

24 February 2015

Select Committee on the Conduct & Progress of the Ombudsman's
Inquiry "Operation Prospect"
Parliament of NSW
Parliament House
Macquarie Street SYDNEY NSW 2000



Attention: Ms Beverly Duffy
Clerk Assistant – Committees

By email: operationprospect@parliament.nsw.gov.au

Dear Ms Duffy

Inquiry into the conduct and progress of the Ombudsman's inquiry "Operation Prospect"

I refer to the "Outline of Submissions submitted on behalf of Mr Phillip Bradley, the former Commissioner of the NSW Crime Commission" dated 23 February 2015 ("**Outline**"), which was published by the Committee on its website some time today and which was drawn to my attention this evening.

Given its contents, it is regrettable that this Outline was not made available to me by the Committee earlier or that, at least, I be made aware of the timing of its publication on the Committee's website so that more time was provided to me to address a number of the comments made in that Outline.

While I remain very much mindful of the potential to prejudice the integrity of Operation Prospect by commenting on evidence which is very likely incomplete, I nevertheless consider it important to provide the following comments in response to issues raised in the Outline:

1. As advised to the Committee in my evidence on 4 February 2015, I was called before the Ombudsman to give evidence. I wish to advise that during that examination, I was **not** made aware by the Ombudsman of the existence of the "July 2004" document referred to in the above Outline, let alone its contents.
2. If in fact the Committee was in receipt of this July 2004 document at the time I gave evidence, and if that document in fact holds the level of significance ascribed to it by Mr Bradley in the Outline, it is most unfortunate that I was not provided with a copy of that document by the Committee when I gave evidence to it so that I could respond to the

Office of the Commissioner
Police Executive Offices

Address: 14/201 Elizabeth Street, Sydney NSW 2000

Telephone: 02 8263 6599 Facsimile: 02 8263 6561 ENet: 45599 EFax: 45399 TTY: 02 9211 3776

ABN 43 408 613 180

issues now publicly raised by Mr Bradley so late in the process.

3. Importantly, the evidence I provided to the Committee on 4 February 2015 regarding my understanding as to the role of the NSW Crime Commission was based on my having read the following:

a) **The Emblems report:** Among other comments:

- Finding No 4 states that

The investigations could not be progressed as limited material was supplied from the NSWCC. Authorisation was not granted from the NSWCC to interview persons under the Operation Mascot reference who are governed by Section 29 (secrecy provisions) of the NSWCC Act.

- Page 12 of the report dated 22.3.04 states in part that a brief of evidence could not be submitted to the DPP for the following reasons:

2. The deponents ((named)) cannot be interviewed, as the NSW Crime Commission (NSWCC) has not allowed these officers or any other officers/witnesses to be interviewed due to the secrecy provisions that bind them under S29 of the NSWCC Act.

- Page 14 of the report dated 22.3.04 states

Mr Bradley stated he would provide documentation on each of the persons named on the warrant which would be sufficient evidence supporting their inclusion on the warrant. He was not prepared to release the affidavit until evidence could be provided warranting access to the affidavit....

On 10 September, 2003 a further conference took place between NSWCC and Temby, where the NSWCC altered their agreement to support the production of the affidavit and would not supply material justifying persons named on the warrant. Temby, however stated S/F Emblems still maintained their position and required the affidavit and source material.

- Page 15 of the report dated 22.3.04 states

Mr Temby concluded his written advice, "The Police Commissioner wants to have the conduct of certain officers investigated. In the view of investigators that could be done in a fully effective fashion if but only if the warrant applications are made available. It would seem appropriate that the Crime Commission, in the spirit of comity make them available, in the manner I have outlined, subject to the approval of its Management Committee".

- Page 16 of the report dated 22.3.04 states

Further communication on 26 February, 2004 and 10 March, 2004 was made with the NSWCC as to the status of the request. There has been no further response from the NSWCC as to their intentions.

b) **Annexure 6 to the Levine Report: Undated Memo:** In a bundle of documents which forms Annexure 6, I had regard to an undated memo comprising at least

13 pages and which from its contents appears to be from Mr Bradley to the Management Committee, which memo sets out a chronology of events and includes detailed excerpts from relevant correspondence with, amongst others, the then Commissioner of Police. One such letter dated 22 October 2003 to the then Commissioner of Police records:

The Commission has co-operated, but progress has been slow...

Co-operation does not mean that the Commission will hand over all documents regardless of the provisions of the Crime Commission Act, the Telecommunications (Interception) Act, the interests of the PIC, public interest immunity and legal convention.

..

...I am not confident that the Commission can disseminate information without it falling into the hands of those who are talking to journalists....

The irony of this is that those seeking access to the information are apparently accusing the Commission of preventing access on the basis of the secrecy provisions. Yet I cannot get access to complaints in order to make up my mind whether the information can be properly handed over. It is also ironic that the complaints apparently assert or imply that officers within Mascot abused their position in order to settle old scores or at least prejudice the position of antagonists. There is now an inference available that the Emblems exercise is retaliatory. ...

Since we last spoke, I have even less confidence that this matter can be handled appropriately or that confidentiality will be preserved.

On page 13 of the undated memo it records

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

It is possible that this undated memo is the July 2004 memo referenced in the Outline. Alternatively, it may be the report prepared by Mr Bradley for the purposes of the September 2004 Management Committee meeting. That is a matter that will no doubt be confirmed in the Ombudsman's report in due course.

I should note for completeness that I did reference from this undated memo in my evidence.

- c) **Annexure 6 to the Levine Report: Minutes of Crime Commission Management Committee:** A copy of the 8 July 2004 Minutes records the Emblems Report not having yet been tabled; a copy of the 26 July 2004 Minutes records Mr Moroney preferring to have the matter dealt with at the next meeting;

A copy of the 26 August 2004 minutes record Mr Moroney tabling the Emblems report and said

he proposed to deal with the matter at the next meeting of the Management Committee, once the Committee had had a chance to read it...

"...Mr Bradley said...Emblems investigations were conducted in a way which concerned him, and that there were many leaks to the press during its course. He will provide advice about the report.

In a 2 page extract from another set of minutes of the Management Committee (signed by the Chairman, the Hon John Watkins), under item 10 "Strike Force Emblems" the following is recorded:

There was a lengthy discussion about the Emblems report. Mr Bradley said he had read the report which was tabled at the last meeting, and had prepared a report of his perception of events...

...Mr Moroney said, however, that he was required to take some action, given the report indicated that corrupt conduct had occurred. He asked whether [name of NSWPF member removed] and [name of NSWPF member removed] could be made members of staff of the Commission, sworn to secrecy, and shown the contents of the affidavit. Mr Bradley said that he would not be prepared to do that, given the leaks that had occurred during the life of the task force, and the pressure which would be brought to bear on them to disclose what they had read. He said he was not accusing either of them of specifically leaking the information, but they had produced a report which was, in his view, not balanced.

The Management Committee resolved that:

1. The matter be referred to the DPP by the Commissioner of the NSW Police for advice on sufficiency of evidence; and....
2. ...

Mr Bradley moved that the resolution be adopted, and Mr Moroney seconded the motion.

It is very likely these two pages are from the minutes of the 27 September 2004 meeting at which the Emblems report was to be discussed in detail. Again, I would expect this would be addressed in the Ombudsman's report.

d) Annexure 6 to the Levine Report: Ministry for Police Briefing Note in preparation for 27 September 2004 NSW Crime Commission Meeting: This briefing note records, relevantly:

NSW Police has sought access to affidavits issued in support of the warrant application from the NSW Crime Commission, subject to legal advice that there was no specific law prohibiting police from assessing relevant application material.

Under established legal precedent the NSWCC refused to supply the material. The view of the NSWCC [is that] [sic] there is no foundation upon which any person can go behind the grant of a warrant.....

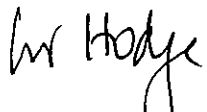
...The decision to disclose the affidavit information rests with the Commissioner of the NSW Crime Commission, being the person who has access to the affidavit information.

I note there are quite a number of other references I relied on in both the Emblems and Levine reports which I do not propose to outline but can do so upon request. Regardless, although I was not involved in this matter at the time, from my reading of the material it is more than open to conclude that the Crime Commission was the final decision maker in authorising access to the information sought by Strike Force Emblems and, further, that it was the decision of the Crime Commission not to do this. This is a view that was also held by the Ministry for Police. I therefore do not accept the statement in the Outline that the evidence provided by myself and Mr Moroney was "demonstrably wrong and must be rejected".

While I accept that the Select Committee's power to investigate matters is an important function in our system of responsible Government, the issues raised in the Outline and in this letter serve to highlight the observations made by the Ombudsman in his letter dated 28 January 2015 to the Committee and reinforced in his evidence before the Committee, including his statement at paragraph 9 of his letter that "Conclusions reached...upon incomplete evidence may cause immense damage to the reputations of individuals, and yet may not ultimately be substantiated upon consideration of the whole of the evidence that is available to [the Ombudsman]".

Lastly, I request that this letter be placed on the Committee's website for the information of the public as soon as possible and by no later than the same time as the Committee releases its report tomorrow at 11am.

Yours faithfully


for **A P Scipione APM**
Commissioner of Police
NSW Police Force