

**INQUIRY INTO THE CONDUCT AND PROGRESS OF
“OPERATION PROSPECT”**

Name: Name suppressed

Date received: 2/02/2015

Partially Confidential

1st February 2015

The Hon. Robert Borsak MLC
Chairperson
Legislative Council Select Committee on the conduct and progress of the Ombudsman's
Inquiry "Operation Prospect"
Parliament House
Macquarie Room
Macquarie Street
Sydney NSW 2000

Dear Sir,

Submission by Former Senior Constable

On the 14th November 2012 I supplied a complaint to Operation Prospect after calls for information was released by the Ombudsman stating Operation Prospect was "an investigation.....into allegations of serious police misconduct by officers of the NSW Police Force, NSW Crime Commission and the Police Integrity Commission in relation to Operations/Strike Forces, Mascot, Florida and other associated investigations during the period 1998 to 2003" and the terms of reference include matters surrounding NSW Crime Commission Listening Device warrants and other associated warrants. My complaint to Operation Prospect surrounded Operation Acer, Mascot2 and Wattles from 2002.
(See annexure A)

On the 18th June 2014, staff from my solicitors firm Heenan and Company Lawyers contacted the Ombudsman Office and spoke with _____ in relation to the current status of my complaint. On the 10th September 2014 I received a letter from the Ombudsman Office
(See Annexure B).

Still to this day I have not been summonsed to appear at Operation Prospect, I have not given any oral evidence to the Ombudsman, I am under no direction from the Ombudsman not to discuss anything from my complaint, I am not under any secrecy provisions from the Ombudsman.

I have been present during the hearings of the Legislative Council Select Committee into the conduct and progress of the Ombudsman's inquiry into Operational Prospect" on hearing dates 29th January 2015 and 30th January 2015. Regardless of the evidence I have to provide the committee along with my submission I have supplied Operation Prospect for investigation, I have been very reluctant as a former police officer of 13 years to come forward as a whistleblower and supply a submission to the select committee.

After hearing the evidence of former Superintendent Brian Harding and Deputy Commissioner Nick Kaldas along with speaking to other former officers present at the hearing that have provided submissions, I sought legal advice and have developed the courage to come forward and provide this submission, I am willing to give oral evidence to the Select Committee, I do not wish for my name to be suppressed.

It appears the Select Committee do not know the full extent of Operation Prospects scope. After hearing the evidence before the Select Committee of the conduct of the Special Crime and Internal Affairs(SCIA) investigators and it's handling of M5 and their warrant applications and handling of warrants, the Select Committee must know that it was common practice for SCIA to use corrupt police officers, obtain listening devices, and have the corrupt police officers 'wired' up and instructed to entrap other police officers into conversations by way of the illegal use of a listening device they have obtained from the Supreme Court. I will show the illegal uses of the listening devices in more detail shortly.

Common use of "Corrupt" Police Officers as Undercover Operatives

In the document from the Ombudsman to the Chair of the Select Committee dated the 28th January 2015, titled, "NSW Ombudsman to Chair regarding the Conduct of Operation Prospect and Public Immunity" on page 23, paragraph 111, the Ombudsman claims;

"The circumstances of a police officer "rolling over" so extensively" and then performing undercover or field operative work was an usual situation not previously seen in either the NSWCC or NSWPF. Following on from this experience in 2003, the Court and Legal Services Branch of the NSWPF conducted a review of the handling of SEA and developed policies regarding roll over operatives similar to SEA"
"SEA is the NSWCC codename for M5 – P12 Paragraph 57)

I find this statement hard to believe from the NSW Ombudsman as it appeared it was common for the NSWPF to use corrupt officers as undercover operatives.

1. In 2000, a corrupt Detective who was identified and had his corrupt behavior recorded by M5 while working in the detectives who was charged with those offences, he later approached SCIA and NSWCC investigators and offered his assistance to obtain a lenient sentence for his corrupt behavior.

This corrupt officer became an informant he was given the pseudonym SCIA investigators took an induced statement from (There is a non-publication order in relation to the identity of). For the purpose of the Select Committee the identity of is,

2. In 's induced statement he included my name as a target of corrupt behavior.
3. I have never worked with , I have never worked on the I held a management position with the Police Rugby League Football Team and it was my only means of contact with the Detectives.
4. I was entrapped into conversations by of which he recorded by listening device. I was never charged with any offences of corruption. I gave evidence at the

Police Integrity Commission (PIC) in March 2003 to Operation ACER/Mascot2/Wattles in secret in relation to the recorded conversations between [redacted] and myself. SCIA informed my Commander I had given evidence at PIC, but would not inform him about what, my Commander suspended me. I heard nothing from the PIC, it brought extensive stress upon me.

5. In November 2004, I had a brain bleed I subsequently had two immediate emergency brain surgeries within 16 hours of each other, the medical team were not confident of my survival. Professor Michael Morgan the neurosurgeon put the cause of the bleed down to stress, fatigue and alcohol abuse, all symptoms I had developed from giving evidence at the Police Integrity Commission 20 months previously, suspended and not heard anything from the PIC or the NSW. Post-surgery, followed lengthy rehabilitation.
6. In 2005 I received a Court Attendance Notice for giving false evidence at the PIC. In June 2007 I sat through a Committal Hearing at the Downing Centre Local Court, I was committed for trial.
7. As a result of my brain injury, I was declared not medically fit to stand trial in Sydney District Court. In April 2011, I sat a Special Hearing before Judge Bennett, I was not convicted, but there were findings of guilt, my counsel [redacted] argued the legality's of the warrants, the credibility and management of [redacted], and the calculated and deliberate wrong doing of the NSW but it was an uphill battle from the beginning.
8. The matter is now in the Court of Criminal Appeal (CCA) and it is awaiting the findings of Operation Prospect, I hope that the Select Committee through what you will read herein and see how the NSW through the word of a self-admitted liar and illegal use of warrants ruined my career and almost took my life.

Corrupt Police Officer – [redacted] – SCIA Asset – [redacted]

[redacted] was charged with some 27 offences, he pleaded guilty to 13 of those and the remainder on a form 1 including, soliciting a bribe, receiving a corrupt reward, steal from dwelling, supply prohibited drug, supply commercial quantity of heroin. He was sentenced to 7 years imprisonment with a non-parole period of 5 years. [redacted] whilst working for SCIA was not placed on any bail conditions and on one occasion is believed to have fled to Spain to avoid jail but returned before his next court appearance.

For the Select Committee to understand that [redacted] was not a person of truth, apart from his admissions of corruption and dishonesty he admitted he was prepared to tell lies on oath when it best suited his purpose and admitted lying to the Crime Commission, SCIA aware of this, [redacted] in his evidence at my Special Hearing knowing of his dishonesty, continued to use [redacted] as an asset, regardless of the lies he provided to the Crime Commission and SCIA to benefit himself, NSWCC and SCIA still provided him with a letter of comfort upon sentencing and he received a reduced sentence. Evidence for this statement is as follows;

1. 4th June 2007, Committal Hearing, (pp. 24-25) Downing Centre Local Court

Q. *So, it is true, is it not that from time to time when it suits you, you're prepared to tell lies, is that the case?*

A. *Yes*

Q. *At the Crime Commission?*

A. *Yes*

Q. *, you're prepared to tell lies on oath when it suits your purposes; that is the fact is it not?*

A. *Yes*

2. 7th April 2011, Special Hearing (pp. 510 – 511) Sydney District Court

Q. *You're prepared to lie on oath when it suits your purpose's, do you deny that answer was correct?*

A. *Yes it's true*

Also at the Special Hearing on the 7th April 2011, [] admits to lying at the PIC under the protection of an objection about organizing a Break Enter and Steal in []. In his evidence, during Operation Florida [] strenuously denied organizing the break, enter and steal, even when the criminal he organized to do the break, enter and steal nominated him as organizing it, when questioned here, he admitted to lying at the PIC and admitted to organizing the break and enter.

It still amazes me how SCIA and the NSWCC use corrupt police officers like [] and M5 as valuable assets. Anything they uncover or supply to investigators is immediately questionable.

Listening Device Warrants used by SCIA on [] (2002)

The warrants applied for and granted were issued under titles Operation MASCOT 2 and Operation WATTLES. The warrants have been served upon my legal team, Counsel [] and Solicitor Assisting [] by SCIA and viewed in a public court, there are no secrecy provisions over the details in the warrants. Subpoenas have been issued for access to affidavits unsuccessfully.

1. NSWCC LD 02/08442

Authorised Justice: Virginia Margaret Bell

Date of Application: 8th October 2002

Applicant:

On the 8th October 2002, Detective Sergeant [] the SCIA investigator made an application for a listening device before Supreme Court Judge Virginia Margaret Bell, the application was authorized to install

a listening device on a premises, it authorized an entry on to the premises, with or without the consent of the owner or occupier thereof at any time of the day for the purpose of that installation and retrieval **(no address of premises listed on warrant)**. The warrant was in force between 5.30 on the 8th October 2002 and expired at 5.30 on the 28th October 2002. (See Annexure C)

The warrant is obviously to be fitted and used in a premises, not to be worn by a person, any reasonable person would see that detailed in the conditions of the warrant.

Problems identified with warrant NSWCC LD 02/08442

1. From my experience working as a detective, and making a warrant application for a premises, the address of the premises at least must be included in the warrant, if not certain rooms of premises for the listening device to be installed, authorizing police to enter and install and retrieve the listening device. The conditions of warrant 02/08442 **DOES NOT** list an address to any premises to enter and install and retrieve the listening device, allowing SCIA to enter **ANY** premises in New South Wales they wish to install and retrieve a listening device between 5.30 on 8th October 2002 and 5.30 on 28th October 2002.
2. The conditions strictly state the warrant only permits to be installed and retrieved from a premises. Under no circumstances should this warrant be fitted, worn or carried by a person to record or listen to private conversations.
3. The time on the warrant periods are unknown and could be challenged. It is filled out 5.30. Is the time period 5.30am or 5.30pm? If certain conversation is recorded between the period of 5.30am and 5.30pm, it could be contested that the warrant expired at 5.30am and the conversation was illegally recorded. It would be expected the warrant would be immaculately filled out.

Illegal use of warrant NSWCC LD 02/08442

1. The warrant was in force between 5.30 on the 8th October 2002 and expired at 5.30 on the 28th October 2002. On the 14th October 2002, the warrant applicant [redacted] fitted the listening device authorized to be installed in a premises to [redacted] and illegally instructed him to wear and carry the listening device to the [redacted] and have a conversation with myself. It is my complaint to Operation Prospect that SCIA illegally misused listening device warrant 02/08442 to record my conversation at the [redacted] at 2.45pm on the 14th October 2002.
2. The warrant was in force between 5.30 on the 8th October 2002 and expired at 5.30 on the 28th October 2002. On the 17th October 2002, the warrant applicant [redacted] fitted the listening device authorized to be installed in a premises to [redacted] and illegally instructed him to wear and carry the listening device to the [redacted] and have a conversation with myself. It is my complaint to Operation Prospect that SCIA illegally misused listening device warrant 02/08442 to record my conversation at the [redacted] on the 17th October 2002.

2. NSWCC LD 02/09169

Authorised Justice: David Levine

Date of Application: 29th October 2002

Applicant:

On the 29th October 2002, Detective Sergeant [redacted] the SCIA investigator made an application for a listening device before Supreme Court Judge David Levine, the application was authorized to be worn, or carried by the applicant or by one of the persons named in the annexed schedule on the applicants behalf. The warrant was in force between 9.30am on the 29th October 2002 and expired at 9.30am on the 19th November 2002. **(See Annexure D)**

Subpoenas have been issued to obtain affidavits and annexed schedules to the warrant applications unsuccessfully, it is unknown if the annexed schedule names [redacted] as a person by the applicant [redacted] as a person permitted to wear and carry the listening device.

Illegal use of warrant NSWCC LD 02/0169

The warrant only lists prescribed offences relating to the manufacture and production of drugs and the supply of drugs. This only allows [redacted] to speak to targets respecting those prescribed offences, nothing more. There is no prescribed offence listed on the warrant relating to obtaining a fictitious passport. The targets on the warrant were [redacted] and any other person having a conversation in their presence.

The drug related prescribed offences were targeted at [redacted] he was later charged with those drug related offences and jailed. I argue why my name was even placed on the warrant.

1. The warrant was in force between 9.30am on the 29th October 2002 and expired at 9.30am on the 19th November 2002. On the 31st October 2002, the applicant [redacted] "wired" up [redacted] and instructed him to meet with me at the [redacted] and entrap and induce me into a conversation about him obtaining a fictitious passport whilst overseas in the UK and asking for my assistance in obtaining him another passport here in Australia. There is no prescribed offences listed on the warrant granting the undercover operative to discuss such matters leading to a perversion of the cause of justice. These recordings were illegally obtained.
2. The warrant was in force between 9.30am on the 29th October 2002 and expired at 9.30am on the 19th November 2002. On the 12th November 2002 the applicant [redacted] again "wired" up [redacted] and further instructed him to meet with me at the [redacted] and again further entrap and induce me into conversations about obtaining a fictitious passport here in Australia. There is no prescribed offences listed on the warrant granting the undercover operative to discuss such matters leading to a perversion of the cause of justice. These recordings were illegally obtained.

The warrant was in force between 9.30am on the 29th October 2002 and expired at 9.30am on the 19th October 2002. The targets on the warrant were [redacted] and any other person having a conversation in their presence. A person by the name of [redacted] was not listed on the warrant as a target therefore he could only have his conversation recorded in the presence of a target being, [redacted]

On the 8th November 2002 the applicant [redacted] "wired" [redacted] up and instructed him to meet with [redacted] at the [redacted] [redacted] alone and incite and entrap conversations relating to his possession of a police identification badge. The illegality of the use of the listening device on this occasion is as follows;

1. [redacted] is not a target listed on the warrant and cannot be under any circumstances targeted by [redacted] and have his conversation recorded alone.
2. There is no offence relating to the possession or use of the police badge listed on the warrant.
3. The offence is not an indictable offence it is a Summary Offence under the *Police Service Act* 1990 and is not an offence that would be authorized by a Supreme Court Judge as a prescribed offence on a Listening Device warrant.

The Crown asked [redacted] under oath on the 11th April 2011;

- Q. *Inspector, what was your understanding as to the legality of [redacted] Wearing a listening device on 8 November 2002 and engaging in a conversation with a person called [redacted]?*
- A. *My understanding was that the warrant authorized me to record the conversations of [redacted] and his associates, which [redacted] was at the time.*

This is an inexplicable answer, it would mean any person that [redacted] engages a conversation with at any time would be his associate and he would be then be authorized to record that conversation.

When the listening device applicant [redacted] was questioned by my Counsel [redacted] at my Special Hearing on the 12th April 2011 about his instructions to [redacted] when meeting [redacted] at the [redacted] on the 8th November 2002, [redacted] being a person not named on the warrant as a target [redacted] states;

- Q. *Prior to him meeting [redacted] on the eighth of the 11th?*
- A. *Yes.*

Q. *By looking at contact advice report 34, parts B and C, are you able to say what it was that you asked [redacted] to do on the eighth of the 11th 2002 when he was fitted with a listening device?*

A. I am. My memory, all of the meetings before [redacted] went and met with somebody, we gave him one or two or three objectives to cover. On this occasion, I can see that there were three objectives I gave him, one involved to talk about the police identification badge. I asked him if he could ask who he received it from, how he received it and what it's been used for, and there were two other matters not relevant to this court case today. I can talk about those if you wish.

Q. Well, in terms of the offences described on the listening device warrant, did those matters concern those offences?

A. Yes.

CROWN PROSECUTOR: If the witness could be given the exhibit, your Honour, of the warrant. I think it's exhibit 2 on the voir dire.

HIS HONOUR: Yes.

Q. I might have missed what you just said, Inspector. You said you gave him three objectives, one was the police identification badge?

A. Yes, your Honour, and there were two other drug-related matters, unrelated to this.

Q. Unrelated to these matters.

CROWN PROSECUTOR

Q. The unrelated matters that you asked [redacted] to talk about with [redacted] did they relate to the offences described on the listening device warrant?

A. Yes, they did.

Q. What were the offences that those topics related to?

A. Supply prohibited drug.

It is obvious, [redacted] blatantly broke the law by "wiring" up [redacted] and instructing him to speak to and record the conversation of a person not named on the listening device warrant.

[redacted] answer relating to the drug related matters that [redacted] was also instructed to speak to [redacted] about not being relevant to my proceedings, supports my claim that the drug related prescribed offences being the only listed offences on the warrant not being relevant to myself, questions the relevance of me being listed on the warrant at all.

Questioning about the process making a Listening Device Warrant application –

[redacted] was an active investigator in Operation Florida/Mascot and also Acer/Mascot2/Wattles, he made applications for listening device warrants in both Operations. My Counsel [redacted] at the special hearing rightfully so argued the legality of the warrants along with the calculated and deliberate wrong doing of the NSWP but it was a continual uphill battle.

Here is some of the cross examination of [redacted] from SCIA by [redacted] did not know the difference between an AFFIDAVIT or an AFFIRMATION when making an application for a listening device warrant to the Supreme Court, something a SCIA investigator who gives evidence of regularly making warrant applications.

Tuesday 12th April 2011 – Special Hearing

Q. I take it, Inspector, that over those years that you'd been involved in many applications for warrants at different times?

A. Yes.

Q. As such you were familiar with the requirements for obtaining a warrant.

A. Yes.

Q. You're familiar with the legislation?

A. Well, we rely heavily on legal services and solicitors to assist in the preparation of these warrants, and I'm as familiar as a police officer would be. I don't have an expertise in it, but

Q. Certainly, it was the situation that you were briefing the solicitors?

A. Yes, the Crime Commission were prepared by solicitors.

Q. As at 2002, you were in secondment from the New South Wales police to the Crime Commission. Is that correct?

A. Yes, you could say that.

Q. In fact you had been on secondment soon after Operation Florida commenced. Is that correct?

A. Yes. Very early when Florida commenced, and then when the - it started to go over, I went back up to internal affairs when this matter came up.

Q. Your role in relation to Operation Florida was an important role, a significant role?

A. I had a significant role, yes.

Q. At some stage, you were placed in charge of the operation that involved

A. Yes.

Q. You had been approached by [redacted] who had indicated to you that he was prepared to provide information to you?

A. Well, he had approached the Crime Commission and they in turn contacted me, yes, and put me in contact with [redacted].

Q. You recognised that a good instrument to use as part of the investigation process with his assistance was to obtain a listening device?

A. Yes.

Q. Following that, you made an application or a number of applications for a warrant in order to obtain listening devices?

A. That's correct.

Q. After you complete the application itself, is it the case that you complete an affidavit which is the document which goes to the justice?

A. At what stage? There's

Q. When you apply for a warrant. I'm just asking about the process.

A. Yeah. You apply for a warrant. You complete an application, which is

Q. And you also complete an affidavit?

A. Yeah, I don't know if it's an affirmation or affidavit. I don't know that.

Q. And when you make the application, is it the case that you ensure that what's contained there is clearly set out in terms of what you're wanting to achieve?

A. There's objectives, yes.

And to have

Q. Is it the case that, once you prepared your application, you'd take the application to the solicitors, and you then brief them about how they should - well, you give them instructions as to what you're seeking to obtain.

A. Yes.

Q. And they rely on your application in order to then pursue the matter with the Supreme Court?

A. That's correct.

Conclusion

I ask that favourable consideration be given by the Select Committee to have the matters I have raised herein on my behalf and the behalf of all other current and former NSW Police Officers also affected by Operation Florida. In particular the Select Committee should seize the opportunity to have my complaints and others made to the Select Committee be dealt with properly by the appointment of an interstate judicial officer to conduct open and public hearings. Without public hearings the parties involved cannot test the evidence in a thorough and transparent manner, if these complaints are not dealt with in an appropriate manner, the criminal and improper conduct identified in this inquiry will be swept under the carpet.

In conclusion, in the great words of Deputy Commissioner Nick Kaldas, a great man and the most well respected police officer in the NSW Police Force at the moment, the officer who lead me to give my submission and accept being labelled a whistleblower when he stated in evidence, "..... that evil prospers when good men choose to do nothing..... The Committee in this room is full of good people. We are in your hands.". I thank you for accepting my submission.

Regards