

**INQUIRY INTO THE CONDUCT AND PROGRESS OF THE
OMBUDSMAN'S INQUIRY "OPERATION PROSPECT"**

Name: Mr Brian Harding (through O'Brien Lawyers)
Date received: 13/01/2015

Partially Confidential

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The Hon Robert Borsak MLC
Chair
Select Committee on the Conduct and Progress of
the Ombudsman's Inquiry titled Operation Prospect
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Borsak

**RE: SUBMISSION TO THE SELECT COMMITTEE ON THE CONDUCT
AND PROGRESS OF THE OMBUDSMAN'S INQUIRY "OPERATION
PROSPECT"
BRIAN HARDING**

We advise that we have received instructions to represent the interests of Mr Brian Harding.

We confirm that we also act for Mr Stephen Barrett and we rely upon and adopt the submissions made on behalf of Mr Barrett.

We are instructed to provide this submission to the Select Committee in response to a media release dated 24 November 2014 calling for submissions from interested parties. In providing this submission we seek, on behalf of our client, Parliamentary Privilege which we understand overrides the statutory secrecy provisions.

We are instructed as to the following:

1. Our client is a former New South Wales Detective Superintendent who served with the New South Wales Police Force for just short of 37 years. During his service our client received Royal and Departmental awards for courage, competence and academic achievement.
2. Since leaving the New South Wales Police Force our client held the position of National Cargo Security Advisor Air New Zealand/Ansett Australia and with the corporate demise of Ansett Australia he became Head of Security (Security Director) with TNT Australia Pty Limited.



3. For an eight year period our client held the honorary position of Chairman of the Freight Security Council of Australia. Our client is currently semi-retired conducting fraud investigations on a part-time basis.
4. In or about April 2000 a listening device warrant was granted by Dowd J naming our client and 112 others. **Annexed hereto and marked 'A'** is a copy of that warrant.
5. In or about September 2000 a further listening device warrant was granted by Bell J naming our client and 113 others. **Annexed hereto and marked 'B'** is a copy of that warrant.
6. On or about 14 September 2000 Glenn William Trayhurn, Police Officer, swore an affidavit in support of his application before Bell J for the listening device warrant. **Annexed hereto and marked 'C'** is a copy of that affidavit. Apart from being named in the affidavit as one of the persons that the listening device warrant is sought against, there is no information in the affidavit about our client.
7. Our client was provided with a copy of Annexure C anonymously in a plain envelope with no return address. Since receiving the material our client has consulted with a wide range of individuals in relation to Special Crime and Internal Affairs (SCIA) Operations Mascot, Florida and Boat. Those consulted included Senior Counsel, Solicitors, Journalists, Politicians and former senior and respected police colleagues, many of whom were also named in the warrants.
8. Any investigation of our client's complaint will go to the heart of law enforcement in New South Wales and will have to examine the conduct of former Police Commissioners Ryan and Moroney as well as the current Commissioner Andrew Scipione in his former role as Commander of SCIA.
9. The investigation will also involve Deputy Commissioner Cath Burn, the New South Wales Crime Commission, the Police Integrity Commission and the means by which these bodies obtain listening device warrants out of the Supreme Court of New South Wales.
10. Up to this point all inquiries and investigations into the matters complained of have been politically motivated and conducted in secrecy and behind closed doors.
11. The complaints can only be adequately dealt with in an open Judicial inquiry conducted by an interstate Judicial Officer with appropriate powers.
12. Our client outlined in his submission to the Ombudsman that because of the potential Judicial, Political, Police leadership and inter-agency sensitivities which are intertwined in any investigation of the matters complained of would lead to an inquiry that would linger for two or more years behind closed doors with a low key confidential report eventually submitted to this Honourable Committee. Self-evidently the Ombudsman's investigation has lingered for over two years and has been conducted behind closed doors.

13. The warrants at Annexures A and B allege the commission of the following offences:

- (a) money laundering, contrary to Section 73 of the *Confiscation of Proceeds of Crime Act 1989* (NSW);
- (b) corruption, contrary to Section 200 of the *Police Service Act 1990* (NSW);
- (c) corruptly receive a benefit, contrary to Section 249B of the *Crimes Act 1900* (NSW);
- (d) conspiracy to pervert the course of justice, contrary to Section 319 of the *Crimes Act 1900* (NSW);
- (e) conspiring to pervert the course of justice, contrary to the common law; and
- (f) tampering with evidence, contrary to Section 317(a) of the *Crimes Act 1900* (NSW).

Our client denies any involvement in any of the offences described.

14. On or about 15 December 2003 our client was interviewed by Officers attached to Strike Force Emblems. Our client was not provided with a transcript. Officers from Strike Force Emblems were prevented from conducting a proper inquiry by the secrecy provisions invoked by the New South Wales Crime Commission and the obstructive approach that it took to the investigation.
15. The main points that our client made in his interview on or about 15 December 2003 was that he met M5 in approximately 1989. Our client had never been part of any Police operation in which M5 was involved. Our client has never socialised with M5 and M5 was not connected with any persons with whom our client regularly socialised.
16. It is clear that the reason for our client's name appearing on the two warrants is M5. It would also seem to be the case that our client was to attend a function at which M5 would be in attendance and he would then attempt to tape a conversation with our client, together with over a hundred other individuals. Our client has never attended a social function with M5 nor has he ever intended to do so.
17. With regard to the affidavit sworn by Glenn William Trayhurn on 14 September 2000 names our client on page three of the affidavit, however, he is not referred to anywhere else in the affidavit. A serious question has to be asked about the quality and accuracy of the material that is being put before the Justices of the Supreme Court of New South Wales in an attempt to obtain these listening device warrants.
18. **Annexed hereto and marked 'D'** is a copy of a report prepared by now Deputy Commissioner Cath Burn. At page 10 our client is mentioned in the following terms:

'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.'

The term 'Suspected to have been involved in or have knowledge of corrupt or criminal conduct by Police' is used consistently and appears to be a 'catch all' phrase for numerous former Police.

Our client is in exalted company as the same phraseology is directed against Deputy Commissioner Kaldas and former Detective Chief Superintendent and

19. James King has provided a statutory declaration providing the date of his send-off as 30 June 2000. The applicability of a June function to a September affidavit raises serious questions of honesty and competence on the part of SCIA and the author of the document.
20. Our client responded to an advertisement placed by the New South Wales Ombudsman detailing the objectives of Operation Prospect. **Annexed hereto and marked 'E'** is a copy of that advertisement. Our client provided a detailed submission in addition to a large amount of material that had come into his possession in response to that advertisement. Our client was never made aware of the change in the terms of reference or the objectives of Operation Prospect.
21. Our client was compelled to attend and was subjected to a compulsory examination. Without going into the details of that compulsory examination the bulk of the examination focused on how our client came into possession of the applications for the listening device warrants and the supporting affidavit of Glenn William Trayburn.
22. The New South Wales Ombudsman, in relation to our client, appears to be not interested in pursuing the illegal acts committed some 12 years ago, but is focused on hunting down and prosecuting all those who have aired the leaked documents and complained about how wrong the actions of Mascot/Florida were. The New South Wales Ombudsman appears to be focused on the Whistleblowers and is ignoring those whistleblowers positive obligations under Section 316 of the *Crimes Act 1900 (NSW)* to report a serious indictable offence.

We ask that favourable consideration be given to the matters raised herein on behalf of our client and we urge this Honourable Committee to seize the opportunity to have these complaints made by our client and others to be dealt with properly by the appointment of an interstate judicial officer to conduct an appropriate public hearing. We note that there has been ample precedent for the appointment of an interstate judicial officer to conduct open hearings.

Without public hearings the parties concerned cannot test the evidence and the transparency so needed in this matter will be lost.

We are instructed that our client wishes to appear before this Honourable Committee and wishes to be legally represented at the hearing.

Finally, please feel free to contact the writer if you have any queries or wish to discuss any matter raised herein.

Yours faithfully
O'BRIEN LAWYERS

ANDREW O'BRIEN

Encl.