

**Submission
No 3**

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

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PARLIAMENTARY SUBMISSION

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I have been invited to make a submission to the Parliamentary Select Committee and I am doing so on the basis that it is covered by Parliamentary privilege.

I understand it may be made public.

By way of background, I have been a journalist for more than 40 years. I have worked for newspapers such as The West Australian, The Sydney Morning Herald and The Daily Telegraph and The Sunday Telegraph.

I have also worked for television programs such as 60 Minutes, Four Corners and Today Tonight.

Since 2008 I have been a freelance reporter for newspapers and television.

On April 13, 2002, in an article by Phil Cornford, the SMH published details of Listening Device warrant 266 and the fact it contained 114 names.

The next day, April 14, 2002, Commissioner Peter Ryan appeared on 60 Minutes. He said there were more than 100 names on the warrant because there was going to be a social function. He said if he had been going to the function, his name would have been on the warrant as well.

Along with my late colleague, Les Kennedy, I subsequently wrote a number of articles.

The gist was that the bugging was unprecedented and widely thought within the force to be illegal.

Strike Force Emblems, comprising senior NSW detectives, was set up in 2003 to investigate what had happened.

The Emblems investigators interviewed many of those named on the warrant but were hamstrung because they were refused access to crucial documents.

The Emblems reports remained secret for almost a decade much to the anger and frustration of many honest officers whose names appeared on the warrant.

My more recent involvement in this matter came about as follows.

In 2012 I obtained a large number of confidential documents relating to the bugging of NSW Police and some civilians by NSW police officers working for the Special Crime and Internal Affairs unit (SCIA).

When the bugging took place – 1999-2001 – SCIA officers were working closely with the NSW Crime Commission.

On September 9, 2012, The Sun Herald published the first of numerous articles.

The front page read, in part:

A secret NSW Police report reveals that “criminal conduct” and revenge may have been behind an internal operation that involved bugging more than 100 officers.

The report, and hundreds of pages of other documents, obtained by The Sun Herald, includes claims that honest police were targeted as part of a “personal vendetta” by some officers within Special Crime and Internal Affairs.

Among the police placed under surveillance are some of the most senior serving officers in the state, including the Deputy Commissioner, Nick Kaldas....

Long suppressed by successive state governments, Strike Force Emblems sensationally reveals the claims of a vendetta are supported by none other than the man who secretly taped scores of his colleagues, a corrupt NSW officer – codenamed M5 – who worked undercover for two and a half years for Special Crime and Internal Affairs and the secretive NSW Crime Commission.

“I smelt a rat,” M5 is quoted as saying in the Emblems report.

“I was settling old scores relating to my supervising superintendent.”

M5 had secretly recorded hundreds of conversations to obtain evidence of corruption for the so-called white knights of the force. But rather than fighting corruption, in the end M5 said he was “assisting, nurturing corruption.”

The article on the inside pages stated that Emblems investigators believed SCIA officers had:

falsified information to obtain listening devices, telephone intercepts and in one case, induced a criminal to commit perjury in front of a magistrate.

It also said Emblems investigators had been:

hampered by the refusal of the NSW Crime Commission to hand over crucial documents, including affidavits, and it therefore could not reach definitive conclusions.

Nevertheless (Emblems) found:

***There were clear indications that “criminal conduct may have occurred surrounding the affidavit.”**

***On the available evidence there was no justification for 54 serving and former police and the journalist Steve Barrett being placed on the listening device warrant.**

***Previous Strike Forces Sibutu, Tumen and Operation Banks had identified “systemic corruption and mismanagement” within SCIA in relation to listening devices, telephone intercepts and search warrants.**

On September 10, 2012, there was another story published in the SMH: “Grudges drove surveillance, say officers.”

In that story, I quoted a record of interview by a former SCIA officer, Paul Albury who was interviewed by the Emblems investigators. He said of his SCIA bosses, Mal Brammer and John Dolan.

“...it was like they both believed that they were riding on a white horse, charging through the fields of corruption. They had this idea that they were the only corruption free police in the service. And they couldn’t trust anybody.”

Inquiries went off on “wild tangents on people that we didn’t seem to have any evidence against at all. To me, it was dangerous. It was extremely dangerous. I felt physically ill ... it didn’t, it just didn’t seem to be lawful.”

On September 11, under the heading “New files cast doubt on bug warrant” it was revealed that a 57 page affidavit used to justify the bugging of the 114 people named only 66 – in other words there was no information before the judge as to why the other 48 should be bugged.

The same story mentioned a briefing note by Catherine Burn written on April 13, 2002, the same day the SMH first revealed the existence of the warrant and the 114 names.

It appears the briefing was written for the Commissioner, Peter Ryan, who was to appear on 60 Minutes the following evening.

It was on 60 Minutes that Mr Ryan said there were 114 names on the warrant because a lot of people were going to a function.

“If I was at that function, my name probably would have been on the warrant too,” he said.

The date on the warrant was September 14, 2000 – the day before the start of the Sydney Olympics.

There was no function going to be held during the time of the warrant.

It appears Mr Ryan relied on Ms Burn’s briefing note.

Importantly, that note states the following:

“It was the procedure to include on the warrant names of people who were likely to be spoken to by the informer (M5) whether they were targets, suspects or persons of interest. This did not extend to every person the informer would come into contact with, just those where it was likely the conversations would be recorded (eg. At a function).”

In a 12 page annexure to the briefing note, Ms Burn goes on to describe a function. She lists the 114 people and gives reasons why they were on the warrant.

Next to 30 names, Ms Burn had written "King send-off list" indicating they were expected to attend a farewell function for a detective, Jim King.

There were a number of problems. King's farewell had in fact been held months earlier. Further, about 20 of the 30 people named as going did not attend the June function because they barely knew Mr King.

According to the documents leaked to Fairfax, Ms Burn was interviewed by Emblems investigators on June 30, 2003, and asked whether Mr Ryan's statement about people going to a function was true.

She replied: "No."

"I have no idea why he said it. I'd say he wasn't briefed," Ms Burn said.

Emblems investigators asked: "Do you know who briefed him?"

Ms Burn replied: "I have no idea."

Yet it was Ms Burn who had written the briefing note on April 13, the day before Mr Ryan's 60 Minutes interview.

She herself had raised the "function" explanation.

Committee members might like to ask her how she reconciles her briefing note and her answers to Emblems investigators.

In my view, Mr Ryan was misled, along with the public, rank and file police and members of parliament.

This was the start of a cover-up of the activities of SCIA and the Crime Commission by police and politicians.

On September 23, 2012, I wrote three articles including "Bugging heat on top brass" and "Email told Scipione of concerns."

The articles said, in part:

One of the leading contenders to become the state's next police commissioner "may have participated in police corruption," according to a secret report.

The report, written in 2004, examined complaints against Deputy Commissioner Catherine Burn and other officers while they were working in the Special Crime and Internal Affairs unit.

It went on:

Internal NSW Police emails have also been obtained that reveal the NSW Police Commissioner, Andrew Scipione, was told of possible corruption in SCIA more than a decade ago.

One email to Mr Scipione included an allegation that SCIA allowed a heroin dealer to continue selling drugs on the northern beaches - potentially

causing deaths – so the special crime unit might have more time to entrap corrupt police.”

The email was sent by special crime unit officer Brett McFadden.

The first issue he raised was about the “legality” of telephone interception affidavits.

The allegation that Ms Burn “may have participated in police corruption” was buried for years while she was promoted. How can this happen?

How can such a serious allegation remain untested for so many years?

There appears to be one rule for those who worked in SCIA – the so called White Knights – and another rule for front line detectives.

Other stories appeared, including an opinion piece where I said an open and transparent judicial inquiry was needed to get to the bottom of what had happened.

Despite previous assertions by Police Minister Michael Gallacher and the Premier, Mr O’Farrell, that they wanted the process to be open and transparent, in October, 2012, the inquiry was given to the Ombudsman.

On May 13, 2013, I wrote a story headed: “Aggrieved officers doubt ability to handle so many alleged offences. Serving and former police I spoke to at the time believed the inquiry would not be effective because the Ombudsman’s office did not have the expertise to investigate what were complex allegations of criminal offences.

It said in part:

The Ombudsman said there would be “no public announcements of the details of the private hearings.”

In other words, secrecy was the order of the day.

The lack of experience of the Ombudsman in investigating criminal matters is illustrated, in my view (and that of experienced former police) by their handling of an aggrieved former officer from the NSW north coast who had been targeted by SCIA and a criminal informer, I’ll call him Mr X.

Mr X, by his own admission, had been involved in armed robberies and murder. After ‘rolling over’ he went to work for SCIA. He alleged the former officer was corrupt – allegations that were never substantiated.

It was only after Fairfax published stories in 2014 about the former officer and Mr X, the Ombudsman called both to Sydney. The Ombudsman put the former officer and his accuser, Mr X, - in the same small hotel in Elizabeth Street. On the same day.

Having been critical, I am pleased that the Ombudsman, in his November 19, 2014 letter to Mr Lee Evans, has tacitly acknowledged there has been a cover-up by the authorities.

At the bottom of the first page, Mr Barbour states: “Although the allegations are of extensive and serious misconduct by senior law enforcement officers, they have remain untested for more than a decade.”

That is a scandalous state of affairs. I invite the members of the committee to ask themselves “why?”

The secrecy and cover-up surrounding this whole matter has allowed criminal offences to go unpunished.

Some Police officers involved in those offences have been promoted through the ranks and are still serving while some of those named in the warrant, unjustly, have seen their careers suffer.

Some of those who raised concerns about SCIA’s behavior at the time were bullied and left the force disillusioned and sometimes with a Hurt on Duty pension. One, I am told, attempted suicide.

The secrecy continues to this day with the Ombudsman’s inquiry. It is ridiculous for Mr Barbour to say his “is not a secret investigation.” (Letter to Mr Evans, page 5, paragraph two).

I was summonsed on July 30, 2014 to give evidence, which I did on August 14.

The summons warned me the hearing would be “**in the absence of the public**” and that it was an offence to “**disclose any information about this summons...**”

At the end of my evidence I was warned not to disclose to anyone what I had said and that if I did, I faced jail. To say the inquiry is not secret is a line befitting a script from Yes Minister.

In his letter to Mr Evans, the Ombudsman says of this non-disclosure order that he would have viewed “sympathetically” any request by a witness for a variation of a direction to permit disclosure for the purposes of a complaint to your committee... I have not received any such request.

He has never received such a request from me because I was never made aware any such thing might be possible!

In a letter to the Premier, dated November 11, 2014, Mr Barbour states: “These (secrecy) provisions are of central importance to the fair and rigorous conduct of Operation Prospect.”

The ICAC has no problem holdings hearings in private and public and being rigorous. At least then, the public can judge whether the ICAC is doing its job. How do we know the Ombudsman’s inquiry has been “rigorous” when it is held in secret?

This saga has now been going on for some 15 years which is both extraordinary and disgraceful.

Few people I know have any confidence in Mr Barbour’s investigation although I hope I am proved wrong.

Who has he interviewed or spoken to?

What allegations has he tested?

How we can tell if they have been rigorously tested when hearings are behind closed doors?

How rigorous was the examination of Mr Scipione or Ms Burn compared to, say, the examination of Mr Kaldas?

We don’t know.

My time in the witness box was primarily spent answering questions about the source of the documents, which documents I had seen and which documents I had had in my possession. I handed over some documents and emails and some notes.

In the secret hearing, I named the source as he had previously said he was prepared to be identified.

But the Ombudsman did not stop there. I was also asked about a number of police officers.

Did I know this officer, that officer?

How did I know them?

Had I spoken to them about this matter?

During my time in the witness box, I was shown some folders of documents. It became apparent to me during this process the Ombudsman has been examining the phone records of people involved in this matter. I believe I saw the phone records of Deputy Commissioner Nick Kaldas.

I believe my phone records have been searched and cross referenced.

How many other journalists have been called?

Have their phone records been examined?

Have the phones of journalists been tapped?

Since when, in a democratic society, does an inquiry into a cover-up of criminal offences target the people who have exposed the cover-up?

In my view this is not an area the Ombudsman should even be investigating for the following reasons.

This matter first came to public attention in 2002.

Police and former police and others complained loudly and at length to Emblems which did its best but was hamstrung. In its reports Emblems sounded the alarm bells that something was seriously wrong, but nobody in the then police hierarchy – or since – has done anything about it, despite considerable agitation. Mr Scipione to this day says he has never read the Emblems reports.

Why not?

They are written by NSW Police for the NSW Police hierarchy (which signed off on them) and contain serious allegations.

Why wouldn't a Police Commissioner want to know that one of his deputies "may have engaged in police corruption"?

The documents revealing a cover-up, serious misconduct and allegations of criminal offences became public in 2012.

Why wouldn't an aggrieved person want to make them public?

Why wouldn't an honest police officer or former officer want a full and open inquiry after so long?

Isn't it their duty to draw attention to possible wrong-doing?

Apparently not in NSW.

Finally, this sorry saga has in recent times been seen in terms of a conflict between Mr Scipione and Ms Burn on the one hand, and Mr Kaldas on the other. In 2002, when I first started writing about this matter, there were dozens and dozens of very angry people, angry that their good name had been placed on a warrant for no good reason.

Numerous public explanations as to why their names were on the warrant (ie the function) have been proven to be false.

The serving officers, former officers and the civilians involved remain angry.

Justice has not been done, nor has it been seen to be done.