the view that this is not enough. The committee assumes that the failure to put these matters to complainants is due to the fact the Ombudsman accepts their version of events without qualification.'

Question put.

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Mr Shoebridge moved: That the following paragraph be inserted after paragraph 6.77:

'The committee is of the view that without the public disclosure of certain documents covered by statutory secrecy, that neither this inquiry, nor Operation Prospect would ever have commenced. This committee accepts that this disclosure has been essential in allowing a thorough investigation of what many people consider an historic injustice.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Blair, Mr Borsak, Mr Khan, Mrs Maclaren-Jones Mr Searle, Ms Voltz.

Question resolved in the negative.

Mr Shoebridge moved: That the following recommendation be omitted: That the NSW Ombudsman immediately cease investigating the following line of inquiry and only resume following his provision of his substantive report into Operation Prospect to the Presiding Officers of the Parliament of New South Wales:

- unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the Crime Commission and the Police Integrity Commission.’, and that the following recommendation be inserted instead:

**‘Recommendation x**

That the NSW Ombudsman immediately cease investigating the following line of inquiry, and only recommence after completing the balance of Operation Prospect and only if persuaded that there are compelling public interest reasons to continue given the central role whistleblowers have played in causing the matter to finally be addressed:

- unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the Crime Commission and the Police Integrity Commission.’

Question put.

The committee divided.

Ayes: Mr Shoebridge, Mr Borsak.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones Mr Searle, Ms Voltz.

Question resolved in the negative.

Ms Voltz moved: That following paragraph 6.78 and recommendation be omitted:

‘Accordingly, the committee recommends that the Ombudsman ceases investigating the leak until he has concluded his substantive inquiry.

Recommendation: That the NSW Ombudsman immediately cease investigating the following line of inquiry and only resume following his provision of his substantive report into Operation Prospect to the Presiding Officers of the Parliament of New South Wales:

- unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the Crime Commission and the Police Integrity Commission.’

Question put.

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones Mr Searle, Ms Voltz.

Noes: Mr Shoebridge, Mr Borsak.

Question resolved in the affirmative.

**Chapter 7**

Mr Khan moved: That the following paragraph 7.1 be omitted:

‘There are two major concerns regarding leadership of the NSW Police Force and the allegations of the legality of warrants obtained during the Mascot/Florida investigations. The first is a lack of leadership by successive Commissioners of Police, who many believe have placed this matter in the ‘too hard basket’, and allowed it to fester for 15 years. The second is that this inaction has created a toxic atmosphere in the NSW Police Force executive, with two of its deputy commissioners at loggerheads over this controversy.’

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 7.6 be amended to insert at the end 'We note the substantial discussion regarding this matter in paragraph x.'

Moved by Mr Blair: That the following paragraph 7.14 be omitted:

'Despite assurances from Commissioner Scipione and Deputy Commissioners Kaldas and Burn, the committee is concerned that these matters are having a negative impact on the NSW Police Force executive. The Minister and Premier must ensure that the obvious tensions are not affecting the effective operation of the NSW Police Force.'

The committee divided.

Ayes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Noes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Question resolved in the negative.

Moved by Mr Shoebridge: That the following new paragraph be inserted before paragraph 7.14:

'What is abundantly clear to the committee is that a culture of secrecy, legal threats and inaction breeds distrust, rumour and division. We note that the Government, and especially the Attorney General, were vehemently opposed to the establishment of this committee. We can only hope that they have now realised the benefit of clearly identifying problems. This committee, aided by the witnesses who appeared before us, has highlighted very real concerns with the NSW Police Force. It is now the job of the executive government to get on and fix them.'

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Moved by Mr Searle: That the following recommendation x after paragraph 7.16 be omitted 'That the Minister for Police and Emergency Services seek assurance from the Commissioner of Police that the obvious tension between Deputy Commissioner Nick Kaldas APM and Deputy Commissioner Catherine Burn APM does not interfere with the effective operation of the NSW Police Force' and insert instead 'The Premier and the Minister must take steps to demonstrate to the community whether and how the working relationship between Deputy Commissioners Kaldas and Burn can be workable, pending the Ombudsman's report expected in June. Anything less will not restore public confidence in the effective operation of the Police leadership in this State.'

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Moved by Mr Shoebridge: That the following new paragraph be inserted after paragraph 7.26:

'The committee notes that there are no published figures on the amount spent by the NSW Police Force on its own internal handling of complaints'

The committee divided.

Ayes: Mr Borsak, Mr Searle, Mr Shoebridge, Ms Voltz.

Noes: Mr Blair, Mr Khan, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 7.30:

‘Mr Scipione went on to develop this further when questioned:

Mr SCIPIONE: You know, look, I am not sure that I am the right person to ask because I am a police commissioner so you are going to get a view that may well be police-centric. But what I can say is this: I have given this a lot of thought over many, many years from a position whereby I was once the commander of the internal affairs branch through to today as the commissioner. I do not want to enter into who it is that should be in charge, but unless you have someone charged exclusively with carriage of these matters, you are potentially going to get a repeat of this problem. My view would be that it needs to be some independent. Perhaps it is time to have a look at something like an independent police complaints authority.

Mr DAVID SHOEBRIDGE: Like the United Kingdom has?

Mr SCIPIONE: Indeed. [FOOTNOTE: Evidence, Mr Andrew Scipione, Commissioner of Police, NSW Police Force, 4 February 2015, p 55.]”

Resolved, on the motion of Mr Shoebridge: That paragraph 7.47 be amended by omitting ‘Most complaints are indeed managed this way and the committee believes that this may be inappropriate and counterproductive’ and inserting instead ‘Most police complaints are indeed managed this way and the committee believes that, especially in relation to more serious matters and matters involving senior police, that the conflict of interest is both inappropriate and counterproductive. The committee accepts the thrust of the submissions from within and outside the police that a single well-resourced oversight body would be a far preferable structure to the current system of multiple agencies with overlapping responsibilities. The fact that the allegations arising from Operation Mascot more than 15 years ago have failed to be addressed by the current system is clear evidence of its dysfunction. It is important to note that the delays and lack of resolution impact as seriously on police, who are the subject of unresolved allegations and inordinately delayed investigations, as they do on the public. Both the public and police have a right to expect that if a complaint is made against police then it will be dealt with quickly, fairly and independently. The existing system largely fails on all three of these measures.’”

Resolved, on the motion of Mr Shoebridge: That:

- a) paragraph 7.48 be amended by omitting ‘However, given that the committee took limited evidence on these issues, it is appropriate that this matter be explored further’ and inserting instead ‘However, given the committee took limited evidence on what the ultimate structure of a single oversight body would look like, it is necessary that this matter be addressed in more detail at the earliest opportunity in the new Parliament’
- b) recommendation x be omitted and insert instead a new recommendation: ‘That the Legislative Council standing committee on Law and Justice inquire into and report on the most appropriate structure for handling police complaints in NSW, with the aim of providing a single well-resourced oversight body that deals with complaints quickly, fairly and independently’.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 3.32:

‘In terms of section 16(4)(b), Justice O’Keefe found it relevant to consider whether all the persons named on the warrant were involved in any of the prescribed offences or whether they were ‘suspects or...principals or persons who otherwise should have their right to privacy interfered with’. In his decision, as part of his reasons to refuse the warrant, he commented ‘I am further of the opinion that the extent to which the privacy of innocent persons unassociated with the application may be interfered with is unacceptable having regard to the policy of the Act’. In this comment, Justice O’Keefe was clearly alluding to the importance of protecting the privacy of conversations of those not accused of wrong doing.

[FOOTNOTE: Re Listening Devices Act 1984 – Application No ST03/173; Ex parte Police Service (NSW), at paras 20, 21 and 30].

Resolved, on the motion of Ms Voltz: That the secretariat, when seeking approval from in camera witnesses to include excerpts of their evidence, may provide context to the quotes.

Resolved, on the motion of Ms Voltz: That the committee hold a deliberative meeting at 3.30 pm, or at the conclusion of the report deliberative of the Select Committee on the supply and cost of gas and liquid fuels on Thursday 19 February 2015 to adopt the report.

Resolved, on the motion of Ms Voltz: That the report be tabled on Wednesday 25 February 2015.

Resolved, on the motion of Ms Voltz: That the amended Chair's draft report be circulated via email to committee members.

Resolved, on the motion of Mr Searle: That evidence about Justice O'Keefe be incorporated into Chapter 3.

## 11. Adjournment

The committee adjourned at 8.26 pm, until 3.30pm Thursday 19 February 2015, Macquarie Room (*report deliberative*).

Beverly Duffy

**Clerk to the Committee**

## Draft minutes no. 11

Thursday 19 February 2015

Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect"  
Macquarie Room, Parliament House, 4.15 pm

### 1. Members present

Mr Borsak, *Chair*

Mr Shoebridge, *Deputy Chair*

Mr Blair

Mr Khan

Mrs Maclaren-Jones

Mr Searle

Ms Voltz

### 2. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 10 be confirmed on the basis that there will be differences between amendments agreed to by the committee and their inclusion in the report, reflecting the committee's request that the secretariat ensure the report flows cohesively.

### 3. Correspondence

The committee noted the following items of correspondence:

#### **Received:**

- 19 February 2015 – From Mr Warwick Anderson, Anderson Boemi Lawyers to Director, requesting Mr Brett McFadden's in camera evidence remain confidential and not be used in the committee's report
- 19 February 2015 – From Mr Bruce Barbour to Director requesting his in camera evidence remain confidential unless appropriately contextualised in the committee's report

- 18 and 19 February 2015 – From Witness C (Mr Phillip Bradley) to Director regarding use of excerpts from his *in camera* evidence in the committee's report.

Resolved, on the motion of Mr Khan: That the committee authorise page 57 of Witness C's transcript of evidence from 29 January 2015 be amended by omitting 'SCIA' and inserting instead 'SEA'.

Resolved on the motion of Mr Searle:

- a) That the following paragraph 6.59 in the Chair's draft report be omitted:

'He also expressed the view that some of the disclosure of documents was 'circulated for alternative reasons and purposes' other than bringing about a resolution of these long-running issues.<sup>465</sup> How and why the Ombudsman has drawn these conclusions will, we assume, be outlined in his report. However, the committee does not believe that this should be the present focus of his inquiry, as we discuss later in this chapter.'

- b) That the following new paragraph be inserted instead, as requested by the Ombudsman:

'Mr BARBOUR: Many of the documents that have been circulated do not further the issue of whether or not this matter ought be investigated. They have been circulated for other reasons.

Mr DAVID SHOEBRIDGE: If they had not been circulated there never would have been an inquiry.

Mr BARBOUR: No—

Mr DAVID SHOEBRIDGE: That is the key conundrum.

The Hon. TREVOR KHAN: Let the witness finish, because he is making a point.

Mr BARBOUR: I am agreeing with you and I am saying that is definitely one of the issues in relation to the exchange of documents but what I am going on to say is that there has been a whole lot of documentation which did not assist with that which did not require circulation and which has been circulated for alternative reasons and purposes. At the end of the day I am focused on what the law says and the law requires and I am doing my best to follow that.

I have set out in my submissions to the committee the very real issues around the handling of whistleblowers and the handling of information under the Public Interest Disclosures Act. Deputy Commissioner Kaldas made a public interest disclosure to the Commissioner of Police when he made his complaint in September 2012. He copied that. We have told him that is a public interest disclosure. He is aware of that. We raised it in our first meetings with him and we confirmed that with him. In relation to him we have absolutely followed all of the necessary requirements that are set out in the public interest disclosures legislation but that does not mean we should not ask him questions about these very important issues, and that is what we have done.[FOOTNOTE: *In camera* evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 5.]'

Resolved, on the motion of Mr Shoebridge: That in the Chair's draft report certain changes be made to paragraphs 4.5 to 4.14 to reflect the request from Mr Warwick Anderson.

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<sup>465</sup> *In camera* evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 5.

**4. Tabling date of report**

Resolved, on the motion of Mr Shoebridge: That the committee place a notice on the inquiry webpage stating that the report will be tabled on 25 February 2015 at approximately 11.00 am.

**5. Publication of correspondence from Ms Burn**

Resolved, on the motion of Shoebridge: That the committee authorise the publication of the further submission made on behalf of Ms Burn dated 12 February 2015 on the committee's website.

**6. Publication of correspondence**

Resolved, on the motion of Mr Shoebridge: That correspondence from the Media and Arts Alliance be published.

**7. Consideration of Chair's revised draft report**

The committee authorised the secretariat to make certain structural changes to the report so as to ensure greater flow of the content as a result of the insertion of a number of amendments resolved at the previous meeting.

Resolved, on the motion of Mr Shoebridge: That:

- a) Finding 2 be amended by inserting 'then' before 'Commissioner of Police' and 'Peter Ryan' after 'Commissioner of Police'
- b) Finding 3 be amended by inserting 'then' before 'Commissioner' and 'of Police Peter' before 'Ryan'

Resolved, on the motion of Mr Searle: That Recommendation 1 be amended by omitting 'consider the establishment of an Office of Independent Counsel to provide independent legal representatives to test the evidence and assertions made by law enforcement agencies seeking surveillance device warrants' and inserting instead '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'.

Resolved, on the motion of Mr Searle: That Recommendation 6 be amended by omitting 'That the Legislative Council Standing Committee on Law and Justice inquire into and report on the most appropriate structure for handling police complaints in New South Wales, with the aim of providing a single well-resourced oversight body that deals with complaints quickly, fairly and independently.' and inserting instead:

'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.'

Resolved, on the motion of Mr Shoebridge: That paragraph 2.60 be amended by omitting 'his intentions' following 'very early stage of' and inserting instead 'this'.

Resolved, on the motion of Mr Shoebridge: That the following paragraph 2.79 be omitted: 'On a different note, the committee asserts that it is essential the Ombudsman completes Operation Prospect before his term expires'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.34 be amended by inserting 'said to be' before 'serious allegations'.

Resolved, on the motion of Mr Searle: That paragraph 3.60 be amended by omitting 'This has been shown not to be the case, as detailed by Ms Burn in the memorandum she prepared close to the time of the Commissioner's interview'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.61 be amended by omitting 'all but three people named on the warrant had serious allegations of crime and corruption against them' and inserting

instead 'almost all of the names on the Bell warrant were included because they were suspected of engaging in or knowing about corrupt conduct'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.81 be amended by inserting 'solely' before 'on the evidentiary material contained in the affidavit'.

Resolved, on the motion of Mr Searle: That paragraphs 3.137 to 3.139 be inserted into the case study where appropriate and paraphrased where possible.

Resolved, on the motion of Mr Searle: That paragraphs 3.140 and 3.141 be inserted into the committee comment section at the end of chapter 3.

Resolved, on the motion of Mr Khan: That paragraphs 3.155 and 3.156 be inserted after paragraph 3.136.

Resolved, on the motion of Mr Searle: That paragraphs 3.164 and 3.165 be inserted into the case study where appropriate and paraphrased where possible.

Resolved, on the motion of Mr Searle: That paragraph 3.166 be inserted into the committee comment section at the end of chapter 3.

Resolved, on the motion of Mr Shoebridge: That the following paragraph 4.50 be omitted:

'In approximately June 2012 Mr Scipione read the Emblems report for the first time:

It was a result of what was happening in and around that time that it became apparent that I needed to look at it, bearing in mind that, as I have indicated in my evidence, I was told by the former commissioner that this matter ... had gone as far as it could.'

Resolved, on the motion of Mr Shoebridge: That paragraphs 4.59, 4.60, 4.61 and 4.63 be inserted in the committee comment section at 4.53.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted at 6.50:

'The Ombudsman rejected the proposal that he should have either issued an interim or progress report, or separated his lines of inquiry:

I do not believe it is possible to unpick all of the issues. The reality of this matter is that, despite its complexity and the enormous amount of information, all of the issues are interwoven. Whilst we have endeavoured to be as discreet as we can in terms of the particular components of our investigation, they none the less flow over a number of issues and a number of people involved in these matters are central to many of the issues that we are investigating. I do not think it would be in the interests of the investigation or those individuals for us to be reporting in an ad hoc or preliminary way about matters that clearly go to the heart of their conduct. [Evidence, Mr Bruce Barbour, NSW Ombudsman, 3 February 2015, p 13.]'

Mr Shoebridge moved: That the following sentence be inserted at the end of paragraph 6.69: 'This sequence of events highlights the conflicted nature of the Ombudsman's inquiry where a complaint becomes a target through not wishing to divulge a confidential source in the course of a compulsory examination'.

Question put and negatived.

Resolved on the motion of Mr Shoebridge: That paragraph 7.50 be amended by omitting 'especially in relation to more serious matters and matters involving senior policy that' after 'the committee believes'.

Resolved, on the motion of Mr Searle:

- a) That the draft report, as amended, be the report of the committee and that the committee present the report to the House,

- b) That the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report,
- c) That upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be kept confidential by the committee,
- d) That the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- e) That the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee,
- f) That dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting.

Mr Shoebridge moved: That the committee authorise the publication of the Strike Force Emblems report with redactions as previously proposed by the secretariat.

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Blair, Mr Borsak, Mr Khan, Mrs Maclaren-Jones, Ms Voltz, Mr Searle.

Question resolved in the negative.

Mr Khan tabled a dissenting statement from Government members.

## 8. **Adjournment**

The committee adjourned at 5.37 pm. *Sine die*.

Beverly Duffy

**Clerk to the Committee**

## Appendix 10 Dissenting statement

**The Hon Trevor Khan MLC and the Hon Niall Blair MLC, The Nationals  
The Hon Natasha Maclaren-Jones MLC, Liberal Party**

### Introduction

The Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation prospect" was established on 12 November 2014.

Prior to the establishment of the Select Committee members had been exposed to a wide range of media publicity regarding the Strike Force Mascot. On the basis of those media reports it would have been easy for members of the Select Committee to enter the Inquiry with preconceived views. Those preconceived views were entirely adverse to the positions of Deputy Commissioner Cath Burn and, perhaps to a lesser extent Commissioner Andrew Scipione.

What has differentiated the Government members of the Select Committee from the Labor and cross bench members has been preparedness of the Government members to divorce themselves from those preconceived views, and reach conclusions on the basis of the evidence presented to the Inquiry, as limited as it has been.

**What is clear is that many, if not all, of the adverse conclusions of both Deputy Commissioner Burn and Commissioner Scipione have either been found to be without foundation or, alternatively, not been made out.**

### The Inquiry

Hearings took place over four days, with 20 witnesses giving evidence. A range of documents were received by the Committee, some of which were made public, and others, because of their sensitivity, were not.

Amongst the limited documents received, but not published was one affidavit which supported the issue of the Bell Warrant in September 2000. What was clear was that the documents presented to the Committee represented a fraction of the available evidence, and appeared to overwhelming favour one side of the story.

This is to be compared with the rigorous process of evidence gathering undertaken by the Ombudsman. He has received an estimated one million pages of documents, including 210 supporting affidavits for listening and telephone intercept warrants. In addition over 60 individuals have been interviewed or attended private hearings. Hearings have taken place over 70 non-continuous days and involved 102 people.

In other words, the Ombudsman has received all of the available evidence, rather than the highly edited version available to this Inquiry, and undertaken a comprehensive examination of all the available material.

It stands to reason that any conclusions drawn by the Select Committee are based on, at best, a small fraction of the evidence available to the Ombudsman. Despite this obviously limited evidence, the Select Committee has reached a range of conclusions and made adverse comments about individuals.

**The decision of the Labor and cross bench members to make adverse findings on the conduct of individuals based upon limited evidence has been an unsafe process, and potentially amounts to a grave injustice.**

### **Operation Prospect**

It is notable that the Select Committee finds that the Ombudsman is **“conducting a proper, thorough and hopefully conclusive investigation that is both incredibly important and incredibly complex”**. We wholly concur in this conclusion.

Notwithstanding this however, the Labor and cross bench members of the Select Committee have sought to make a number of adverse comments of the Ombudsman's handling of his investigation

The principal criticism made by the Labor and cross bench members is that the Ombudsman should not have combined the issues of the examination of the conduct of Strike Force Mascot with the alleged mishandling and dissemination of sensitive documents.

This criticism, is misplaced (at best). How can it be said on the one hand that the Ombudsman is **“conducting a proper, thorough and hopefully conclusive investigation”**, and on the other hand criticise the Ombudsman for hearing and considering a range of issues at the same time? The position of the majority of the Committee is logically inconsistent and, indeed, perverse.

### **Terms of the Ombudsman's Investigation**

It is clear that members of Parliament was put on notice of the intention of the Ombudsman to undertake a wide ranging inquiry, including issue of the release of highly confidential material, when the Ombudsman's letter to Commissioner Scipione of 10 October 2012 was tabled at a Budget Estimates hearing on 11 October 2012. One member of the cross bench, David Shoebridge, was a member of the GPSC 4 Committee, and present, at the time of the tabling of the letter.

Despite this letter being in the public domain, no Member of Parliament took issue with the scope of the Ombudsman's Inquiry. To criticise the Ombudsman now, when his report is expected by June, can only be seen as undermining the integrity of the Ombudsman's inquiry.

### **Criticism of the Government**

During the Inquiry, and in the Report, criticism has been made of the Government for its failure to provide a range of documents pursuant to Orders of the House for the tabling of documents.

What has been clear from the limited terms of those orders has been a failure of the movers to understand the sheer volume of documents made available to the Ombudsman, and necessary to complete a proper and thorough examination of the issue.

Even when the Inquiry had commenced, and after receipt of correspondence from the Ombudsman identifying the volume of documents available to him, the Select Committee still resolved to write to the Premier on 5 February 2015 seeking the limited range of documents covered by the original SO 52 and 53.

This correspondence to the Premier exposed the partisan nature of the Inquiry and either the lack of intellectual rigour or a desire to properly investigate the matters covered by the Terms of Reference.

In short, the partisan nature of this Inquiry was exposed.

### **Conclusion**

After over a decade of inaction by the previous Labor Government the Liberal and Nationals Government, having taken office in March 2011, has moved to address long standing concerns about Strike Force Mascot, the alleged wrongful dissemination of confidential documents and related matters.

The Ombudsman, with the support of all sides of Parliament was provided with additional powers to undertake an investigation into these matters. The Ombudsman is expected to report in June of this year.

It is appropriate that all parties affected await the outcome of the Ombudsman's investigation.



Niall Blair MLC



Natasha McLaren-Jones MLC



Trevor Khan MLC