



***Inspector  
of the  
Police Integrity Commission***

Our Ref: G8 2015 02

4 February 2015

Ms Beverly Duffy  
Clerk to the Committee  
Select Committee on the Conduct & Progress of the  
Ombudsman's Inquiry Operation Prospect  
NSW Legislative Council  
Parliament House  
Macquarie Street  
**SYDNEY NSW 2000**

Dear Ms Duffy

**Re: Post-hearing responses**

I refer to your letter of 3 February 2015.

1. I note that your letter was addressed to "Level 3, 111 Elizabeth Street". This is not the correct address for my Office as Inspector of the Police Integrity Commission. That address is of the Police Integrity Commission itself. My address for mail purposes is GPO Box 5215, Sydney 2001 or by email [pic\\_executive@oipic.nsw.gov.au](mailto:pic_executive@oipic.nsw.gov.au). (Geographically the office of this Inspectorate is presently located at level 10, Bligh House, 4-6 Bligh Street, Sydney).
2. There are no alterations I wish to have made to the transcript.
3. I refer to the highlighted passage on page 48. I enclose a bundle of documents which constitutes the material forwarded to me by the Hon Michael Gallacher MLC, then Minister of Police and a covering letter dated 11 May 2012. No clean copy is available and thus I must stress the underlining or highlighting is my own and no special significance should be attached to it. This bundle includes the additional communications referred to in the highlighted passage.

Encl

Inspector of the Police Integrity Commission  
GPO Box 5215, Sydney NSW 2001  
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4. I enclose a chronology as referred to in the highlighted passage on page 55 of the transcript. It is to be NOTED that this chronology includes matters that I consider useful for the deliberations of the Committee in relation to section 217 of the *Police Act* in reference to the questions on page 51 of the transcript asked by the Hon Adam Searle. Attached hereto is (a) a copy of the Memorandum on section 217 and (b) the letter from the then Premier dated 17 April 2013.

Yours sincerely,



The Hon David Levine AO RFD QC  
Inspector: PIC

Encl

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***Inspector  
of the  
Police Integrity Commission***

**Referral of the “Emblems” Matter to the Inspector of the Police  
Integrity Commission: CHRONOLOGY**

**(Transcript p. 55)**

**10 May 2012:** Email from Brad Scutella, Chief of Staff of Minister for Police and Emergency Services, to the Inspector re proposed referral from Minister for Police and Emergency Services, the Hon. M Gallacher MLC.

**11 May 2012:** Written request from Minister for Police and Emergency Services to the Inspector, pursuant to s.217 Police Act 1990.

**24 May 2012:** Meeting with Inspector and Brad Scutella in Inspector’s office.

**25 May 2012:** Letter from Premier O’Farrell referring to Mr Gallacher’s reference and also requesting that the Inspector consider whether Emblems report could be publicly released.

**25 May 2012:** Email from Brad Scutella attaching letter to Minister for Police and Emergency Services from NSWCC Commissioner Peter Singleton re calls for documents by Parliament.

**31 May 2012:** Meeting with Inspector and Brad Scutella and Les Tree, Chief Executive Officer, Ministry of Police and Emergency Services in Inspector’s office.

**20 June 2012:** Letter from Inspector to Commissioner of Police, A. Scipione, referring to meeting of 31 May 2012.

**June to September 2012:** Requests from Inspector to various bodies, including Police Commissioner, Ombudsman, NSWCC and PIC for documents.

**14 September 2012:** Letter from Commissioner Scipione to Inspector informing him that Paul Carey, then Assistant Commissioner and Commander of Professional Standards Command, would provide requested material.

**19 September 2012:** A/C Carey attends office of Inspector and delivers 30 or so boxes of material.

**8 October 2012:** Letter from Inspector to Mr Bruce Barbour, Ombudsman, referring the Emblems matter to him pursuant to s. 125 Police Integrity Commission Act 1996.

**15 October 2012:** Acknowledgment from Ombudsman of Inspector's referral of 8 October 2012.

**23 November 2012:** Inspector reports to the Minister for Police on his review as per request of 11 May 2012. Copy sent to Premier, Commissioner Scipione and the Ombudsman.

**4 February 2013:** Inspector writes Memorandum regarding section 217 Police Act 1990 and forwards it to the Premier O'Farrell with copies sent to the Hon Minister for Police; Michael Gallacher; the Hon Attorney-General (NSW), Greg Smith; the PIC Commissioner, the Hon Bruce James QC; the NSW Ombudsman, Bruce Barbour and the Chair of NSW Law Reform Commission, the Hon James Wood AO QC.

**23 April 2013:** Inspector receives letter dated 17 April 2013 from Premier O'Farrell acknowledging receipt of Memorandum of 4 February 2013 and advising that "*no further referrals under section 217 Police Act 1990 will be made to the Inspector of the PIC*" to ensure public confidence in the Inspectorate is maintained.

**31 October 2013:** The Inspector refers to the Emblems reference and the section 217 Memorandum in his Annual Report to Parliament for the year ending 30 June 2013.

The Hon David Levine AO RFD QC  
Inspector: PIC

**INSPECTOR: POLICE INTEGRITY COMMISSION  
MEMORANDUM  
S.217 POLICE ACT 1990.**

1. By letter dated 11 May 2012 the Hon Michael Gallacher MLC, Minister for Police & Emergency Services, pursuant to **Section 217** of the **Police Act 1990**, requested that I, as Inspector of the Police Integrity Commission, undertake a Review.
  
2. The terms of the Minister's letter were as follows:

*Please find attached a copy of an investigation report and attachments, covering Strike Force Emblems which was established in 2003 by then Commissioner Moroney following a complaint from the NSW Police Association. This is a matter, which I am advised has not been finalized.*

*By way of background, I advise that while in Opposition, I stated that I would make public the recommendations of Strike Force Emblems.*

*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.*

*In your role as Inspector of the Police Integrity Commission I request that you undertake a review of this matter with an emphasis upon reviewing the recommendations to ensure they have firstly, been properly dealt with, secondly their release would be in the public interest, thirdly whether their release would not prejudice any legal action or investigation by the Public Integrity Commission or your office and fourthly, their release will not unreasonably reflect upon any individuals without them being afforded natural justice.*

*In accordance with S.217 of the Police Act NSW, 1990, I respectfully request this investigation be reviewed by your office and report provided to myself with your findings.*

3. As at 11 May 2012, the Inspectorate was **not** within the Police Minister's portfolio. It was within that of the Premier.
4. By letter dated 25 May 2012 the Hon Barry O'Farrell MP, Premier, wrote to me in the following terms:

*Dear Inspector*

*I refer to the NSW Police Strike Force Emblems Report dated 25 August 2005.*

*I am advised the Minister for Police and Emergency Services referred the Emblems Report to you earlier this month. I am further advised that in accordance with S.217 of the Police Act NSW 1990, the Minister has asked you to determine whether you are of the opinion that the recommendations of the report can be made available to the public.*

*As the Minister responsible for the administration of the Police Integrity Commission Act 1996 I would also respectfully request you consider whether the Emblems Report could be publicly released in its entirety.*  
(emphasis added)

*The NSW Government is committed to openness and transparency but we understand the necessity of balancing public interest against procedural fairness and the importance of not prejudicing any potential legal action or investigation.*

5. Section 217 of the Police Act 1990 states:

**'217 Ministerial inquiries**

- (1) *The Minister may appoint any person (an authorised person) to inquire into, and to report to the Minister on, any matter on which the Minister*

wishes to be advised in relation to the management and administration of the NSW Police Force. (emphasis added).

(2) *For the purpose of conducting such an inquiry, an authorised person may, at any time, do any of the following:*

- (a) *enter any police premises,*
- (b) *call for, and inspect, all or any police records, documents, files or other matter, whether of the same or of a different kind, on police premises,*
- (c) *question and seek information from any member of the NSW Police Force.*

(3) *A member of the NSW Police Force who fails:*

- (a) *to comply with any requirement made of the member by an authorised person under this section, or*
- (b) *to give all assistance and co-operation to an authorised person, is guilty of an offence.*

*Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.'*

6. Prior to the current version of section 217 and pursuant to the **Police Service (Management) Amendment Act 1993**, it was the Police Board which had the power to consider matters relating to the administration and management of the Police Service. This was by virtue of s.19 of the **Police Service Act 1990**. (The Police Service Act 1990 was renamed the Police Act 1990 pursuant to amendments in July 2002.) In particular the Police Board could, after consultation with the Minister, “*undertake reviews it considered appropriate of the procedures of the Police Service designed to safeguard the integrity of the Police Service*” (s.19(c)) and to make “*reports or recommendations to the Minister on any matter referred to it by the Minister or on any matter arising from the exercise of its functions or, after consultation with the Minister, on any matter it considers appropriate*” (s.19(d)(i) and (ii)). The Police Board had the power to delegate to any person any of the functions of the Police Board

but only after consultation with the Minister (s.21). Section 22 set out the powers of entry and inspection which are in almost identical terms to those of the current s.217(2). Section 22(5) defined “**Authorised person**” as “*a member of the Police Board, or other person, authorised by the Chairperson of the Police Board for the purposes of this section*”.

7. The relevant sections of the **Police Service Act 1990** were:

**Functions of the Board**

*s.19 The Police Board has the following functions:*

- (a) the functions conferred on it by this Act in connection with the employment of members of the Police Service Senior Executive Service and other members of the Police Service;*
- (b) the supervision and promotion of career development and training for all members of the Police Service;*
- (c) after consultation with the Minister, the undertaking of reviews it considers appropriate of the procedures of the Police Service designed to safeguard the integrity of the Police Service;*
- (d) the making of reports or recommendations to the Minister:*
  - i. on any matter referred to it by the Minister; or*
  - ii. on any matter arising from the exercise of its functions or, after consultation with the Minister, on any matter it considers appropriate.*
- (e) such other functions as are conferred or imposed on it by or under this or any other Act.*

**Delegation by the Board**

- s.21 (1) The Police Board may delegate to any person any of the functions of the Police Board, other than this power of delegation.*
- (2) The Police Board must consult the Minister about any proposed delegation by the Board under this section.*



## **Powers of entry and inspection**

- s.22** (1) *An authorised person may, for the purposes of exercising the Police Board's functions, enter any police premises at any time.*
- (2) *The authorised person may, for that purpose, call for and inspect all or any police records, documents, files or other matter, whether of the same or a different kind or nature, on those premises, and question and seek information from any member of the Police Service.*
- (3) *A member of the Police Service who fails to comply with any requirement made of the member under this section or to give all assistance and co-operation to the authorised person is guilty of an offence.*
- Maximum penalty: 20 penalty units or 6 months imprisonment, or both.*
- (4) *An authorised person is to be issued with a certificate of authority under this section signed by the Chairperson of the Board.*
- (5) *In this section "authorised person" means a member of the Police Board, or other person, authorised by the Chairperson of the Police Board for the purposes of this section. (emphasis added)*

8. The current version of section 217 became law by virtue of the **Police Service Further Amendment Act 1996** which, *inter alia*, abolished the Police Board. The Police Board's power to conduct inquiries into the administration and management of the Police Service was transferred to the ministerial appointee who would by virtue of his or her appointment become an "authorised person". There is no longer a definition of "authorised person" as referred to under s.217 but it is clear from the wording of the section that any person can be appointed by the Minister so as to become an authorised person for the purpose of section 217. The Ministerial appointee replaces the role of the Police Board whose primary function was to undertake reviews of the procedures of the Police Service designed to safeguard the integrity of the Police Service.

## **9. The Police Integrity Commission**

In the same year as the amendments to the Police Act referred to above came into effect, namely 1996, the Police Integrity Commission (“PIC”) was established. The Principal functions of the PIC are set out in s. 13 of the **Police Integrity Commission Act 1996** (“the PIC Act”) and are as follows:

- to prevent officer misconduct (s.13(1)(a))
- to detect or investigate, or manage or oversee other agencies in the detection or investigation of, officer misconduct (s.13(1)(b))
- to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under the PIC Act, and to deal with records of the Police Royal Commission as provided by the PIC Act (s.13(1)(c)).

## **10. Principal Functions of the Inspector of the PIC**

The principal functions of the Inspector of the PIC (“the Inspector”) are set out at s. 89 of the PIC Act which reads as follows:

- s.89(1) The principal functions of the Inspector are:
  - (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
  - (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
  - (b1) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and

- unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.
- s.89(1A) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:
    - (a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and
    - (b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.
  - s.89(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency.
  - s.89(3) The Inspector is not subject to the Commission in any respect.

11. It will be seen that the powers and functions of the Inspectorate are essentially directed at the performance of the Police Integrity Commission and its officers, not the police or any other agency.

## **12. Referral by the Minister of Police**

The referral by the Minister pursuant to section 217 in effect required a review of the procedures of the Police. This was concurrent with the Inspector's oversight role of the PIC, a body which was established to prevent, detect and investigate serious police misconduct. The Emblems matter revolved around alleged officer misconduct on a very large scale, dating back to the last century. The situation was thus that this

Inspectorate was asked to review Police conduct and procedures over a wide area and discrete recommendations whilst also oversighting the PIC, which is an integrity body established to investigate virtually the same such kind of matters as arose from Strike Force Emblems, namely serious police misconduct.

One of the functions of the Inspector is to consider complaints lodged against PIC or its officers. Such complaints are usually from current or former Police officers. It is clear that by its very nature, the role of “authorised person” (in s.217 above) and the role of the Inspector should not be undertaken by the same person.

It is undesirable that the Inspector be asked to report to a Minister of Police on matters with respect generally to the management and administration of the NSW Police (noting the functions in s.89(1) above) and given that the Inspector’s role is to oversight the PIC. It is paramount that the PIC Inspector is seen as independent, impartial and objective in performing his functions. To review and report back with respect to the Emblems matter did not sit with the role of PIC Inspector and in effect, had the potential of undermining public confidence in the Inspectorate.

Further, to consider whether recommendations of an internal report prepared over 10 years ago had been “properly dealt with” would have required an in-depth knowledge of the administration and management of the Police over the past 10 years, including determining whether and how the recommendations of the Emblems matter had been implemented or could have been.

Given the width of the terms of reference, this Inspectorate was not adequately staffed to deal with such a large matter. At the time the Emblems matter was referred, I was (and still am) engaged on a part-time basis (3 days a week). In addition, I had the assistance of an executive assistant, who was also employed 3 days a week. In October 2012, a third staff member, a Senior Legal Project Officer, was employed to assist me in the Inspectorate. She is also employed on a part-time basis (3 days a week). The Emblems matter has now been referred to the NSW Ombudsman and I understand that 10 staff will be employed to work on

the matter and it is anticipated that the investigation will take about 2 years.

The reference from the Minister (within whose portfolio lies the Inspectorate) must be a reference pursuant to s. 89(2) of the PIC Act to perform the functions referred to at s.89(1). The independence of the Inspector will otherwise be at risk of subversion and the office compromised.

Section 217 in its current form is too broad. The section should be amended (together with any other necessary amendments elsewhere) so that the situation cannot arise whereby a Minister of Police can appoint an Inspector of PIC to review the procedures of the Police. The Police Act should be amended so as to define "authorised person" for the purpose of s.217. The definition should expressly exclude the PIC Inspector, given the Inspector's quite specific legislative functions to which I have already referred.

13. I am grateful for the assistance of Ms Susan Raice, my Senior Legal Project Officer, in the preparation of this Memorandum.

February 2013

The Hon David Levine AO RFD QC  
Inspector: Police Integrity Commission

RECEIVED

23 APR 2013

INSPECTOR, PIC

DPC11/02904  
2013-29833

17 APR 2013

The Hon. David Levine, AO RFD QC  
Inspector of the Police Integrity Commission  
GPO Box 5215  
SYDNEY NSW 2001

Dear Mr Levine

Thank you for your letter of 4 February 2013 concerning the referral of the Strike Force 'Emblems' Report under section 217 of the *Police Act 1990*.

The matters raised by you in your attached memorandum have been carefully considered.

I am advised that the Ministry for Police and Emergency Services discussed the referral of the 'Emblems' Report with you prior to it being made and additional resources were also offered. Notwithstanding this, I advise that no further referrals under section 217 of the *Police Act 1990* will be made to the Inspector of the Police Integrity Commission. This will ensure that public confidence in the Inspectorate is maintained.

I note that the Strike Force 'Emblems' matter is now being considered by the Ombudsman.

Thank you for bringing these matters to my attention.

Yours sincerely



**Barry O'Farrell MP**  
Premier

cc: Minister for Police and Emergency Services



**The Hon Michael Gallacher MLC**  
Leader of the Government in the Legislative Council  
Minister for Police and Emergency Services  
Minister for the Hunter

11 May, 2012

Mr David Levine  
Inspector of the Police Integrity Commission  
Police Integrity Commission  
Level 4, 104 Pitt Street  
SYDNEY NSW 2000

Dear Mr Levine

Please find attached a copy of an investigation report and attachments, covering Strike Force Emblems which was established in 2003 by then Commissioner Moroney following a complaint from the NSW Police Association. This is a matter, which I am advised has not been finalised.

By way of background, I advise that while in Opposition, I stated that I would make public the recommendations of Strike Force Emblems.

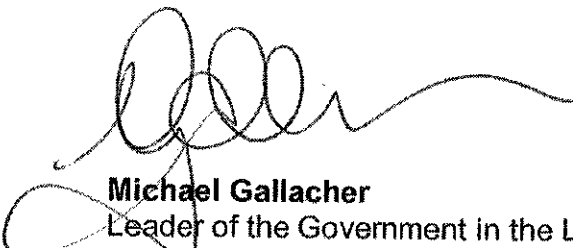
Since becoming Minister for Police I have reviewed those recommendations and I am of the view that they cannot be released in their current form. Firstly, I am not confident that these recommendations have been concluded. Secondly, I am conscious of the need to ensure that no one person is denied natural justice.

In your role as Inspector of the Police Integrity Commission I request that you undertake a review of this matter with an emphasis upon reviewing the recommendations to ensure they have firstly, been properly dealt with, secondly their release would be in the public interest, thirdly whether their release would prejudice any legal action or investigation by the Police Integrity Commission or your office and fourthly, their release will not unreasonably reflect upon any individuals without them being afforded natural justice.

In accordance with S.217 of the Police Act NSW, 1990, I respectfully request this investigation be reviewed by your office and report provided to myself with your findings.

Should you wish to discuss any aspect of this matter, please contact Brad Scutella, Chief of Staff on 9228 5257. 0467 740 654

Kind regards,



**Michael Gallacher**  
Leader of the Government in the Legislative Council  
Minister for Police and Emergency Services  
Minister for the Hunter



COPY

## Ministry for Police and Emergency Services

### STRIKE FORCE EMBLEMS

- In April 2003 Commissioner Ken Moroney received a complaint from the Police Association concerning the issuing of a listening device warrant during Mascot/Florida. Operation Mascot/Florida was a joint major corruption investigation involving the Special Crime Unit of the then Internal Affairs Command of NSW Police, NSW Crime Commission and PIC.
- The complaint alleged impropriety in that the warrant covered over 100 people, mostly former and serving police officers. Strike Force "Emblems" was established in July 2003 by Commissioner Moroney to investigate the Police Association complaint.
- The issuing of the warrant had been investigated by the Inspector of the PIC and the Crown Solicitor who had found that the warrant had been justifiably sought and there had been no illegality. A copy of the Inspector's report is attached 'A'.
- The police investigation was ordered without consultation with the Crime Commission or Minister. The complaint was notified to the Ombudsman and the PIC. Both declined to oversight the investigation.
- Police also referred the matter to the DPP who declined to pursue any charges.
- NSW Police sought access to the affidavits issued to support the warrant application from the NSW Crime Commission. Under established legal precedent, the Crime Commission refused to supply the material.
- The Strike Force completed its report (copy attached - 'B') which was tabled at the NSW Crime Commission Management Committee meeting on 26 August 2004. It made a number of recommendations. Shortly afterwards the Strike force was disbanded. The total cost of the Strike Force was \$286,850.
- At the request of the Minister's Office advice was sought from the NSWPF on the outcomes of the recommendations of SF Emblems and any further action taken. Police advice is that all avenues have been exhausted and no further action was taken ('C'). Indeed, the findings and recommendations of SF Emblems were found in June 2004 by the then Assistant Commissioner Professional Standards to be "based on conjecture and not based on empirical evidence" ("D").
- The Commissioner, NSW Crime Commission has strong views on the matter and should be consulted about any decision to release any material relating to SF Emblems.



- From a review of the papers it would seem that the warrant was legally issued, no independent body would investigate the complaint and that all avenues for the police investigation have been exhausted. Given the contested nature of the "Emblems" findings no useful purpose would be served by releasing the report or recommendations without the review conducted by the then Assistant Commissioner Professional Standards. Indeed release of any of the material would seem to raise more questions than can be answered and should not be supported.
- **It is Recommended** that given the Minister's previous undertaking to release the "Emblems" recommendations that the Minister discuss the implications of any such release with the Police Commissioner, Crime Commissioner and myself beforehand.

Les Tree  
Chief Executive Officer  
20 June 2011

Minister

Minister

## ISSUE

Urgent request for advice on Strike Force Emblems, in particular, the outcomes of the Strikeforce and what actions have been taken in response to the recommendations of the Report of Strike Force Emblems.

## BACKGROUND

Due to the complexity of the matter and the timeframe in which information is required, a précis of the outcomes and actions is provided. Relevant reports have been annexed to this document and further information can be provided at a later date if required.

Strike Force Emblems was formed in 2003 to investigate complaints about the conduct of the joint NSW Police, NSW Police Integrity Commission and NSW Crime Commission Operation 'Florida/Mascot'. These complaints included allegations of impropriety of Listening Device Warrant 266 of 2000, containing 114 names, and allegations concerning the management of the Special Crime Unit (SCU), SC&IA.

The investigation arose after the above issues were raised by the NSW Police Association in 2003, and they were accepted as a complaint under Part 8A of the Police Act.

The recommendations of the NSWPF Strike Force Emblems report of 22 March 2004 is at Tab A.

The NSW Ombudsman and NSW Police Integrity Commission were both notified, however both agencies, for various reasons, declined to oversight this investigation (tab B).

In declining to oversight, the NSW Ombudsman suggested that the NSW Police Minister might consider appointing an authorised person under s217 of the Police Act to review the matter, however this was not deemed appropriate in June 2004 (tab C).

In a report dated May 2004, by the lead investigator of Strike Force Emblems, he reported on the Executive Complaints Management Team's decision to close the Strike Force and the subsequent action taken to meet with the Association. This report is attached at Tab D.

That report and a second report from the Executive Complaint Management Team (CMT) of 11 May 2004 (tab E) were forwarded to the Minister via the Ministry for Police.

At tab F, the Executive CMT wrote to the Commander Professional Standards indicating that the Police Association (original complainants) would be advised of the outcome of the Strike Force investigation. The Executive CMT also forwarded the report's recommendations to the Commander Professional Standards for review and appropriate action.

The Commander Professional Standards replied to the Executive CMT on 28 June 2004 (tab G), indicating his position on the recommendations of Strike Force Emblems. He did not support many of the recommendations. He finishes the Memorandum by stating *inter alia*;

“...there would appear to be no avenues for further inquiry. It is my recommendation that the DCoP 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'.

In response to the information provided to the Ministry, the Director General replied on 23 June 2004 (tab C) suggesting a number of avenues for consideration by the then Police Commissioner, Commissioner Moroney. This included referring the matter to the DPP or raising it at the NSW Crime Commission's Management Committee.

#### COMMENT

Whilst all the records relating to this matter have not been able to be located in the timeframe, the following information is available.

#### Referral to the DPP

On 8 December 2004, the investigating officer forwarded a submission to the Commissioner (tab H). The then Commissioner reiterated his previous directions that all material be referred to the ODPP for their consideration.

On 17 March 2005, Legal Services advises the investigating officer via email that they had received a response from the DPP and that on the material provided there is insufficient evidence to lay charges against any person (tab I).

#### Raising the matter at the NSWCC Management Meeting

At the meeting of 8 July 2004, Commissioner Moroney advised the meeting of the status of dealing with the complainants. He also noted that the report came to a number of conclusions, but that given the lack of access to the documents sought, they were unable to pursue the matter further.

Also at this meeting, the then Minister asked that the report be tabled at the next Management Committee Meeting where the Committee would decide on what action, if any, would be taken.

At the meeting of 26 July 2004, Commissioner Moroney requested that the report be tabled at the next meeting.

At the meeting of 26 August 2004, Commissioner Moroney tabled the Emblems report and said he would deal with the report at the next meeting, once the Committee had had a chance to read it.

At this stage the Crime Commission has not forwarded any further copies of the Minutes of the following meeting, however these have been sought.

#### Status of the recommendations

At the 1 September 2006 session of Budget Estimates, Lee Rhiannon asked Commissioner Moroney if he supported the recommendations of Strike Force Emblems. That question was taken on notice and advice sought. The advice provided by Professional Standards

summarises the status of the recommendations as of 19 September 2006. An unsigned copy of that report is at Tab J.

Essentially that report summarises the status of the recommendations as follows:

"Advice from Detective Inspector Galletta is that none of these recommendations have been implemented. Further to this, I have been unable to locate any documentation to indicate that these recommendations (as accepted by the ECMT) have been implemented, or indeed sighted by Commissioner Moroney. There is correspondence available to indicate that one of the recommendations, relating to the implementation of the document, *'Development of best practice for the conduct of internal covert investigations'*, has been progressed - even if not finalised. This was specifically referred to, along with the other recommendations detailed in the Strike Force Emblems final Investigators Report, by Assistant Commissioner Carroll in correspondence dated 28 June 2004.


It may well be that there was a delay in implementing these recommendations due to the fact that further efforts were made after the conclusion of the Strike Force to obtain the relevant affidavit under S17 of the Listening Devices Act 1984. Advice from the Operational Legal Advice Unit in December 2004 was to abandon this as it was 'not a viable path to pursue'. Further, it was asserted that advice should be sought from the Office of the Director of Public Prosecutions to ascertain whether there was sufficient evidence to support any criminal proceedings against any NSW police officers out of the investigation. Advice relating to this was received back from the ODPP in March 2005, citing insufficient evidence to proceed. These issues 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."

This is the last documentation on this issue able to be located at this time. It would therefore appear as if this has not progressed any further since 2006.

#### RECOMMENDATIONS

1. The Minister note the recommendations of the report of Strike Force Emblems;
2. The Minister note the current status of those recommendations;
3. The Minister advise if he would like those recommendations to be reviewed and advice provided on the viability of progressing them.

Assistant Commissioner Paul Carey  
Professional Standards Command

1. Commissioner 
2. Ministry
3. Minister

summarises the status of the recommendations as of 19 September 2006. An unsigned copy of that report is at Tab J.

Essentially that report summarises the status of the recommendations as follows:

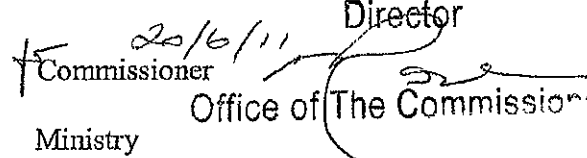
“Advice from Detective Inspector Galletta is that none of these recommendations have been implemented. Further to this, I have been unable to locate any documentation to indicate that these recommendations (as accepted by the ECMT) have been implemented, or indeed sighted by Commissioner Moroney. There is correspondence available to indicate that one of the recommendations, relating to the implementation of the document, *Development of best practice for the conduct of internal covert investigations*, has been progressed - even if not finalised. This was specifically referred to, along with the other recommendations detailed in the Strike Force Emblems final Investigators Report, by Assistant Commissioner Carroll in correspondence dated 28 June 2004.

It may well be that there was a delay in implementing these recommendations due to the fact that further efforts were made after the conclusion of the Strike Force to obtain the relevant affidavit under S17 of the Listening Devices Act 1984. Advice from the Operational Legal Advice Unit in December 2004 was to abandon this as it was ‘not a viable path to pursue’. Further, it was asserted that advice should be sought from the Office of the Director of Public Prosecutions to ascertain whether there was sufficient evidence to support any criminal proceedings against any NSW police officers out of the investigation. Advice relating to this was received back from the ODPP in March 2005, citing insufficient evidence to proceed. These issues 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.”

This is the last documentation on this issue able to be located at this time. It would therefore appear as if this has not progressed any further since 2006.

## RECOMMENDATIONS

1. The Minister note the recommendations of the report of Strike Force Emblems;
2. The Minister note the current status of those recommendations;
3. The Minister advise if he would like those recommendations to be reviewed and advice provided on the viability of progressing them.

1.  Commissioner  
2. Ministry  
3. Minister

Director  
Assistant Commissioner Paul Carey  
Professional Standards Command  
Office of The Commissioner



Ministry for Police and Emergency Services

M110208

**MEMORANDUM**

TO: Andrew Scipione  
Commissioner of Police

FROM: Les Tree  
Chief Executive Officer

DATE: 15 June 2011

**SUBJECT: Strikeforce Emblems.**

---

The Minister's Office has sought your urgent advice on Strikeforce Emblems.

In particular the Minister's Office has sought a report on the outcomes of the Strikeforce, and what actions have been taken in response to its recommendations.

Please note that your advice is sought urgently and by no later than close of business tomorrow, **16 June 2011**.

Your assistance with this request is appreciated.

Many thanks,

**Les Tree**  
Chief Executive Officer

**ISSUE:**

Oversighting NSW Police internal complaint investigation P0302636 – Strike Force Emblems.

**BACKGROUND:**

This investigation results from a letter received by the NSW Police on the 29 April 2003 from the Police Association of NSW.

Members of that association made a number of complaints about the conduct of the joint NSW Police, Police Integrity Commission and NSW Crime Commission Operation Florida/Mascot.

The investigation has been managed by the Executive Complaint Management Team and is being led by Assistant Commissioner Gary Dobson.

The complaint has been notified to the NSW Ombudsman and Police Integrity Commission.

Both of these agencies have declined, for various reasons, to oversight this investigation.

The NSW Ombudsman's response to the NSW Police is attached (Attachment 1).

The Police Integrity Commission response to the NSW Police is attached (Attachment 2).

The NSW Ombudsman has suggested that the NSW Police Minister can appoint an 'authorised person' according to Section 217 of the Police Act 47/1990 (Attachment 3).

**RECOMMENDATION:**

The NSW Police Minister consider Section 217 of the Police Act 47/1990 and appoint an 'authorised person' to oversight Strike Force Emblems.

~~Bradley Howell~~  
Detective Inspector  
Professional Standards Manager  
Executive Complaint Management Team  
12 September 2003.

1. Deputy Commissioner (Operations).
2. Commissioner of Police.
3. Ministry of Police.
4. Minister of Police.



NSW Ombudsman

Our Reference: P0302636

Eng: Simon Cohen  
Ph: 9286 0953

~~Ken Moroney APM~~  
Commissioner  
NSW Police  
Police Headquarters  
Avery Building  
14-24 College St  
DARLINGHURST NSW 2010

Level 24 680 George St  
Sydney NSW 2000  
Phone 02 9286 1000  
Fax 02 9286 2911  
Tollfree 1800 451 624  
TTY 02 9284 8050  
Web [www.omrbo.nsw.gov.au](http://www.omrbo.nsw.gov.au)

Dear Mr Moroney

### Strike Force Emblems

NSW Police has notified my office of a complaint by Peter Remfrey, the Secretary of the Police Association of NSW (the Association), of 29 April 2003. This complaint canvasses particular matters arising from Operation Florida Mascot, a joint NSW Police, NSW Crime Commission (NSWCC) and Police Integrity Commission (PIC) investigation.

### Matters the subject of investigation

I understand that subsequent to the receipt of the complaint, and as part of the assessment process, officers of the Executive Complaints Management Team met with the complainant and other members of the Association to clarify concerns and issues that may require investigation.

I have been provided with a copy of the investigation plan for this complaint. Matters the subject of investigation include:

- allegations of impropriety regarding listening device warrant 266 of 2000 – a listening device obtained as part of Operation Florida/Mascot.
- investigative decision making processes by the NSWCC, NSW Police and the PIC regarding target selection and operational strategies.
- whether the listening device was part of a controlled operation or integrity test.
- whether M5, a principle figure in Operation Florida/Mascot, was an informer or undercover operative.
- reviewing legal advisings provided as part of Strike Force Sibutu (a NSW Police investigation overseight by the PIC).
- training and management of M5 and Special Crime Unit officers during Operation Florida/Mascot.



### Oversight of investigation

I have been concerned from the outset that it is not appropriate for the Ombudsman to oversee 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 those 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 oversee Strike Force Emblems, any meaningful review would be limited by these legislative prohibitions.
2. Matters touching on the investigation have already been the subject of some review by the Hon M D Finlay QC, the previous Inspector of the PIC. In particular, on 29 April 2002 Mr Finlay reported on a preliminary investigation of some aspects surrounding listening device warrant 266 of 2000. I understand that a copy of Mr Finlay's report was divulged to you at the time of its provision to the Minister for Police.  
  
The Inspector's conduct cannot be the subject of complaint, investigation, inquiry or other action under the Ombudsman Act – see Part 12 of the Police Integrity Commission Act. I am concerned that, should my office oversee Strike Force Emblems, 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.
3. 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.

For these reasons, I am declining to oversee investigation of this complaint.

I understand that the PIC was notified of this complaint by NSW Police in June 2003. My officers have already discussed oversight of this matter

with the PIC - in part because of PIC's involvement in Operation Florida/Mascot and in part because of PIC's oversight of Strike Force Sibutu. My office was advised by Mr Sage, Assistant Commissioner, in July 2003 that the PIC would not oversight investigation of this complaint.

While I am of the view that it is not appropriate for the Ombudsman to review the investigation of Strike Force Emblems, I am of the view that it is in the public interest that an external agency with appropriate jurisdiction have some role in the reviewing the matter.

I note the role of the previous Inspector of the PIC in respect of listening device warrant 266 of 2000. Whether the current Inspector, the Hon M D Ireland QC, should be considered to undertake some oversight role in respect of Strike Force Emblems may well be a matter for the Minister to consider. In this respect, I note that in addition to the Inspector's oversight role in respect of the PIC, the Minister may appoint the Inspector to report on various matters pursuant to s 217 of the Police Act - as occurred when Mr Finlay examined the listening device warrant on a previous occasion.

Request for further advice

I would ask that you consider this issue of oversight, and take any steps you consider appropriate to ensure an independent review of the outcomes of Strike Force Emblems.

I would appreciate your advice in due course as to this matter. Following completion of the investigation and any review, I would ask that this office be notified of the findings for our records and intelligence purposes.

I have attached for your information a copy of my letter to Mr Remfrey of the Association advising that the Ombudsman will not oversight the investigation of his complaint.

Your officers may contact Simon Cohen on 9286 0953 if there are any matters they wish to discuss.

Yours faithfully

Bruce Barbour  
Ombudsman

12/8/03

CC: Mr Peter Remfrey, Secretary, Police Association of NSW



ABN 22 670 745 540

9 September 2003

Our Ref: 11657/4



Mr Michael Egan  
 Manager  
 Police Integrity Commission Liaison Unit  
 Level 3  
 45 Clarence Street  
 Sydney NSW 2000

Dear Mr Egan,

Re: Strike Force Emblems (P0302636)

Please refer to your letter of 25 August 2003 (your ref: LU/7519) seeking advice in relation to the oversighting of the NSW Police investigation concerning P0302636.

The Commission considered P0302636 in June 2003 and decided to refer it to the NSW Police and Ombudsman to be dealt with under Part 8A of the Police Act 1990. Having considered your correspondence of 25 August, the Commission's decision not to oversight this matter remains unchanged.

In his letter of 12 August 2003 to the Commissioner of Police, the Ombudsman raised the possibility that an appointment could be made under section 217 of the Police Act 1990 for the purpose of oversighting the police investigation. The Commission has no objections to P0302636 being oversighted by way of an appointment under s 217. However, it makes no comment as to who should be considered for that role.

A copy of this letter shall be forwarded to the Ombudsman for information.

Yours sincerely

  
 T.P. Griffin  
 Commissioner

Section 217 Police Service Act 1990 No 47

Part 12 Miscellaneous

### 217 Ministerial Inquiries

- (1) The Minister may appoint any person (an *authorised person*) to inquire into, and to report to the Minister on, any matter on which the Minister wishes to be advised in relation to the management and administration of the Police Service.
- (2) For the purpose of conducting such an inquiry, an authorised person may, at any time, do any of the following:
  - (a) enter any police premises;
  - (b) call for and inspect all or any police records, documents, files or other matter, whether of the same or of a different kind, on police premises;
  - (c) question and seek information from any member of the Police Service.
- (3) A member of the Police Service who fails:
  - (a) to comply with any requirement made of the member by an authorised person under this section, or
  - (b) to give all assistance and co-operation to an authorised person,

is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 6 months or both.

### 218 Industrial Relations Act 1996 not affected

- (1) The *Industrial Relations Act 1996* is not affected by anything in this Act.
- (2) Subsection (1) does not limit section 44 or 89 or any provision of the *Industrial Relations Act 1996*.

### 218A Police Band


- (1) There is to be a Police Band, which may consist of members of the Police Service or other persons approved by the Minister or both.
- (2) The ceremonial and other roles of the Police Band are to be as determined by the Commissioner from time to time.

Tab

# Ministry for Police



## MEMORANDUM

TO:  23/6/04 2:50 pm  
Commissioner Ken Moroney, APM

FROM: Les Tree, Director General

DATE: 23 June 2004

SUBJECT: Strike Force 'Emblems'

I refer to the attached 'pinks' relating to Strike Force 'Emblems'.

I note that the internal complaint investigation has been finalised and the investigation staff returned to their commands.

As previously advised, I do not consider it appropriate that any inquiry be established under Section 217 of the Police Act to further investigate the matter. If you believe further action is required you should refer the matter to the Director of Public Prosecutions.

Inspector Howell's 'pink' of 11 May 2004 contains a notation from you that 'It may also be that consideration of the issues herein, is relevant to the Minister's role as Chair, Management CTE, NSWCC'. If you wish to pursue this matter, it is open to you, as a member of the NSW Crime Commission's Management Committee, to raise any relevant issue in that forum.

In the circumstances, no further action will be taken in regard to these 'pinks' and no further pinks need be submitted in relation to this matter.

Les Tree  
Director General

Tab



NSW POLICE

## STRIKE FORCE EMBLEMS

Level 2 5-9 Butler Avenue  
Hurstville NSW 2220  
Ph: 9375 8016  
Fax: 9375 8093  
6 May, 2004

**ISSUE**

Strike Force Emblems

**BACKGROUND**

*Strike Force Emblems* was formed to investigate allegations of impropriety of Listening Device Warrant 266 of 2000 containing 114 names, allegations concerning the management of the Special Crime Unit SC&IA and other issues as set out in the investigation plan. (c@ts.i P0302636). The investigation arose after a series of issues raised by the New South Wales Police Association (NSWPA) were accepted as a complaint under Part 8A of the Police Act.

Other investigations that formed part of the Strike Force Emblems investigation were

- CIS 99003865 -- allegations that members of SC&IA induced an informant to breach his bail conditions and then the informant in court proceedings was influenced by SCU to perjure himself by giving false information.
- c@ts.i P0304808 & P0304811 & P0304008. Complaint by Detective Senior Sergeant Darren Mackay & Detective Cheryl Cook of the Special Crime Unit regarding management & investigation practices of SC&IA
- CIS 01004320, a previous investigation conducted by A/C Reith into the Operational activities of SCU that was oversighted by the PIC regarding fictitious information to facilitate search warrant applications.

**COMMENT:**

Strike Force Emblems exhausted every avenue of investigation in attempt to resolve these matters. The strike force had limited access to information due to statutory restrictions of the New South Wales Crime Commission Act and after lengthy negotiations with the New South Wales Crime Commission (NSWCC) was unable to obtain the affidavit and associated material pertaining to the subject warrant. On 18 February, 2004 the Executive Complaints Management Team took the decision to suspend any further investigations and close the strike force.

On 6 May, 2004 Deputy Commission Madden, Assistant Commissioner Dobson and Detective Inspector Galletta of Strike Force Emblems met with Peter Remfrey and other delegates of the NSWPA. Emblems personnel advised the NSWPA of their lack of success in being able to provide a successful conclusion to the seven issues raised in the initiating correspondence that gave rise to the creation of Strike Force Emblems. Due to the large number of complainants the NSWPA was advised that they would be provided with a formal and comprehensive response to the issues raised. Further, the individual complaints would a personnel debrief from Assistant Commissioner Dobson and Detective Inspector Galletta with respect to their issues with particular reference to the reasons for them being named on the warrant.

NSW Police  
Highly Protected  
Deputy Commissioner's  
Office - Operations

NSWR/D/2004/75906



CRIME PREVENTION AND DETECTION - Strike Force  
Emblems - C@ts.i P0302636

During the course of the briefing the delegation raised a number of issues, the critical ones being the following:

1. Why the Minister for Police did not authorise as a member of the NSWCC Joint Management Committee the dissemination of the subject affidavit and associated material to S/F Emblems
2. Why did the NSWCC refuse to provide the subject affidavit
3. Why didn't The Office of the Ombudsman, The Police Integrity Commission and/or the Minister of Police provide oversight of the investigation
4. What is going to be done in relation to the statements by former Commissioner Ryan and former Senior Assistant Commissioner Walsh regarding an alleged function held that justified the names being on the warrant. As the function did not exist the NSWPA requested access to the briefing given to Mr Ryan that lead to his statement on the 60 Minutes Program aired at the time the issues was in the public arena.
5. Why is the Commissioner of Police allowing the continuing secondment of Police to the NSWCC when they are not able to be interviewed because of the secrecy provision restrictions of the NSWCC Act.
6. Given that the Mascot/Florida investigation is finalised why were only twenty-eight people in receipt of a letter informing them that the investigation had been finalised. The delegation went on to question that if these twenty-eight persons were cleared what is the status of the remaining eighty-six.

In respect of these issues Strike Force Emblems investigators and Deputy Commission Madden were not in a position to provide answers that would satisfy these questions. The delegation advised that they intended via the NSWPA Executive to take these matters up with the Minister for Police.

The delegation stated that they were satisfied with the investigation but not the outcome. They intimated that the matters that were of concern to the membership and complainants would be pursued through other means which might likely include media, legal avenues and Parliament.

The delegation advised that issues surrounding the Mascot/Florida inquiry were raised from the floor at the last NSWPA Biennial conference in 2002. On that basis the delegation was of the view that there would be a need to report back to the conference this month on the outcomes of the Emblems Inquiry. Deputy Commissioner Madden undertook where possible to provide a briefing to the NSWPA to assist in that regard.

Given the complexity of the inquiry, attached is the investigation report which provides a comprehensive briefing on the conduct of the investigation.

**RECOMMENDATION:**

This submission be forwarded to the Minister for Police for his information and advice

Mark Galletta  
Detective Inspector

1. Commander Strike Force Emblems Assistant Commissioner Dobson
2. Deputy Commissioner (Operations)
3. Commissioner of Police
4. Minister for Police

*See above 9/5*

*Matter for discussion*

*MINISTRY*

*This briefing is provided as a matter of urgency because the matter may be raised in the media. Further inquiries are continuing.*

*7/5/04*

*10/5*

*16/5*

Tab E

NSWP/0/2004/78862

**CONFIDENTIAL**

**ISSUE:**

Strike Force Emblems - C@ts.i File P0302636.

**BACKGROUND:**

The internal complaint investigation, Strike Force Emblems has been finalised and the investigation staff returned to their individual Commands.

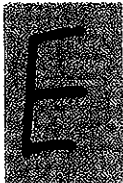
On Thursday, 6 May 2004 Deputy Commissioner Madden, Assistant Commissioner Dobson and Detective Inspector Galletta met with representatives of the Police Association of New South Wales to brief them on the investigation outcomes including information contained in the Final Report (Attached 1).

Complainants will be debriefed individually over the next two months. This debrief will be in terms of Section 150 of the Police Act 47 of 1990 although both the NSW Ombudsman and Police Integrity Commission have refused to oversight the investigation.

Attached are a number of documents that relate to oversight of this matter including a request to the NSW Police Minister to appoint an authorised person under Section 217 of the Act (Attached 2).

**RECOMMENDATION:**

Forwarded for information.



Bradley Howell  
Detective Inspector  
Professional Standards Manager  
Executive Complaint Management Team  
11 May 2004.

- 1. Deputy Commissioner (Operations).

*This report contains significant information on complainants & methodologies. It should be treated with strict confidentiality at all times. Protection of IPCE must be guaranteed.*

- 2. Commissioner.

*It may also be that consideration of the 12/5/04 re: issues herein, is relevant to the Minister's role as Chair,*

- 3. Ministry of Police. Management Cde, NSWCC.

*Given the complaint investigation has been finalised. No further action is required.*

- 4. Minister of Police.



*17/5*



**ISSUE:**

Strike Force Emblems – Findings and Recommendations.

**BACKGROUND:**

The investigation Strike Force Emblems was recently finalised by the Executive Complaint Management Team.

I have conducted a comprehensive review of the file and agree with the Findings and Recommendations (Attached 1).

A Comprehensive debrief of all complainants will commence on Thursday, 20 May 2004. On this date Mr Peter Remfrey of the Police Association of NSW will attend a meeting with the investigators, Professional Standards Manager and the Deputy Commissioner (Operations).

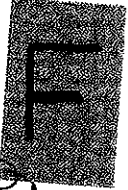
There is no external oversight of this investigation, therefore no requirement to report to any other agency.

I have already acted on Recommendation 2 and 6 (Page 38).

Given that the remaining Recommendations concern matters managed by the Assistant Commissioner (Professional Standards) it is appropriate that he be given the opportunity of commenting of the remaining matters and reporting to the Executive Complaint Management Team prior to this file being finalised.

**RECOMMENDATION:**

Forwarded for information and attention of the Assistant Commissioner (Professional Standards).



Bradley Howell  
Detective Inspector  
Professional Standards Manager  
Executive Complaint Management Team  
14 April 2004.

- 1. Deputy Commissioner (Operations).

*As indicated above, further work is required.*

*[Signature]* 15/4/04

RECEIVED  
16/4/04  
DEPUTY  
COMMISSIONER  
SUPPORT

- For 2. Deputy Commissioner (Support).

*For Comment And Advice on Recommendations.*

*M.A. [Signature] 7/5/04.*

- 3. Assistant Commissioner (Professional Standards).

*[Large signature]*  
*Del accepted. 29/6*



Tab G

**NSW POLICE**

www.police.nsw.gov.au

ABN 43 406 613 100

**PROFESSIONAL  
STANDARDS COMMAND**

NSWP10/2004/62348-001

**MEMORANDUM**

**TO:** Detective Inspector Bradley Howell

**FROM:** Assistant Commissioner  
Professional Standards Command (PSC)

**DATE:** 28 June 2004

**SUBJECT:** Strike Force Emblems – Findings and Recommendations

I refer to your report enclosing the findings and recommendations in Strike Force Emblems. I have reviewed the report and recommendations and make the following comments.

1. I do not support recommendation 1 as NSW Police cannot direct the Police Integrity Commission (PIC) to investigate matters. It is noted that the complaints are category 1 matters and as such have been notified to the PIC through the [c@tsi](mailto:c@tsi) system.
2. The document referred to in recommendation 2 is currently being reviewed by the Professional Standards Command in relation to its implementation.
3. I do not support recommendation 3 as it is not an appropriate matter to be included within an investigation report. It is submitted that the recommendation be amended to state "Due to the secrecy provisions of s 32 and s 29 of the NSW Police Commission Act, Strike Force Emblems is unable progress the investigation".
4. I do not support recommendation 4 as it is unclear and conflicting in its content and intent.
5. It is noted that the memorandum of understanding between the NSW Crime Commission (NSWCC) and NSW Police dated 08 June 2001 in Operation GyMEA states that the NSWCC is responsible for the provision of legal support. There is nothing in the investigation report that indicates any structural problems with current practice, beyond the apparent frustration of this investigation. In view of the above I do not support this recommendation.
6. The first paragraph in recommendation 6 is incorrect and should be removed. I am unable to ascertain the recommendation if any that is stated herein.

**Command Centre**

Level 3, 45 Clarence Street, Sydney NSW 2000

Tel (02) 8234 5699 Fax (02) 8234 5656 TTY (02) 9211 3776 (Hearing/Speech Impaired) Enet 40699 Efax 40658

The comments of the investigator are extremely subjective, as he has drawn an inference of corrupt conduct without accessing 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 be appear to be no avenues for further inquiry. It is my recommendation that the DCOP 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'.

*John Carroll* 29/6.  
A/Assistant Commissioner  
Professional Standards Command

# CONFIDENTIAL

## Issue

Strike Force Emblems - Review of section 17 notice under the Listening Devices Act of 1984

## Background

As per previous sitrep dated 23 November, 2004.

Inspector Kennedy, Operational Legal Advice Unit, Legal Services conducted a further review of the section 17 notice under the Listening Devices Act of 1984.

## Comment

The Solicitor General, Michael Sexton detailed the following information pertaining to S17 notices.

1. The Solicitor General accepts the S17 notice on behalf of the Attorney General for the sole purpose of taking instructions so the Attorney General can indicate to the appropriate Judge whether or not the Attorney General wishes to be heard on the application for the listening device warrant. Therefore the Solicitor General is a contact point for the Attorney General.
2. The S17 notice has never been given out previously.
3. The Legislation is silent whether or not the S17 notice can be given out, so in the Solicitor General's view there would need to be some process compelling production of the notice before it would be produced.
4. If there was such a process, it is likely that the protection of Section 29 (secrecy provisions) of the New South Wales Crime Commission Act would extend to cover the S17 notice. Even if the NSWCC Act did not cover the S17 notice, it is probable that production would be successfully resisted on grounds of public interest immunity - contrary to the public interest to allow any person to go behind the listening device warrant.

I am instructed that there would be a strong argument that an alternative means by which the party seeking production of the S17 notice could access the information - e.g. obtain the original affidavit from the author. However, this avenue is clearly unavailable in this case due to the NSWCC Act, and therefore arguable that production of the S17 notice would frustrate the protections of that Act, and so that is another reason why a court would not compel access on public interest grounds.

Inspector Kennedy believes on closer examination of the aforementioned information from the Solicitor General that obtaining the S17 notice is not a viable option.

Kennedy advises to abandon any request for S17 notice and send the material to the Office of the Director of Public Prosecutions (ODPP) as originally proposed. The instructions to the ODPP would include the fact that the NSW Police Force have considered and rejected obtaining the S17 notice as an investigative strategy.

Formal written advising of Inspector Kennedy attached.

## Recommendation

The Commissioner note this information in regards to whether he sends a formal request to the Solicitor General seeking the information contained in a Section 17 notice under the Listening Devices Act of 1984.

That the review and advising by Legal Services regarding the Strike Force Emblems material be forwarded as originally proposed to the ODPP for sufficiency of evidence.

NSW Police  
Highly Protected  
Commissioner's Office

NSWP/D/2005/1699



MANAGEMENT - Strike Force Emblems - Review of Section 17  
Notice under the Listening Devices Act of 1984



Mark Galletta  
Detective Inspector  
Hurstville Local Area Command  
8 December, 2004

1. Executive Complaints Management Team Received 18/12/04 @ obo  
ECMT. For information.

*Original document of 4/1 Galletta not seen by me.  
In all of the circumstances, I note the recommendation  
and Interstate previous directions on the referral  
of all materials to O&PP for their consideration.*

2. Commissioner

*H. E. Kennedy  
Comm. 16.1.05.*

3. *Msgr. Galletta,  
Hurstville LAC.*

--- Received from NSWP.GALLIMAR 58502

17/03/05 11:42

Brad,

For your information

When I get the formal notification I will forward to you.

Mark

-----  
--- Received from NSWP.KENNICOL 8831 0114 /25114

17/03/05 11:39

Hello Mark

I have received a response from the DPP re this matter. As we all anticipated, they are of the opinion that , "On the material provided there is insufficient evidencet to lay charges against any person."

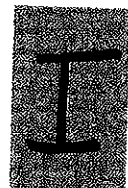
It seems to me that this puts an end to this matter. I will send you the DPP response ( the ususal 2 liner) with a short covering memo.

Cheers

Col Kennedy  
Legal Services

-----  
---- 17/03/05 11:39 ---- Sent to -----  
-> NSWP.GALLIMAR GALLETTA, MARK HURSTVIL

-----  
---- 17/03/05 11:42 ---- Sent to -----  
-> NSWP.HOWEIBRA HOWELL, BRADLEY POLICE



**4. It is recommended that the current relationship between the NSW Police and the NSWCC be reviewed. It is advised that the NSW Police continue to utilise facilities and coercive powers of the NSWCC.** " This recommendation, however, additionally included reference to the NSW Police returning to **"the process of the submission of affidavits and granting of listening device and telephone intercept warrants through Court & Legal Services in lieu of submission through the NSWCC"**.

The investigators recommendations also included a commentary relating to the possibility of reprisal or payback complaints due to the alleged corruption identified and investigated within the terms of reference of Strike Force Emblems. This was structured as a commentary only.

Advice from Detective Inspector Galletta is that none of these recommendations have been implemented. Further to this, I have been unable to locate any documentation to indicate that these recommendations (as accepted by the ECMT) have been implemented, or indeed sighted by Commissioner Moroney. There is correspondence available to indicate that one of the recommendations, relating to the implementation of the document, **'Development of best practice for the conduct of internal covert investigations'**, has been progressed - even if not finalised. This was specifically referred to, along with the other recommendations detailed in the Strike Force Emblems final Investigators Report, by Assistant Commissioner Carroll in correspondence dated 28 June 2004.

It may well be that there was a delay in implementing these recommendations due to the fact that further efforts were made after the conclusion of the Strike Force to obtain the relevant affidavit under S17 of the Listening Devices Act 1984. Advice from the Operational Legal Advice Unit in December 2004 was to abandon this as it was 'not a viable path to pursue'. Further, it was asserted that advice should be sought from the Office of the Director of Public Prosecutions to ascertain whether there was sufficient evidence to support any criminal proceedings against any NSW police officers out of the investigation. Advice relating to this was received back from the ODPP in March 2005, citing insufficient evidence to proceed. These issues 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.

**RECOMMENDATION:**

That the Commissioner give consideration to the final recommendations arising out of Strike Force Emblems.

Kendall Strik  
Sergeant  
Coordinator – Professional Standards Unit  
Professional Standards Command  
EN 40682  
19 September 2006

Tab G

**NSW POLICE**

www.police.nsw.gov.au

ABN 43 405613 180

**PROFESSIONAL  
STANDARDS COMMAND**

NSWPI012004/62348-001

**MEMORANDUM**

**TO:** Detective Inspector Bradley Howell

**FROM:** Assistant Commissioner  
Professional Standards Command (PSC)

**DATE:** 28 June 2004

**SUBJECT:** Strike Force Emblems – Findings and Recommendations

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I refer to your report enclosing the findings and recommendations in Strike Force Emblems. I have reviewed the report and recommendations and make the following comments.

1. I do not support recommendation 1 as NSW Police cannot direct the Police Integrity Commission (PIC) to investigate matters. It is noted that the complaints are category 1 matters and as such have been notified to the PIC through the ci@tsi system.
2. The document referred to in recommendation 2 is currently being reviewed by the Professional Standards Command in relation to its implementation.
3. I do not support recommendation 3 as it is not an appropriate matter to be dealt within an investigation report. It is submitted that the recommendation be amended to state "Due to the secrecy provisions of s 32 and s 29 of the NSW Crime Commission Act, Strike Force Emblems is unable progress the investigation".
4. I do not support recommendation 4 as it is unclear and conflicting in its content and intent.
5. It is noted that the memorandum of understanding between the NSW Crime Commission (NSWCC) and NSW Police dated 08 June 2001 in Operation Gynea states that the NSWCC is responsible for the provision of legal support. There is nothing in the investigation report that indicates any structural problems with current practice, beyond the apparent frustration of this investigation. In view of the above I do not support this recommendation.
6. The first paragraph in recommendation 6 is incorrect and should be removed. I am unable to ascertain the recommendation if any that is stated herein.

**Command Centre**

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The comments of the investigator are extremely subjective, as he has drawn an inference of corrupt conduct without accessing 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 be appear to be no avenues for further inquiry. It is my recommendation that the DCOP 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'.

/ / John Carroll *29/6*  
A/Assistant Commissioner  
Professional Standards Command