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**REPORT OF PROCEEDINGS BEFORE**

**SELECT COMMITTEE ON THE CONDUCT AND PROGRESS  
OF THE OMBUDSMAN'S INQUIRY "OPERATION  
PROSPECT"**

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

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**At Sydney on Wednesday 4 February 2015**

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**The Committee met at 9.00 a.m.**

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**PRESENT**

The Hon. R. Borsak (Chair)

The Hon. N. Blair

The Hon. T. Khan

The Hon. N. Maclaren-Jones

The Hon. A. Searle

Mr D. Shoebridge (Deputy Chair)

The Hon. L. Voltz

**CHAIR:** Welcome to the fourth hearing of the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect". Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today we will hear from Mr John Giorgiutti, former solicitor of the NSW Crime Commission, and Mr Malcolm Brammer, Former Commander Special Crime and Internal Affairs with the NSW Police Force. We will also hear from Mr Andrew Scipione, the current New South Wales Police Commissioner, Mr Clive Small, former New South Wales Assistant Police Commissioner, and Mr Ken Moroney, former New South Wales Police Commissioner.

Before we commence I will make some brief comments about the procedure for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website within the next day or two. In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence as such comments may not be protected by parliamentary privilege if another person decided to take an action for defamation.

The guidelines for the broadcast of proceedings are available from the secretariat. Media representatives who are not accredited to the parliamentary press gallery should approach the secretariat to sign a copy of the broadcasting guidelines. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within five calendar days following receipt of the transcript.

Given the subject matter of this inquiry it is possible that some of the information witnesses may be asked to provide will be covered by statutory secrecy provisions. The position of the Legislative Council, the same as the Australian Senate and other Houses, is that statutory secrecy provisions have no application to Parliament except by express enactment and that secrecy provisions do not affect the powers of the Select Committee to require answers to lawful questions. The Legislative Council stated this position in establishing the inquiry and received advice from Mr Bret Walker, SC, dated 14 January 2015 that supports the Legislative Council's position regarding this matter. This advice can be accessed on the Committee's website.

Following the recent advice from Mr Bret Walker, SC, the Select Committee has adopted the unusual step of resolving to summons all witnesses to appear before it for this inquiry only. Mr Walker stated that, although not necessary to protect witnesses, he strongly favoured the service of a summons to make it clear that witnesses are being compelled to answer or provide information.

In the submissions received to date inquiry participants have made a number of serious allegations about certain persons. I remind all witnesses who may reflect adversely on other people not to misuse parliamentary privilege and to ensure that your comments are relevant to the inquiry's terms of reference. Witnesses are advised that any messages should be delivered to the Committee members through the Committee staff.

**JOHN MICHAEL GIORGIUTTI**, Former Solicitor, NSW Crime Commission, sworn and examined:

**Mr GIORGIUTTI:** I am a solicitor. For the purposes of these proceedings I am the former solicitor to the NSW Crime Commission and at the relevant time I was its sole director.

**CHAIR:** Would you like to start by making a short statement?

**Mr GIORGIUTTI:** It is not that short but I would like to do that. Chair and members, at 5.45 p.m. on 30 January 2015 an arrangement was made that I attend Parliament House on 3 February 2015 to be served with a document requiring my appearance before your Committee today. To assist the Committee I subsequently made submissions that I provided to Committee members prior to the Ombudsman giving evidence. I indicated that I had no objection to the submissions and the attachments being made public. As those submissions have not been made —

**CHAIR:** Are you going to read your whole submission? This is just your opening statement.

**Mr GIORGIUTTI:** As I understand it my submissions have not been made public.

**The Hon. NIALL BLAIR:** Parts of them have.

**Mr GIORGIUTTI:** When I checked this morning they had not been.

**Mr DAVID SHOEBRIDGE:** Fundamentally, the Committee considered publication of your statement this morning and resolved to publish the enormous bulk of it subject to some redactions of some names, some details in relation to M5 or Sea and the annexure. The great bulk of your submission was resolved to be published this morning by the Committee.

**Mr GIORGIUTTI:** Okay. That fact was not known to me. My opening is in fact the submissions redacted to exclude identities and names. In that case the only two matters I would wish to raise are these: That as the solicitor to the Crime Commission the Crime Commission is entitled to legal professional privilege in respect to communications I may have had with them in relation to my role as solicitor. I have not been contacted by the commission and there is no-one here from the commission to assert that I cannot give evidence because of that privilege. I assume it is waived. In any event, I was also the director to the commission and I think I am careful in my submissions to only include matters about which I can give evidence also as the director to the commission. The only paragraph out of my submissions that I would like to then read is:

Some of my submissions and evidence may appear to be, or be, in conflict with the evidence of Cath Burn, Deputy Commissioner. I stress to the Committee that if my evidence has that appearance then it is not a case of oath against oath, but merely a case of recollection against recollection.

**CHAIR:** Thank you.

**The Hon. ADAM SEARLE:** On page 8 of your submission you indicate that the Commissioner of the Crime Commission felt that it was being unfairly targeted presumably by Strike Force Emblems and that the Commissioner of the Police Integrity Commission [PIC] shared that view. At this time who was the PIC commissioner?

**Mr GIORGIUTTI:** Terry Griffin.

**The Hon. ADAM SEARLE:** You also state that the commissioner of PIC disseminated to the commission documents generated by the Emblems task force?

**Mr GIORGIUTTI:** Yes.

**The Hon. ADAM SEARLE:** How did the PIC inspector get hold of the Emblems task force documents at that time?

**Mr GIORGIUTTI:** As I gather it, the Police Integrity Commission have access to all police holdings whether the police know it or not.

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**The Hon. ADAM SEARLE:** So even while there is an ongoing police investigation that is live they can dip into the well and see what other investigation is progressing in real time?

**Mr GIORGIUTTI:** That is how I understand it.

**The Hon. ADAM SEARLE:** Would the Emblems Strike Force have been aware of this?

**Mr GIORGIUTTI:** I do not know.

**The Hon. ADAM SEARLE:** You relay in that paragraph some criticisms of the task force. Do you have a personal view about the task force's objectivity?

**Mr GIORGIUTTI:** None whatsoever.

**The Hon. ADAM SEARLE:** At the bottom of page 10 of your submission I think you give evidence that it was Ms Burn and one other officer who conducted the debrief that you talk about there?

**Mr GIORGIUTTI:** That is right.

**The Hon. ADAM SEARLE:** Then on page 11 at the second paragraph you indicate that the confidential informant did not provide information of corrupt activity on the part of Nick Kaldas but that his name was specifically put to the confidential informant.

**Mr GIORGIUTTI:** That is my recollection, yes.

**The Hon. ADAM SEARLE:** Presumably it was put by one of those two police officers.

**Mr GIORGIUTTI:** Yes.

**The Hon. ADAM SEARLE:** Do you know which police officer?

**Mr GIORGIUTTI:** I have no recollection of that.

**The Hon. ADAM SEARLE:** Nevertheless, there would be documents that reveal the identity of each officer?

**Mr GIORGIUTTI:** Yes, the debrief was a question and answer like a record of interview so questions were asked and answered. I do not think it was recorded. I think it was typed on the fly, so to speak, but the document will tell you exactly who asked the question.

**The Hon. ADAM SEARLE:** But in your reading of those documents you can tell us that your clear recollection is that one of those two officers suggested the name of Mr Kaldas to the informant?

**Mr GIORGIUTTI:** I would not embellish it with "clear recollection". That is my recollection, yes. But the document, if you had the document, would speak for itself.

**The Hon. ADAM SEARLE:** But you are clear that the original 19 names that were part of the Mascot reference did not include Mr Kaldas?

**Mr GIORGIUTTI:** That is right, yes.

**The Hon. ADAM SEARLE:** Do you recall what was suggested to the confidential informant about Mr Kaldas?

**Mr GIORGIUTTI:** I do not think there was a suggestion; I think it was along the lines or to the effect of, "Do you know anything about Kaldas?" or something like that.

**The Hon. ADAM SEARLE:** How do you recall the confidential informant responded?

**Mr GIORGIUTTI:** In the negative. I cannot be more precise than that.

**The Hon. ADAM SEARLE:** That being the case, do you know how Mr Kaldas came to then be investigated by Mascot?

**Mr GIORGIUTTI:** No. I commenced collating documents for Inspector Levine back in 2012 and in the process of doing that I came across material that concerned me. That collation converted to an inquiry but I never got to the bottom of that in the time that I was on that inquiry.

**The Hon. ADAM SEARLE:** On that same page, third paragraph from the bottom, you talked about statements of debrief involving Mr Kaldas.

**Mr GIORGIUTTI:** Yes.

**The Hon. ADAM SEARLE:** And then in the second paragraph from the bottom you say you retrieved from the District Court the files that related to arrests that you say gave rise to the statements of debrief relating to Mr Kaldas.

**Mr GIORGIUTTI:** Yes.

**The Hon. ADAM SEARLE:** The material that was contained in those District Court files, is that, as you recall it, the totality of the material that gave rise to the two statements of debrief about Mr Kaldas?

**Mr GIORGIUTTI:** No. I retrieved those files in 2012. When I did there was no indication on the files, that they had been previously retrieved. I have a recollection that one of them might have even gone on appeal. But the point I make there is I retrieved those files; they related to the two SODs; they did not look as if they had been previously retrieved because they would have a letter on the file; and at least one if not both the complaints that had been raised had been disposed of in the court proceedings. But I cannot remember more than that.

**The Hon. ADAM SEARLE:** Do you remember what those two complaints were?

**Mr GIORGIUTTI:** The words I can give you in respect of one of them—I think one of them involved the loading of a gun. I think it involved the finding of a gun at a cemetery. My recollection is that what concerned me about that SOD was that the defendant was not present when the gun was located and, therefore, I am not able to say in my view, from what I had seen very briefly—because I never completed the inquiry—if, in fact, it was loaded who loaded the gun.

**The Hon. ADAM SEARLE:** What about the second matter?

**Mr GIORGIUTTI:** I do not recall, I am sorry.

**The Hon. ADAM SEARLE:** Notwithstanding that these court files did not appear to have been retrieved previously, nevertheless there were statements of debrief involving the same subject matter that you had the opportunity of reading?

**Mr GIORGIUTTI:** Yes.

**The Hon. ADAM SEARLE:** Do you recall who was it that provided the material that went into the statement of debrief?

**Mr GIORGIUTTI:** No, I never got that. In the time that I was doing that inquiry there was insufficient time to get to that point. I say earlier in the submissions that there were some, I think, 20,000 files and I had retrieved 100 and I was just in the process of working my way through documents and ultimately my inquiry was terminated and material went to the Ombudsman. But there is no doubt—I think I indicate in my submissions—that given enough time I could have got to the bottom of it and, equally so, could and should have the Ombudsman.

**The Hon. ADAM SEARLE:** As best you can recall at this point in time, what were the specific complaints about Mr Kaldas? Was it that he had discharged the firearm or had loaded the firearm?

**Mr GIORGIUTTI:** Loaded. I think the allegation was that he had loaded someone with a firearm. That is the highest I can say.

**The Hon. ADAM SEARLE:** You mean falsely planted the firearm?

**Mr GIORGIUTTI:** Yes, falsely planted the firearm. It is something that happened many, many years before the time of Mascot. There was nothing in the file that jumped out at me to say yes he had done it—that is, Kaldas had done it. It was raised at the trial, as things were in those days. It could have been a false allegation, it could have been planted by other persons in the task force, I had no way of knowing and I did not promote that.

**The Hon. ADAM SEARLE:** But you did not see any finding against Mr Kaldas in the documents?

**Mr GIORGIUTTI:** No. There were some transcripts, I think, on the file but there was nothing there. The issue of the loading of the gun was raised and disposed of and, as far as I could see, never went anywhere. Whether it went to internal affairs or not, I never got to that point.

**Mr DAVID SHOEBRIDGE:** But it had been raised and disposed of in open court proceedings in the District Court?

**Mr GIORGIUTTI:** That is my recollection, yes.

**Mr DAVID SHOEBRIDGE:** Was there any reference to the fact that it had been raised and disposed of in open proceedings in the District Court in the statement of debrief?

**Mr GIORGIUTTI:** The answer is no, but you would not expect it there because the statement of debrief is only a very, very small narrative; it would be something like an allegation of loading of a gun on defendant so and so, what date it was and what task force or where it happened, something along those lines—very, very brief. You would have to go to the SOD. For every SOD there was then a file or files and you would have to go to that file to find out, and I never got to that point.

**The Hon. TREVOR KHAN:** It would be the case, would it not, what one has seen over the years is that allegations have been made by accused persons in trials with regards, for instance, being loaded up in some way?

**Mr GIORGIUTTI:** Yes.

**The Hon. TREVOR KHAN:** The matter is disposed of in the sense that, say, the accused is convicted and yet months or years later that allegation is refreshed when other evidence becomes available that supports what the accused said at the time but seems to have been dismissed by a jury.

**Mr GIORGIUTTI:** Sure, and I am conscious, not in respect to this allegation but in respect of others, that many accused persons raised or re-raised complaints or allegations they had made previously to the royal commission when the royal commission was on and they were all looked at by the royal commission. But equally you have to understand that a "good cook" will make a false allegation. So it is not a very simple matter to take an allegation and dispose of it in a few minutes; you have to find a thread to work your way through with. But the thing that I think concerned me about that one was particularly that the accused was not at the scene where the gun was retrieved. I might be mistaken about that but it is my recollection.

I remember a cemetery and I do not think he was there. So even if the police planted the gun at the cemetery how would he know which police officer did it? That was the thing I think that struck me. But there is a lot of stuff—there is not a lot about this particular point in newspapers, but the trouble with this matter over 15 years is that there has been a lot written and one forgets things, other things take over and then you could get confused with other things you have read.

**The Hon. TREVOR KHAN:** You have got so many sources of information it is difficult to determine when you actually received bits of the information.

**Mr GIORGIUTTI:** Yes, and this was not my primary job; I had other work to do. That is why I make the point that this is my recollection and it could be mistaken, but at the end of the day there are documents that will support or contradict what the SOD was.

**The Hon. ADAM SEARLE:** SOD stands for statement of debrief?

**Mr GIORGIUTTI:** Schedule of debrief.

**The Hon. ADAM SEARLE:** That is the debriefing of a witness or a source?

**Mr GIORGIUTTI:** I had not come across that term previously. In Mascot the informer, Sea—a codename attributed to him by the NSW Crime Commission—was debriefed over five days in that question and answer debrief and then one or more persons took that debrief and summarised the different allegations he raised in a schedule. I think it says here there were something like 86 SODs but in the reference there are only 19 persons named. So, obviously, these persons had more than one SOD. If you were corrupt you would expect that corrupt officer A was involved in these four or five incidents of corruption.

**The Hon. ADAM SEARLE:** So presumably the information that was ultimately reduced to writing in the SOD would have been from the informant?

**Mr GIORGIUTTI:** It was from the debrief of the informant.

**The Hon. ADAM SEARLE:** But your recollection from reading the documents is that this informant did not introduce the information about Mr Kaldas?

**Mr GIORGIUTTI:** He did not introduce or give any adverse information about Kaldas, that is right. That is my recollection.

**The Hon. ADAM SEARLE:** Unless I have missed something that means that information could only have got into the SOD from one of those two officers. Is that your evidence?

**Mr GIORGIUTTI:** No, not at all. I do not know who it is who took the debrief of court records of interviews over the five days and converted it to an SOD. I raise in my submissions that when I looked at the SOD schedule it had on there by then 231 allegations of corruption. But my recollection is that the two that related to Kaldas, and only those two, had the letter A after the number. So it appeared to me that rather than being given the next sequential number on the schedule they were given a number with the letter A so it looked as if it had been introduced into the schedule earlier. That is what it appeared to me. I could be mistaken about that; there might have been a legitimate reason why it was like that, but that was what concerned me.

That is not to say that Cath Burn or the other interviewing officer had anything to do with putting those names on the schedule. Any analyst, police officer on a task force could have added that to the schedule or could have been directed to add it to the schedule. I am not here to defend Cath Burn or Kaldas or anyone but it is possible, given enough time—and the Ombudsman has had enough time—to trace who it is who added that allegation to the schedule of debrief. I did not have time to do it in the time I had, but it is possible to do that.

**Mr DAVID SHOEBRIDGE:** If we could go back to the bottom of page 10 of your submission. You say that in June 2012 you started collating some documents for Mr Levine.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** To do that you obtained the original debrief of M5 or Sea. Is that right?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** And that document was held by the Crime Commission? Where was that held?

**Mr GIORGIUTTI:** It was in storage out near Penrith or Kingswood. There were very, very few files in the commission in 2012; they had been sent to storage many, many years before. I say earlier in the submission that the affidavit for the warrant 266 was missing at the time of the Emblems investigation and even when Cath Burn wrote to Mervyn Finlay it was missing then and, to my knowledge, it has never been located. One of the first things that I did was to get instructions from my then commissioner to approach the duty judge of the Supreme Court to obtain a copy of that affidavit, which I did. I cannot remember exactly why but for

some reason I was preparing a schedule of other warrants obtained to indicate to Levine how many names were on other warrants, I think because there was an earlier warrant in the April that had a number of names on it, and I had the schedule of debrief. I think that is the first time I had seen the schedule and seen that the Kaldas allegations had the letter A against them and no-one else had that letter. So I thought I should get out the debrief of Sea, and through our document management system I identified the box or folder that it was located in and it was retrieved from Kingswood, I think it is.

**Mr DAVID SHOEBRIDGE:** You saw the letter "A" against Mr Kaldas and it looked like, from the information you had to hand, that his name had been put in at a later date, and you wanted to find out if he was mentioned in the original debrief. Was that the line of inquiry you were undertaking?

**Mr GIORGIUTTI:** Well, I did not want to find out—I did not specifically want to find out whether he was mentioned in the original debrief. I knew that SOD231—I knew that a number of SODs had been added after the original debrief. I was looking, actually, for the original debrief. I could not find that, so one of the things I was doing was looking for the debrief of Sea because that would give me, if I had the debrief and I had the SOD with 231 names on it, I could go through the debrief and work out where the original number of the debrief stopped and at which point there were others added—something along those lines.

**Mr DAVID SHOEBRIDGE:** You found the original debrief and it was five days' worth of interviews in a question and answer form. Is that right?

**Mr GIORGIUTTI:** That is my recollection, yes.

**Mr DAVID SHOEBRIDGE:** Ms Burn and another officer were conducting that debrief with M5.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** In the course of those entire five days, M5 made not a single allegation against Mr Kaldas. Is that your recollection?

**Mr GIORGIUTTI:** That is my recollection and, for the purpose of *Hansard*, M5 and Sea, S-E-A, are the same person.

**Mr DAVID SHOEBRIDGE:** Yes. Indeed, in the course of those five days of questioning of M5, did the two police, Ms Burn and another who were debriefing M5, proactively raise the name of any police—prod M5 with the names of any police, any serving police at all—who he may have information about or allegations of corruption against, other than Mr Kaldas?

**Mr GIORGIUTTI:** I will answer the question, but I will preface it this way: I do not think "prod" is a nice word to use. It is a very emotive term.

**Mr DAVID SHOEBRIDGE:** I am happy for you to put it in your own words, Mr Giorgiutti.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** What was your discovery?

**Mr GIORGIUTTI:** I read through the debrief, the five days of question and answer, and Sea provided information or made allegations of corruption, or corrupt activity, known to him by other officers. He did not raise Kaldas and he was asked about—rather than "prod" I would use the term "asked about"—Kaldas, but he was asked about no other officer other than Kaldas. That is my recollection.

**Mr DAVID SHOEBRIDGE:** You say in your submission that in fact Sea was specifically asked whether he knew of any corrupt activity on the part of Kaldas.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Sea responded in the negative.

**Mr GIORGIUTTI:** Yes.



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**Mr DAVID SHOEBRIDGE:** Kaldas was the only name specifically put to Sea. No other officers' names were put to Sea.

**Mr GIORGIUTTI:** Yes. That is my recollection but, you see, if you had the document here, you would not have to prod me and—

**Mr DAVID SHOEBRIDGE:** Well, I might take offence at you using the word "prod", Mr Giorgiutti. No, that is perfectly fine.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Mr Giorgiutti, did you draw any conclusions or did you have any warning bells go off at the fact that Kaldas is the only name being put?

**Mr GIORGIUTTI:** Yes, because some years before Kaldas had been told by the commission that his name was there, I think, from the beginning, so I knew that he had been told that. When I read the debrief, that did not accord with what I knew so I thought it did not look right.

**Mr DAVID SHOEBRIDGE:** His name was there from the beginning.

**Mr GIORGIUTTI:** Yes, but not—

**Mr DAVID SHOEBRIDGE:** It is just that it was put in there by the investigators, not by the informant.

**Mr GIORGIUTTI:** He was told it was in there from the beginning, in adverse terms, in terms of those two SODs.

**Mr DAVID SHOEBRIDGE:** You are quite clear in your recollection he was not one of the original 19 names who were the subject of the Mascot reference.

**Mr GIORGIUTTI:** That is my recollection. He was not part of the 19 names. Again, if you had the document, it would speak for itself in less than three seconds.

**Mr DAVID SHOEBRIDGE:** You were continuing to investigate this matter in 2012?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Did you complete your investigations?

**Mr GIORGIUTTI:** No.

**Mr DAVID SHOEBRIDGE:** Why not?

**Mr GIORGIUTTI:** Two reasons, really: one, that the commissioner, and not the present commissioner, I do not think wanted me to continue with it; and, two, the documents were all provided to the Ombudsman. The commission had returned to it a copy of all the documents, but I was never instructed to resume the inquiry.

**Mr DAVID SHOEBRIDGE:** Mr Giorgiutti, you attended a number, but not necessarily all, of the weekly operational meetings of Mascot. Is that right?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** The majority of them—or, how would you characterise those?

**Mr GIORGIUTTI:** I have no recollection. I did not become actively involved in Mascot until I was engaged in the drafting of the memorandum of understanding [MOU] with the Police Integrity Commission in

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2000. Before that, if I was at meetings, it was merely to stay across what was happening, not because I had any active role in the investigation.

**Mr DAVID SHOEBRIDGE:** When you attended those weekly management meetings, was it ever raised, or was there any information raised, about any members of the management committee meetings having an antipathy or a dislike towards anyone who was the subject of an investigation—I suppose, especially Mr Kaldas?

**Mr GIORGIUTTI:** I think the safe answer is I do not recall. I think the earliest I became aware was when Kaldas raised it with my commissioner then, Mr Bradley. I do not have a recollection of being aware of it beforehand, but there is nothing unusual in that. I would not read anything into that.

**The Hon. TREVOR KHAN:** We have talked about management meetings.

**Mr GIORGIUTTI:** They are operational meetings.

**Mr DAVID SHOEBRIDGE:** Weekly operational meetings.

**The Hon. TREVOR KHAN:** These were the meetings that actually, in a sense, ran Operation Mascot. Is that the case?

**Mr GIORGIUTTI:** They were meetings to keep the whole team across what had happened over the previous week and what was proposed to happen in the next week, two weeks, three weeks and so forth. Most people would have known what was discussed at the meetings anyway because they had access to computer systems and so forth, but it was just in case you were not across what might have happened—you might have been on leave or something—and also if you want to have input into a proposed strategy and allow analysts or monitors of the devices or the police or anyone to give input into the proposed operational strategy.

**The Hon. TREVOR KHAN:** How many people attended these meetings?

**Mr GIORGIUTTI:** Initially, probably less than a dozen and then the Mascot work increased. There were more police. I do not know if we put on more commission staff, but at the end maybe 20—maybe. Also, as time went on, the Police Integrity Commission would have people at some of those meetings: so maybe 20 at the end.

**The Hon. TREVOR KHAN:** All those various people were giving input and making suggestions as to where things go.

**Mr GIORGIUTTI:** Fundamentally, Sea was run by the police and so the police would have had the operational strategy, but others could say something about the strategy or suggest something else, or whatever. It was an unusual investigation because you essentially had one asset—a source who was permanently or perpetually wired up. It was not a very difficult game plan that changed every week. It was the same day in and day out, basically. It is not like a drug investigation where you start off buying a sample and you work your way up to buying a kilo. It was the same strategy over and over again.

**Mr DAVID SHOEBRIDGE:** Was it identifying targets for M5? Was that the primary role of those operational meetings? Was it, "This will be when we are sending him out again"?

**Mr GIORGIUTTI:** Having been debriefed, what happened was the police or commission analysts would have assessed the allegations of Sea. The police would have looked at their holdings back at Sydney internal affairs command. The Police Integrity Commission would look back at their holdings at the royal commission. Some of the persons against whom Sea made allegations by then had left the Police Force so they had to be located. Then strategies had to be developed giving Sea opportunity to be pushed into people. At those meetings, what would happen would be an analyst might, say, "Oh, we have found out that our target X is now retired and living on the Central Coast."—whatever—"It's an opportunity for Sea—he's got a court case up there—to go and knock on the bloke's door", or something like that. Those are the sort of things that you had to—

**The Hon. TREVOR KHAN:** Did you attend with the deponent in respect of the application for the warrant in September 2000?

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**Mr GIORGIUTTI:** I never made any applications for any of the warrants.

**The Hon. TREVOR KHAN:** Your name appears on the first page of the affidavit.

**Mr GIORGIUTTI:** My name appears on what is called the back sheet of the application and the affidavit as a solicitor of the commission, but the Mascot team had a dedicated senior solicitor who was doing the legal work for that team.

**Mr DAVID SHOEBRIDGE:** You are what is called the solicitor on the record.

**Mr GIORGIUTTI:** The solicitor on the record. That is right.

**The Hon. TREVOR KHAN:** You have had a go. Just explain to me: Was that solicitor a solicitor from the New South Wales Crime Commission?

**Mr GIORGIUTTI:** Yes, a Crime Commission solicitor. He is probably about my age, so he was at the time one of our two most senior and experienced solicitors.

**The Hon. TREVOR KHAN:** Do I take it that in a hierarchical sense he fell beneath you?

**Mr GIORGIUTTI:** As I indicated in my submissions, the commission operated on a flat structure. He was in the Mascot team and he would have reported to Mark Standen, who was the commander, in police speak, of the Mascot team. He would only have come to me if he had a legal issue raised. He did not report to me day to day. I would not have known what he or indeed any other lawyers did day to day.

**The Hon. TREVOR KHAN:** Your name was appearing on an affidavit when you did not have any input or control over what was or was not going into the affidavit.

**Mr DAVID SHOEBRIDGE:** That is not fair. He was the solicitor on the record. It is a different, other proposition. It is not a fair argument.

**Mr GIORGIUTTI:** If you go down to the Crown Solicitor's office, the Crown Solicitor acts for the State of New South Wales. His name appears on every back sheet. He would have 250 or more solicitors working for him. His name appears on every one of those back sheets. He would not be across 250 matters. He would do specific litigation and advice work. He would have processes in place to ensure that his solicitors are progressing litigation on behalf of the Crown—either defending it, advising or prosecuting—without knowing any of the details of those files.

**The Hon. TREVOR KHAN:** Do you have a view on the quality of this affidavit of September 2000 in support of what has plainly turned into a fairly contentious listening device warrant?

**Mr GIORGIUTTI:** I never saw the affidavit until 2012.

**The Hon. TREVOR KHAN:** I am not suggesting you did.

**Mr GIORGIUTTI:** We had an electronic copy of it on the computer system. I had no faith in that copy. When I received it—I have not read it in its entirety—my concern was trying to ascertain what the names were on the warrant, but I never got that far advanced. If I had the affidavit I could give you an indication of what I thought of it, but I would need to know the basis upon which the names are included. In my submissions I say that my understanding at the time was that the names were included on the affidavit because Sea was, to use my language, going to bump into people who were not necessarily targets. That is why the name was included.

In 2012 when I was responding to requests from Emblems, I find out—and I have that in my submissions—that in fact on my reading of the two document all the names bar two were included because they actually were targets. If they were targets, the affidavit would have a different structure, or could have a different structure, to the situation where they are not targets, but merely people who are going on report and who were not targets of the investigation.

CORRECTED

**The Hon. TREVOR KHAN:** Putting aside this issue of targets or incidental, let us assume that everyone is a target. If they are going to be a target they are actually referred to in the affidavit, so there is some explanation as to why they are doing it?

**Mr GIORGIUTTI:** If there are 10 persons who are targets, I would expect to see in the affidavit information as to why those 10 persons are targeted in the affidavit. If the persons are not targets, I would not be troubled if there was nothing in there about those persons, but I would still be concerned about the structural—how the affidavit conveyed to the judge that they are not targets.

**The Hon. LYNDA VOLTZ:** I want to raise another point in your submission regarding that affidavit. You raised the issue of the Commission officers, that if it was about people being bumped into that they should be included in the affidavit?

**Mr GIORGIUTTI:** Yes.

**The Hon. LYNDA VOLTZ:** Annexures are normally attached to the affidavits? So there is annexure A that has a list of previous warrants.

**Mr GIORGIUTTI:** Previous warrants, yes.

**The Hon. LYNDA VOLTZ:** There is an annexure B of persons who are authorised to—

**Mr GIORGIUTTI:** Yes. In those days you had to attach who was going to use the device and so forth, yes.

**The Hon. LYNDA VOLTZ:** If there was a long list of Commission people included in B, would that allay those concerns that you had or do you believe they should be included in the warrant? I am not clear as to why—

**Mr GIORGIUTTI:** Those names on that attachment are there for the purpose of—under the Act—saying who it is who can use the device and use the product from the device, not the persons who are going to be recorded by Sea.

**The Hon. LYNDA VOLTZ:** For example, if your name appeared on that list—

**Mr GIORGIUTTI:** Yes, my name is there because it allowed me to use—depending on how it is structured—the listening device or listen to the product from the device.

**Mr DAVID SHOEBRIDGE:** Mr Giorgutti, in answer to a question from Mr Khan, I think you said it was about June 2012, and you became aware that people were on the warrant primarily because they were targets rather than—

**Mr GIORGIUTTI:** Not June 2012. It was when I was looking to assist Emblems in 2000—

**The Hon. TREVOR KHAN:** Two.

**Mr GIORGIUTTI:** Three, I think it was.

**Mr DAVID SHOEBRIDGE:** Can I ask you to go to the bottom of page 6 of your submission.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Maybe if you just refresh your memory with the bottom of page 6 and those two paragraphs on page 7.

**Mr GIORGIUTTI:** Yes, on the bottom of page 6 I refer to the memo.

**Mr DAVID SHOEBRIDGE:** Yes.

**The Hon. TREVOR KHAN:** The proposition that you put that you are suggesting he told me is not correct.

**Mr DAVID SHOEBRIDGE:** I think it was accidental. That is why I am clarifying it.

**Mr GIORGIUTTI:** In 2003 I am assisting in Emblems and it is then that I find out—

**Mr DAVID SHOEBRIDGE:** That is right.

**Mr GIORGIUTTI:** —about the memo of 2002.

**Mr DAVID SHOEBRIDGE:** I was just clarifying that for the transcript.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** You then, in the second paragraph on page 7, say you also became aware of the attachment to the memo.

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** That is the list of names with SOD references on it?

**Mr GIORGIUTTI:** Yes, and part of that list says not mentioned in the affidavit.

**Mr DAVID SHOEBRIDGE:** Yes. You then say:

Taken together (the memo and the attachment) it seemed that only two were not suspects. I raised this with my Commissioner and he was unresponsive. He appeared surprised.

**Mr GIORGIUTTI:** Yes, because the Commissioner had told persons who were on the warrant that they were on the warrant either because they were targets or because they would have been recorded by Sea and, "Do not assume that you are a target", so we had that position, and the Commission—there was correspondence with practitioners. There were complainants who were part of the 114 names, so they were quite clearly told, "Look, if your name is on the warrant it could be because Sea was going to bump into you and you are not necessarily a target." That was our position. It is only then in 2003 that Phillip and I realised—and again, it is the reading of the two documents, you read the two documents together and it is not that clear. I think Cath Burn was questioned about this.

If you look at the documents, they are both prepared on the Commission computer system. They have a footer that identifies them as Commission documents. They are different numbers, so they are two sets of documents. Again, if you look at the metadata for those two documents, you will be able to work out who created them, who viewed them, who printed them and when. But they are not authored by the same person so that is why, when I read them, there was the Cath Burn memo and there is the attached document, not necessarily authored by the same person. I think her evidence is that—

**Mr DAVID SHOEBRIDGE:** Someone else did the—

**Mr GIORGIUTTI:** Second one. So when you look at them together, the impression I got was there are a couple of random names there, but everyone else is a target, which is not what we had been telling people.

**Mr DAVID SHOEBRIDGE:** You realised that, in fact, the information that had been given to complainants and in the public had actually been false? Is that right?

**Mr GIORGIUTTI:** False is a very emotive term.

**Mr DAVID SHOEBRIDGE:** Well, not true.

**Mr GIORGIUTTI:** The Commission—I remember one practitioner who is no longer with us, John Marsden, he wrote some correspondence. At the end of the day, he wrote back and said, "Phillip, I have known you for a long time. I accept your assurance", and went away. He was acting for some client. We had told people that if their name was on the warrant, do not be troubled by it.

**Mr DAVID SHOEBRIDGE:** But they should have been troubled because they were almost certainly a target.

**Mr GIORGIUTTI:** If you read my memo, as it turned out, the impression I got—when you read the two documents together—is that they were all in fact targets. That is my impression. I could be wrong about that. That is what happened. When I raised it with Phillip, like me, he was unresponsive and he appeared surprised, which did not surprise me because that is what our position was. What happened after that, I do not know.

**Mr DAVID SHOEBRIDGE:** Did you take any steps to correct the record or inform those practitioners who had been making those inquiries that, in fact, "It appears we were wrong. You probably were a target"?

**Mr GIORGIUTTI:** I did not, but it was not my position to do that.

**Mr DAVID SHOEBRIDGE:** Whose position was it to do that?

**Mr GIORGIUTTI:** Well, the Commission and, at that time, the only person who advised the Commission was Phillip Bradley, so he was aware of it. I told him about it. It was a matter for him to deal with it as he saw fit. At the time, if you remember, there was the Emblems investigation. When I tell him the Emblems investigation is on foot, I am not to know how it is all going to pan out. I tell my commanding officer. He is surprised, as I was, and what happens after that, you have to ask him.

**Mr DAVID SHOEBRIDGE:** You have seen some of the affidavit materials, Mr Giorgiutti, is that right?

**Mr GIORGIUTTI:** Sorry?

**Mr DAVID SHOEBRIDGE:** You have seen a form of the affidavit?

**Mr GIORGIUTTI:** I saw it when I retrieved it from the Supreme Court, but I did not read it; I glanced through it, but I am not across it.

**Mr DAVID SHOEBRIDGE:** In the material you have seen, was there any sufficient basis to include, say, Mr Barrett on some 50 warrants or Mr Kaldas on some 80 warrants?

**Mr GIORGIUTTI:** My recollection is that—the warrant had 114 names and my recollection is that in the body of the affidavit, either all 114 names are listed or 112 of them, but there is no paragraph corresponding with some of the names.

**The Hon. ADAM SEARLE:** There are no allegations made against a number of them in the evidence?

**Mr GIORGIUTTI:** No. One of the things that troubles me even today is that what could well have happened is that the solicitor went to the judge, made the application, and told the judge there is 114 or 112 names in the body of the affidavit. They are all people who are going to be recorded but 60, say, for argument are targets and the remaining ones are persons he might bump into. Therefore, for reasons of the Act and breach of privacies, I am telling your Honour we are going to possibly catch 114 people.

**The Hon. ADAM SEARLE:** If that had happened, that would not have been true?

**Mr DAVID SHOEBRIDGE:** I think Mr Giorgiutti was about to explain himself.

**Mr GIORGIUTTI:** Well I do not know what the solicitor knew. You would have to ask the solicitor. Even Levine was asked about Virginia Bell. You really have to ask Virginia Bell. Judges have notebooks or diaries and they will make a note of an application before them. It is possible that Virginia Bell saw that, raised it and made a note in the diary or the notebook. I do not know. So it is possible that the affidavit, if the solicitor believed that he was putting on the names of everyone who is going to be recorded and not necessarily against whom an allegation was made, structured the affidavit that way. It is not apparent. You would have to ask him and you would have to ask Virginia Bell if she saw it, or any other judge for that matter, if they saw it, what they

said about that. It could have been done better, but it does not mean there is anything wrong with the affidavit. Now, if they are all meant to be targets, then you would expect to have a paragraph—

**The Hon. TREVOR KHAN:** Really?

**Mr DAVID SHOEBRIDGE:** Mr Giorgiutti, surely—surely—if someone is approaching the Supreme Court and is going to be making an application for someone's name to be on a warrant on the basis that they will incidentally be contacted by the person carrying the listening device, that should have been in the affidavit material at a bare minimum?

**Mr GIORGIUTTI:** Well, I think the affidavit has all the names there. If that was the position, the paragraph that deals with the clause at the back of the affidavit about the privacy of persons who are going to be recorded, it should have been made clearer in that paragraph to make it clear to the judge.

**Mr DAVID SHOEBRIDGE:** All of this is speculation on your part?

**Mr GIORGIUTTI:** It is all speculation because I do not know. I did not draft the affidavit. No-one raised it as a concern. There was a senior practitioner. I do not know what the judges were told. If you had all the documents, they speak for themselves as to what was—

**The Hon. TREVOR KHAN:** They do not, that is the point.

**The Hon. NIALL BLAIR:** On page 8 of your submission under "Inspector Levine", it says you were given responsibility for collating and I take it from what you said this morning also analysing some of the documents on behalf of the inspector. Who gave you that responsibility?

**Mr GIORGIUTTI:** The then Commissioner of the Crime Commission.

**The Hon. NIALL BLAIR:** You go on later in that section to talk about when there was the transfer to the Ombudsman for the investigation.

**Mr GIORGIUTTI:** Yes.

**The Hon. NIALL BLAIR:** You thought that you should have had responsibility for providing the handover of those documents, but that was denied.

**Mr GIORGIUTTI:** Yes.

**The Hon. NIALL BLAIR:** Why was that denied?

**Mr GIORGIUTTI:** You would have to ask the then Commissioner.

**The Hon. NIALL BLAIR:** You were collating documents for meetings, for example, as you said, with the Mascot team that you were a part of?

**Mr GIORGIUTTI:** Well, when Emblems came along I had to collect the documents for Emblems. When Mark William Standen was arrested, I did all that. When Levine came along, I did all that. There was an expectation, on my part, that when the Ombudsman came along, I would collate all those documents, if for no other reason that I had been there the longest, by then nearly 21 years. The persons who ended up providing the documents to the Ombudsman had not been there—

**The Hon. NIALL BLAIR:** Had those persons been involved in some of those operational meetings?

**Mr GIORGIUTTI:** No, they had not been involved in Mascot or any of those things. I had administrative access to the whole of the Commission's holdings. I knew structurally how "poorly" some of the Commission's files were kept, and if you want to have a position where you provide documents to another agency and hand on heart say, "These are all the documents", I was not the best person for the job, I was really the only person for the job. But that view did not hold.

CORRECTED

**The Hon. NIALL BLAIR:** So you were not told that you were not collating those documents because you were involved in some of the meetings of the substantive matter—

**Mr GIORGIUTTI:** No—

**The Hon. NIALL BLAIR:** —in which the complaint to the Police Integrity Commission [PIC] was made?

**Mr GIORGIUTTI:** No. The Mark William Standen matter, everyone thought that Phillip and myself and a bunch of other people were all in a conspiracy. That did not stop anyone saying to me, "Look, go and get all the documents out because you are the best person to get them all out." In fact I had a torrid time with the Prosecutor in the Standen matter where he believed that I was—

**The Hon. NIALL BLAIR:** You were involved when the inspector was doing the investigation?

**Mr GIORGIUTTI:** Yes.

**The Hon. NIALL BLAIR:** But when it was transferred to the Ombudsman, which would be at arm's length to this—

**Mr GIORGIUTTI:** Yes.

**The Hon. NIALL BLAIR:** —you were then denied from collating those documents?

**Mr GIORGIUTTI:** Yes.

**The Hon. NIALL BLAIR:** I guess I am trying to ascertain whether that could have been because you were involved with some of the operational meetings at the time?

**Mr GIORGIUTTI:** No, because I would not have been doing the inquiry with Phillip or collating the documents for Levine.

**Mr DAVID SHOEBRIDGE:** On the Ombudsman, you were in the middle of drafting a 150-page memorandum at some point responding to this matter?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** You did not get to complete that because you were directed not to, is that right?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Who directed you not to complete the memorandum? Do you remember who directed you or if you got a direction not to complete that work?

**Mr GIORGIUTTI:** The work was being done by the Special Investigation Litigation Team [SILT]. It was one of the number of matters it had. All of its work was stopped. I would rather leave it at that, I think.

**Mr DAVID SHOEBRIDGE:** That is a SILT team within the Crime Commission, is it?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you know if your draft memorandum ever found its way to the Ombudsman?

**Mr GIORGIUTTI:** Yes.

**Mr DAVID SHOEBRIDGE:** Have you been questioned by the Ombudsman?

**Mr GIORGIUTTI:** I have appeared before the Ombudsman on three occasions.



**Mr DAVID SHOEBRIDGE:** When was that?

**Mr GIORGIUTTI:** In total I was there for more than one day and probably up to 1.5 days. I was there in August last year and at some later time; I cannot recollect. I alerted the Ombudsman to the 150 page document, and know he did not have it.

**Mr DAVID SHOEBRIDGE:** He did not have it?

**Mr GIORGIUTTI:** He did not have it and he did not have other documents.

**Mr DAVID SHOEBRIDGE:** Would you have expected him to have been provided with that material?

**Mr GIORGIUTTI:** I would have expected him to have been provided with that and a lot of other material that he had not been provided with.

**Mr DAVID SHOEBRIDGE:** What was the bulk of your questioning in front of the Ombudsman about?

**Mr GIORGIUTTI:** I think on the first day I was not really questioned so much as I gave the Ombudsman an overview a bit like the submissions. On the second occasion, I went there because I knew that all the documents had not been provided to the Ombudsman and I wanted to alert him to that. On the third occasion, I was questioned about a range of matters. To be frank, I have very little recollection of what I was questioned about.

**The Hon. ADAM SEARLE:** Do you have a copy of your memo—the one you did not complete?

**Mr GIORGIUTTI:** No.

**The Hon. ADAM SEARLE:** Did you leave it at the Crime Commission?

**Mr GIORGIUTTI:** Yes.

**The Hon. ADAM SEARLE:** Based on your knowledge of the SODs relating to Mr Kaldas and the complaints against him made therein, in your professional opinion would that material have justified seeking and obtaining listening device and telephone intercept warrants against him at the time that they were sought?

**Mr GIORGIUTTI:** As you know, I do not have a very good recollection about what was in the District Court files. I do not know the exact wording in the SODs. To obtain a listening device warrant you only have to have a suspicion. Even if you put in the allegation and what was in the District Court file, you could still have a suspicion. It really comes down to whether the person making the application and swearing the affidavit reasonably holds a suspicion.

**The Hon. ADAM SEARLE:** Going back to your earlier evidence, you would expect the facts constituting the allegation to be in support of the affidavit if they were a target.

**Mr DAVID SHOEBRIDGE:** And that it is a reasonable suspicion, not just a suspicion.

**Mr GIORGIUTTI:** Yes, a reasonable suspicion reasonably held. But you and I might have a difference of opinion about our suspicions.

**Mr DAVID SHOEBRIDGE:** It is a subjective call.

**Mr GIORGIUTTI:** It is a subjective test. If it looks like you could have that suspicion the lawyer making the application would not query it.

**The Hon. ADAM SEARLE:** If the name is in the affidavit but there is no allegation or fact constituting the allegation, you would see that as a serious shortcoming in the affidavit?

**Mr GIORGIUTTI:** It should contain the allegations against them.

**Mr DAVID SHOEBRIDGE:** Your understanding once you read the memorandum and the attachment in 2003 was that they were targets. On the information you had you would have expected there to be information about those people in the affidavits?

**Mr GIORGIUTTI:** The way I express it is that taken together it seemed to me that they were all targets. Had I been the solicitor making the application and presenting the affidavit and if I was told they were targets, I would have included the allegations against each of the persons.

**Mr DAVID SHOEBRIDGE:** How did that happen? What is the process between the police, SCIA and the Crime Commission that led to the allegations that are contained and mainly held by the police in their schedule of debrief finding their way into an affidavit and then getting the listening device warrant? Who is making the decisions about this?

**Mr GIORGIUTTI:** Probably the best way to answer that is to look at the Clive Small allegation because it is very contained and a bit less contentious than the Kaldas allegations. If you go to page 13—

**The Hon. NATASHA MACLAREN-JONES:** Some of that has been redacted.

**Mr GIORGIUTTI:** Clive Small's complaint to the Ombudsman is on the public record. What is alleged to have occurred is that C—

**Mr DAVID SHOEBRIDGE:** Please do not use the name of the next person.

**Mr GIORGIUTTI:** I will not do that. C unexpectedly runs into a former police officer and is alleged to have been told something adverse to Clive Small. That either did or did not occur. Let us assume it occurred. At some point C—the informer—would have told his police handlers, as opposed to Standen. Whether those two persons were Cath Burn and the police officer at the debrief, I do not know. It could have been different handlers on different jobs and people could have been away. At some point C would impart the information that he received at Manly to two police handlers and they would make a note about that. A lot of times they come back and make a handwritten contact report and then type it up so it is on the computer system and people can see it. That contact report would go to different analysts who assess the information to find out what they can and so forth.

**Mr DAVID SHOEBRIDGE:** Would they be Crime Commission analysts attached to Operation Mascot?

**Mr GIORGIUTTI:** It could be a mixture; it could be police or analysts. In the very early days the commission analysts did not have the same level of access as the police analysts at the Police Integrity Command. The Police Integrity Commission and police internal affairs had a level of access so police and the persons who run the computer system could not see that the records had been accessed. Whereas if a commission analyst were to access a police record, there is a trace and an audit is done probably annually about why those things have been accessed. The police internal affairs do not have that limitation. Depending on when the allegations were passed on in the early days they could have gone to the police or the Crime Commission analyst or to either one of them later.

From that contact report at least one, if not more, information reports would be generated. If it was decided to include that in an affidavit, as is alleged, the person swearing the affidavit would either provide the solicitor with a draft of the affidavit or would say, "Use the previous affidavit plus this information report." The solicitor could not be expected to go behind the information report and look at the contact report to find out whether it was properly generated. He would accept the information report at face value and include the allegation in the affidavit.

**The Hon. ADAM SEARLE:** If any allegation was included in the affidavit.

**Mr GIORGIUTTI:** Yes. What happens now is that a journalist writes an article saying he has seen the affidavit and it has this allegation. Clive Small gets to know about it and he sees the affidavit or not and he complains to the Ombudsman and Ombudsman is looking at that allegation. The Ombudsman must do the job in reverse.

**Mr DAVID SHOEBRIDGE:** I was not asking about the Ombudsman's job; I was asking how it is that it goes from the information report to an affidavit to a warrant from the Supreme Court to a delivery.

**Mr GIORGIUTTI:** Each affidavit could have been different. The way different applicants interacted with the system might have been different. However, either the affidavit was crafted in draft form by the deponent or the solicitor was given the affidavit and asked to add what was in the information report.

**Mr DAVID SHOEBRIDGE:** Whose job was it to ensure that there was enough information in it to satisfy the warrant being issued against those named in it? Whose ultimate job was that?

**Mr GIORGIUTTI:** The solicitor would have been satisfied that the affidavit supported the application for the warrant.

**The Hon. ADAM SEARLE:** You said that the solicitor could not go behind the information provided by the investigator.

**Mr GIORGIUTTI:** That is right.

**The Hon. ADAM SEARLE:** So in a quality control sense, where does the responsibility lie in an operation like Mascot?

**Mr GIORGIUTTI:** I think this is what I am trying to tease out in the submission. Parliamentarians passed legislation—the Listening Devices Act, as it happens and I say job well done. What troubles me is that we have two former Supreme Court judges, both eminent QCs, who say essentially that if the affidavit is false we cannot tell you. Justice Levine says he looks for "M. Mouse" and "D. Duck", and we seem to have focused on those words. What Justice Levine is telling you is that if the affidavit had mentioned Mr Borsak, Mr Shoebridge, M Blair, Mr Khan, Mrs Maclaren-Jones, Mr Searle and Ms Volts, he would have signed it.

**CHAIR:** You may well get one soon.

**The Hon. LYNDA VOLTZ:** We assume we are bugged anyway.

**CHAIR:** It is just a question of by whom.

**Mr GIORGIUTTI:** There is a real disconnect between what the parliamentarians think they have achieved with the legislation and what the judges are saying they can do. There is certainly a perception that these affidavits will never see the light of day. Leaving aside corruption, if I am lazy and I know that no-one is reading the affidavits because the judges will sign anything and I have had a hard night and I do not meet the threshold in the legislation, you could well get a warrant that does not meet that threshold leaving aside corruption.

**Mr DAVID SHOEBRIDGE:** So we are interrogating you about a failure to have quality control systems and you are saying that the Parliament has also failed to implement quality control systems and legislation that works?

**Mr GIORGIUTTI:** I think the parliamentarians have assumed that having criteria in the legislation means that there are systems in place to ensure that they are met and ultimately the judge will say "Job well done." The reality is something different. Because these things are so secret and generally because they contain sensitive information, methodology and so forth and they do not see the light of day. Therefore, it is possible that in some organisations, in parts of organisations, in some affidavits, in some sections of Police Force, the Crime Commission or the Independent Commission Against Corruption or wherever, these things probably do not even meet the threshold without worrying about corrupt activity. I do not know.

However, it concerns me that you have Clive Small making allegations about things in other Emblems-type inquiries—about which I know very little—along the lines of false swearing, you have my public interest disclosures and you have Mascot. If I were a member of this Committee I would be more troubled about that conceptually rather than just focusing on Mascot. At the end of the day, I do not know the Ombudsman from a bar of soap. I knew of him, but I never knew him. I do not think I have ever been introduced to him. However, he strikes me as being a competent person. There are one million pages of documents and I know for a fact that given enough time you can trace through and work out whether C was told that at the Corso.

You can trace through and work out who he told it to, if he did say it. If he did not say it, then it is his problem and you can trace through the document system at the Crime Commission and work out and say, "This is where it went wrong". Now whether there is then corrupt activity, incompetence or negligence, that is a different matter. My concern with the Ombudsman, when I went down there on the second occasion, was that it would have been futile for him to be doing an investigation and then get to the end of the day and find out that he did not have certain documents which were, to my mind, crucial. But if you have all the material from the Police Integrity Commission, the Police Internal Affairs and the Crime Commission, this can all be resolved. And that is the point I try and make in the submission.

In respect to the Kaldas allegations, I know they are very disturbing to him. I suggested that certain questions be asked of the Ombudsman because, if you ask those questions and he says, "Yes, I have done that", then you have to have confidence that, at the end of the day, there will be a report that will give you all the answers. In the meantime, he has to find out why it happened, as opposed to how. The "how" will be all there—it will drop out from the documents. There is an enormous documentary chain and the metadata—there is email traffic, there will be a bunch of documents and forensic information that will allow you to say: Sea was or was not told that; he told it to these people; he told that person that. So, at the end of the day, you will be able to say, "Why did you do that?"

I am not here defending the Ombudsman either. In my submissions I am trying to play a straight hand and be helpful to the Committee so that it can come up with something a bit more meaningful than just Mascot. Mascot will be resolved. I could be totally wrong. The Ombudsman might have been sleeping two and a half years, he might do a one-page report to Parliament and go away on holidays. But I do not think that is the case and certainly, if he has got all the material, he would know all the answers.

**Mr DAVID SHOEBRIDGE:** But you are urging us to lift our eyes a bit and look at those systemic problems and how it is that the checks and balances the Parliament has put in are actually working in practice or failing in practice.

**Mr GIORGIUTTI:** That is right, that is the critical question. I watched Mr Levine be questioned. I do not know how old he is but he is a senior practitioner. If he says he believes X subjectively, then that is what he believes and he is never going to come here and say, "I told a lie; I made it all up". That is what he believed about a report. If he says to you "Donald Duck" or "D. Duck" and "M. Mouse", to me you have to look beyond those words and say, "What is he really telling me?" What he is really telling you is, "Do not expect the Supreme Court to be checking anything because we really cannot". If I read an affidavit at the Crime Commission, the only reason why I can go beyond "M. Mouse" and "D. Duck" is if I have been to operational meetings and I actually know, otherwise I would be like the judge, I just would not have a clue. How can you tell if something is false?

**CHAIR:** You had the opportunity to go through and collate the documents, as you did.

**Mr GIORGIUTTI:** That is right, which is what I started and which is what the Ombudsman is doing. But what could have happened over the years is that back in the day when you had people like Gordon Lever—who again, I knew more of him than knew him—he might have been doing one application a week and he was doing the whole lot. He was getting the original source material and had evidence of that. It is not like that nowadays. The NSW Crime Commission has four to six lawyers, full time, churning out warrant applications, different types of warrants. You heard Mr Levine say they are inundated—it comes like floods. In that environment it is not like it might have been when the legislation passed in 1985, where you were doing one a week and one practitioner could turn his mind to every source document and make sure the I's were dotted and the T's were crossed. That is what I think the Committee should look at, to see the reality, that what Mascot is highlighting and all these allegations highlight is that there is some bigger problem out there.

**CHAIR:** Thank you for coming Mr Giorgiutti, your evidence has been very helpful.

**(The witness withdrew)**

**(Short adjournment)**

CORRECTED

**MALCOLM BRAMMER**, Former Commander, Special Crime and Internal Affairs, NSW Police Force, affirmed and examined:

**CHAIR:** Would you like to make a short opening statement?

**Mr BRAMMER:** Yes. Mr Chair, members of the Committee, thank you for providing me with the opportunity to make an opening statement.

By way of background, I was a member of the New South Wales Police for some 39 years. I was the Commander of the Professional Responsibility Command Internal Affairs and Special Crime Internal Affairs from February 1997 to mid April 2001. Events relevant to my involvement with the New South Wales Crime Commission reference Mascot investigations occurred between January 1999 and March 2001, well over a decade ago.

Let me say at the outset, people make allegations and complaints, either validly, misconceivedly, maliciously or vexatiously. Such complaints require full and comprehensive investigation and resolution based on factual, verifiable and competent evidence, where natural justice and procedural fairness prevails and not based on speculation and innuendo. Complainants and those affected by allegations are entitled to expect this, irrespective of the outcome—something that has been lost in regard to the Mascot matter since allegations first arose in late 2001.

Doubt about the legality or otherwise of listening device and telephone interception warrants used during the Mascot investigation remain to this day. This is despite legal reviews and New South Wales Police internal investigations. I am confident that the New South Wales Ombudsman's office will determine the factual basis of those allegations in its current investigation.

In 2002 the then Inspector of the PIC reviewed the subject affidavit and found it was lawful and properly used, following assurances from the Crown Solicitor's Office and the New South Wales Crime Commission. In the early part of 2002 the Interim Commander of the New South Wales Police Professional Standards Command told me that they had an investigation on foot resulting from a hypothetical issue raised by a staff member affecting Mascot. This may relate to issues raised by detective inspector McFadden in late 2001. I am not aware of the substance of the issues or of the outcome of that investigation. At no time did that investigation seek to interview me or ask me to respond to allegations of findings, if that occurred.

In April 2002 the media raised allegations regarding the propriety of a listening device affidavit naming police officers and a journalist. Despite this disclosure there was no evident investigation until July 2003 under the realm of Strike Force Emblems. On 16 May 2002 the Parliamentary Committee on the Ombudsman and the PIC raised the Mascot affidavit with the PIC following media disclosures on 16 April 2002. The PIC rejected any responsibility for the warrant, deferring to the New South Wales Crime Commission. This indeed is a remarkable situation, given that the PIC Florida report relevant to Mascot had not been completed.

Prior to my retirement from the NSW Police Force on 2 July 2002, I formally advised the then acting commissioner that I wanted to have any outstanding complaint matters resolved before my retirement came into effect. That obviously did not occur. As of 16 May 2003 New South Wales police accepted the legal review by the Inspector of the Police Integrity Commission in 2002 when declining allegations, affecting others and myself, of impropriety in regards to obtaining the subject listening device warrant in Operation Mascot. My New South Wales police complaint history records that decision. Despite that occurring, New South Wales police instigated Strike Force Emblems in July 2003, apparently following representations from the Police Association of NSW.

As I understood it, Strike Force Emblems never had access to the affidavits, other than the one disclosed publicly by the media and the Police Association of NSW. At no time did Strike Force Emblems approach me for the purposes of interview or to provide a response to allegations or findings arising from the investigation, as required in the interests of natural justice and procedural fairness. From my perspective, Strike Force Emblems unreasonably sought to sustain their findings of possible systemic corruption and maladministration existing in Operation Mascot from four other unrelated internal investigations. Those internal investigations were insignificant in number compared with the total undertaken by the Special Crime and Internal Affairs Unit [SCIA] during the period 1997 to 2001.

Strike Force Emblems reportedly claimed systemic corruption and maladministration involving those four internal investigations pervaded and influenced the obtaining of listening devices in Operation Mascot. Those internal investigations had nothing to do with the Operation Mascot team members responsible, nor were they relevant to such findings. Despite this, mischievous persons within the police service unlawfully released those reports and findings to former police and the media, resulting in their publication and speculation which, to the detriment of myself and others, prevails to this very day. Likewise, it did not serve the best interest of the NSW Police Force organisation's credibility.

I suspect those who leaked the reports well knew the deficiencies existing in Strike Force Emblem's report and the consequences for the police affected, including myself. To this very day, NSW Police Force senior executive, past and present, seem to not accept responsibility for the emblems investigations or the inadequate outcomes. In 2012 the Inspector of the Police Integrity Commission criticised the emblems report and advised the Minister for Police and Emergency Services to that effect. The NSW Police Force set up Task Force Volta in 2002 to deal with the large amount of outstanding matters arising from Operation Mascot and Police Integrity Commission oversight. Operation Volta provided no tangible resolutions for the concerns held by the officers and the journalist named in that affidavit. Its findings and outcomes are still publicly unknown to this day.

Despite the allegations existing in 2004 the Police Integrity Commission, when publishing their inquiry report to the New South Wales Parliament, seemingly were satisfied with the veracity of the subject affidavit and the 2002 review by the Inspector of the Police Integrity Commission. The parliamentary Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission in November 2006 considered the advice of the Inspector of the Police Integrity Commission regarding that affidavit. The committee accepted that the affidavit was lawful and properly used. The committee criticised the NSW Police Force for expending time and effort undertaking an investigation of matters that had already been investigated by the Inspector of the Police Integrity Commission.

Phillip Bradley, NSW Crime Commissioner, gave evidence to the committee in the same month to the effect that the allegations relating to the listening device affidavits were untrue and that the conduct of those who drafted the warrant was found to be correct by a number of legal examinations of it. There has been a deplorable state of confusion prevailing ever since the allegations regarding Operation Mascot affidavits were first raised by the media more than a decade ago. New South Wales police senior executive, despite having ample opportunities, failed to resolve serious allegations arising from Operation Mascot and Strike Force Emblems. It is little wonder that claims of a cover-up prevail. The interests of officers and their recall of events would have been much better-served had the New South Wales police interviewed them at the time, when they had a clear recollection of events. We are now left with imprecise and inexact recall when called to account due to the passing of time and the limitations of accessing the relevant records.

The failure to adequately address the allegations over the years has unfairly fed agitation of officers concerned and speculative reporting in the media. This escalated when the reports I previously referred to were unlawfully leaked to former senior police officer Clive Small, who seemingly used that material for the purposes of publishing his book in 2010 focussed on the Special Crime and Internal Affairs Unit. Fairfax media have relied heavily on that book as a public document and the New South Wales internal investigation reports leaked to them in articles published since. Mr Small also relied upon those reports in making submissions to this inquiry, which have since been published. I have addressed my concerns and allegations in regards to his submission in my formal written submission to this inquiry. Again, I stress that I have not had access to those leaked reports.

I also made submissions to the inquiry resulting from the evidence of Deputy Commissioner Kaldas, specifically things he raised affecting me. I categorically reject any suggestion that I directed the obtaining of listening devices or telephone interception warrants in regards to the Operation Mascot investigations. I was never privy to any of the affidavits or applications prepared or executed by the NSW Crime Commission and the Special Crime and Internal Affairs Unit in this investigation. The status quo remains to this day. Similarly, I categorically reject any assertion that I in any way acted corruptly, incited, harboured or condoned corruption or misconduct in the Operation Mascot investigations. The same applies to the obtaining and use of listening device and telephone interception warrants relevant to that investigation.

I categorically reject allegations that I used my position as commander of Special Crime and Internal Affairs Unit to facilitate or encourage Operation Mascot investigators to use the Mascot investigation for the purposes of payback or vendetta against any other New South Wales police officers, whether current or past,

and this includes Mr Kaldas. I am not aware of any material evidence to the effect that members of the Operation Mascot team were allegedly involved in corruption or misconduct during their investigations. I am not aware of any vendetta or payback, allegedly perpetrated by the Operation Mascot team, against any person subject to investigation, including Mr Kaldas.

As I understand it, whatever investigations affecting Mr Kaldas that did occur within Operation Mascot, using intrusive technology and M5, occurred after I left the Special Crime and Internal Affairs Unit command when Mr Scipione was effectively in command. Some seem to have formed a predetermined view that Operation Mascot affidavits were not valid or were unlawful. I am in no competent position, and nor am I legally qualified, to offer any opinion in that regard or to argue otherwise. I have never had access to the affidavits in question. It is important that the allegations are finally and factually determined by the NSW Ombudsman in the interests of all concerned. This includes the unlawful release of New South Wales police internal investigation reports to persons not entitled to them, pursuant to the Ombudsman Act. I am confident that the Ombudsman's inquiry will achieve that end and I like all others just want a fair go.

**The Hon. ADAM SEARLE:** You are very critical of the Strike Force Emblems investigation. Are you aware that we have received evidence to the effect that the Emblems task force felt it was prevented from properly going about its task to fully investigate the matter?

**Mr BRAMMER:** I believe that is the case, yes. That was why I said "deficient".

**The Hon. ADAM SEARLE:** When you say "deficient", you do not level any blame at the participants of that strike force?

**Mr BRAMMER:** No, they had a difficult position. I recognise that and I accept that. I have got no problem with it.

**The Hon. ADAM SEARLE:** You are critical of the Emblems report or what you understand to be in it but you have never seen a copy; is that correct?

**Mr BRAMMER:** No, I am only relying on what is the media as publicised in 2010 from the reports that were provided to Fairfax.

**The Hon. ADAM SEARLE:** Nevertheless, you understand the grievance of people who say they were the subject of police surveillance unjustifiably? You understand that is a legitimate grievance?

**Mr BRAMMER:** From their perception, yes, I can understand that. I readily accept that and it should have been dealt with a long time ago.

**Mr DAVID SHOEBRIDGE:** What material did you say you relied upon to critique the Emblems report?

**Mr BRAMMER:** What I have seen in the media and the report from the Inspector of the PIC, from Justice Levine.

**Mr DAVID SHOEBRIDGE:** That is the two-page letter?

**Mr BRAMMER:** That is all I can rely on. I have never seen it. I have never had access to it.

**The Hon. ADAM SEARLE:** You are very critical of successive police commissioners about the inability of the police force to resolve the controversy properly one way or the other?

**Mr BRAMMER:** Yes.

**The Hon. ADAM SEARLE:** What do you think ought to have happened?

**Mr BRAMMER:** There should have been a full and proper investigation and some further negotiation by the Crime Commission to try to resolve the issue. I feel sorry for the people that who made the complaints and were subject to the investigation. They should have had opportunities to know what the outcomes of the investigations were and what the allegations were, which was always my intention when Mascot was on foot.

**CHAIR:** When should this have been sorted out?

**Mr BRAMMER:** As close as possible to when it first was exposed and the allegations were made, in 2001 or 2002, I think it was—whenever the article came out in the papers. But to be perfectly frank, in 2001 the issue was raised about questioning the validity of, as I understood it—I have never seen Mr McFadden's email but there were obviously serious allegations made there which need to be resolved. In my own mind I believe the hypothetical issue that was raised and referred to by the then acting commander of professional standards related to that allegation because I was never ever approached to interview—

**CHAIR:** Who was that?

**Mr BRAMMER:** That was in early 2002. Mr Brian Reith was the chief superintendent. I think he was relieving. I think it was the interim from Mr Scipione leaving and going to the deputy commissioner's position and I think it might have been Mr Carroll who took over.

**Mr DAVID SHOEBRIDGE:** You say at the bottom of page 10 of your statement:

In my view this required an immediate investigation on the part of Mr. Scipione and Mr. Moroney to whom he sent the email, it seems nothing happened until perhaps July 2003 when Emblems was established, however that investigation apparently failed to resolve the matter and was discarded.

**Mr BRAMMER:** There was an opportunity there and then to interview me. I was never approached. I certainly said if they did approach me I would have legal representation but I never said I would not be interviewed. No-one ever approached me and gave me that opportunity.

**Mr DAVID SHOEBRIDGE:** In November 2001 were you still with the force?

**Mr BRAMMER:** I was still a member of the New South Wales police in November 2001. I was at the Independent Commission Against Corruption [ICAC] as the executive director of strategic investigations. I did not retire until 2 July 2002.

**Mr DAVID SHOEBRIDGE:** Was any explanation ever given to you about why no-one asked you about these matters?

**Mr BRAMMER:** No.

**Mr DAVID SHOEBRIDGE:** Would you have expected a competent investigation to have done that?

**Mr BRAMMER:** I certainly would. Given the allegations that had emerged on the "possible findings of corruption" on my behalf and "systematic maladministration" I would expect someone would have come and approached me about it.

**Mr DAVID SHOEBRIDGE:** Do you think Mr Scipione referring the matter to his senior officer Mr Moroney at the time was an adequate response from Mr Scipione?

**Mr BRAMMER:** I could understand Mr Scipione doing it because I could see it may have affected him as he was the commander of SCIA and Mascot was still ongoing. Therefore I would expect Mr Moroney to have done something more positive, more proactive to resolve that issue.

**Mr DAVID SHOEBRIDGE:** Do you know of anything Mr Moroney did?

**Mr BRAMMER:** I know nothing of what Mr Moroney did.

**Mr DAVID SHOEBRIDGE:** In the absence of Mr Moroney having resolved it and given that Mr Scipione was in charge of the unit at the time what would you have expected of Mr Scipione?

**Mr BRAMMER:** I would have expected him to conduct the investigation himself, to further develop the issue rather than just relying on email as to the evidence, or have someone to do the investigation on his behalf, to interview the people who are making the allegations, I understand it, to Mr McFadden and determine the facts or otherwise.



**Mr DAVID SHOEBRIDGE:** You say at paragraph 20 on page 2 of your statement:

The serious failure of the NSW Police Force to expeditiously and effectively resolve the allegations forming the genesis of the Emblems investigation in 2003 is abysmal and appalling.

**Mr BRAMMER:** Correct.

**Mr DAVID SHOEBRIDGE:** Given that it was a tripartite investigation between the PIC, the Crime Commission and the police how could the police have resolved the investigation other than establishing Strike Force Emblems as they did?

**Mr BRAMMER:** I do not know what discussions they had with the PIC because certainly as it related to their Florida investigation it is a serious potential deficiency in their investigation if the allegations were confirmed. I am not quite sure what the allegations were that were put to Mr McFadden but certainly they obviously questioned the validity of telephone and, as I understand it, listening device warrants. I have never seen the document. Also the Crime Commission—I mean, it affected the whole three agencies; one would have thought they would have all got together and said, "What are we going to do about this? This is serious." Nothing happened.

It has been frustrating for me particularly because since that time I have had continual media speculation, allegations of corruption and all those sorts of things levelled against me. How can I respond? I could only respond relying on investigation. That is why I am more than happy that the Ombudsman is doing this investigation and I am more than happy to assist the Ombudsman in doing that investigation. I am more than happy to be frank and honest in regards to what my involvement was in giving evidence to the Ombudsman and hopefully at the end of the day it will be resolved. If there is some criticism of me, I will accept that as long as it is based on factual and verifiable evidence. At this stage I have not seen that.

**Mr DAVID SHOEBRIDGE:** Do you know that the Strike Force Emblems recommendations and report were signed off through a chain of command that went well beyond the investigators at Strike Force Emblems and at a minimum up to a deputy commissioner level?

**Mr BRAMMER:** Yes. I must admit I saw the evidence of the Ombudsman yesterday—sorry, the evidence of the other officer after the Ombudsman where that was mentioned, yes. That is part of the quality control process. But I do not see how they could withstand having outstanding possible findings against me and other officers in regards to Mascot rather than on the balance of probabilities or if it is a criminal matter it is beyond a reasonable doubt. Then it goes off and sits in the ether of the complaints management system unattended.

**Mr DAVID SHOEBRIDGE:** Is that not a significant part of your complaint: You say that Emblems is done, the concerns are raised in Emblems but then it is never resolved?

**Mr BRAMMER:** And the concerns raised in Emblems eventually get out into the media and are speculated upon by the media. That is certainly one of my gripes. One of the big gripes is that they did not resolve it. I have got no problem with people making complaints. People make complaints and always have made complaints. I have got lots of complaints. All I expected was for them to be dealt with properly. I know my complaint history has got complaints in it that I have never been approached about. Some are serious. Some have been written off. It is like the decision of the police service to decline the allegations against me in one month and the next month start inquiring about the same thing again. You would at the end of the day hope for some effective and prudent resolution.

**Mr DAVID SHOEBRIDGE:** Almost the worst thing you could do as the NSW Police Force once you get Strike Force Emblems is just simply park it and do nothing with it?

**Mr BRAMMER:** Exactly right.

**Mr DAVID SHOEBRIDGE:** Who are the people you think ultimately hold the responsibility for that failure to resolve the issues raised in Strike Force Emblems?

**Mr BRAMMER:** My understanding of it, it is from the media again, is that then Deputy Commissioner Madden instigated the strike force. I think he left at some stage and who took over responsibility

for it I do not know. Who they eventually reported to I do not know. But ultimately it was the responsibility of the commissioner because it was a distinct discredit to the organisation that these allegations continued on and continued on to this very day without any resolution or an attempt to resolve it in any effective way. Mr Moroney was in office until 2006. Mr Scipione was in office after that. There was still no resolution. No-one, to my mind, has accepted reading the report.

**Mr DAVID SHOEBRIDGE:** That brings me to paragraph 38 of your statement. Can you see that?

**Mr BRAMMER:** Yes.

**Mr DAVID SHOEBRIDGE:** It would be fair to say that you are extremely critical of the current police commissioner for the assertion that he has not read Strike Force Emblems. Can you explain that?

**Mr BRAMMER:** There has got to be a point in someone's administration when issues are continually arising to determine what the report says. The best way of doing that is actually reading it and understanding it and getting advice on it. It has not happened. Mr Scipione says he has not read it. The question I ask is why.

**Mr DAVID SHOEBRIDGE:** Indeed, have you ever heard a valid explanation asserted as to why the commissioner has not read it?

**Mr BRAMMER:** It is not my place. To be perfectly frank, I got that frustrated with trying to deal with the issue that I just wanted to move on and say, "Right. People are making these allegations. What can I do about it? Nothing, until they release those documents." Certainly I wrote to the Premier and raised my concerns about the release of information and the failure of the police service to deal with these issues far earlier.

**Mr DAVID SHOEBRIDGE:** When was that?

**Mr BRAMMER:** I think it was in September, very shortly after the articles were published. I was approached by Neil Mercer and I gave him a response by email about aspects of my views that he sought from me. When it was published I then sent it to the Premier's office.

**Mr DAVID SHOEBRIDGE:** Is this September 2012 that we are talking about?

**Mr BRAMMER:** Yes, it was.

**Mr DAVID SHOEBRIDGE:** You say in paragraph 35 of your statement:

NSW Police had a legislative obligation to report the allegations of corruption arising in Emblems to PIC particularly as they affected senior officers over and above the rank of Superintendent; the PIC had an obligation of oversight and/or to investigate.

**Mr BRAMMER:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you understand if that has ever happened?

**Mr BRAMMER:** I have got no idea.

**Mr DAVID SHOEBRIDGE:** You do understand the difficulty though, because if the PIC was involved in the operation they were clearly conflicted in terms of undertaking an investigation into it? They would be investigating themselves in part.

**Mr BRAMMER:** From what I understand the PIC is saying that it does not affect us, it affects the NSW Crime Commission and the police.

**Mr DAVID SHOEBRIDGE:** But they were a party to a memorandum of understanding under which the matter ran, were they not?

**Mr BRAMMER:** Yes.

**Mr DAVID SHOEBRIDGE:** What was their involvement in it? You were there, Mr Brammer. Is that assertion by the PIC valid that it was not them it was other two?

**Mr BRAMMER:** In July 2000 following the memorandum agreement between the police and the NSW Crime Commission they came into the investigation. They carried a lot of the parts of the investigation forward, leading to the public exposures and a whole range of things and people rolling over or whatever it may be. They had a very significant involvement and my view is that they relied on material gathered from the listening devices and telephone interceptions as forming the basis for their investigation.

**Mr DAVID SHOEBRIDGE:** They were happy to accept the fruit of the investigation but they were not happy to be any part of the critique leading up to it?

**The Hon. TREVOR KHAN:** That is hardly unusual in the public service, is it?

**Mr DAVID SHOEBRIDGE:** Or anywhere.

**Mr BRAMMER:** Following the investigation Task Force Bax into the PIC Operation Jade and their report, in the report they gave no recognition to the involvement and the development of the investigation into New South Wales police. That absolutely angered Peter Ryan, Commissioner Ryan. Basically, they then had to go and rectify it to give that recognition to the police. So them stepping away and the comment you made there is no surprise to me.

**Mr DAVID SHOEBRIDGE:** Commissioner Ryan gave an explanation on *60 Minutes*, if you remember, about how so many people were bound on a warrant, which in large part says it was because they were going to a social function. Do you have any knowledge about how it was that Commissioner Ryan received information relating to that explanation?

**Mr BRAMMER:** No. What year was that again?

**The Hon. TREVOR KHAN:** 14 April—

**Mr DAVID SHOEBRIDGE:** 14 April 2002.

**Mr BRAMMER:** I was at the Independent Commission Against Corruption at that time. I do not know on what basis he made that, nor was I aware, during my time there, of any warrant being prepared for that purpose. It is not necessary I would know but I do not know.

**Mr DAVID SHOEBRIDGE:** You worked closely with Mr Dolan for a number of years. Is that right?

**Mr BRAMMER:** Yes, intermittently.

**Mr DAVID SHOEBRIDGE:** When was that period?

**Mr BRAMMER:** I was in charge of the Plantation Unit in 1986. He came there from the Bureau of Crime Intelligence. He worked with me for three years. I then was promoted to inspector and went to the National Crime Authority as a senior investigator. I was there until, I think, 1991. I then went to Task Force 4; I was in command of Task Force 4 until I went to Kings Cross in 1994. I returned as a special agencies in 1996—Mr Dolan I think was education and training officer at the time—and I remained in that command until I think it was February 1997.

**Mr DAVID SHOEBRIDGE:** That rolled into the work you did at Mascot?

**Mr BRAMMER:** Yes. He then came to work for Special Crime Unit, but that was a recommendation of Mr Bradley. I think I explain in my statement the circumstances in regard to how the relationship with the Crime Commission evolved and certainly Mr Ryan and Bradley wanted to identify some people they had high regard for and also were to be trusted to do the type of work that they were proposing and John Dolan's name came up at the time. I then approached John and had a discussion and he agreed to come and do that job. So that was basically it.

In so far as personal relationships, we did not socialise that much at all. He was involved in some projects—I am trying to think back now. When I was at Task Force 4 I was responsible for developing, with some other police from other States, a national clandestine laboratories program including education and

training and Dolan assisted me in that. There was another issue where, because he was in charge of an undercover unit, he was involved in the undercover working party reviewing for the crime management model.

**Mr DAVID SHOEBRIDGE:** You say you did not have a lot of social activities but you had a very extensive professional engagement with him?

**Mr BRAMMER:** Yes.

**Mr DAVID SHOEBRIDGE:** And you would have known him well.

**Mr BRAMMER:** Professionally I know him well.

**Mr DAVID SHOEBRIDGE:** Did you ever become aware of him having antipathy towards Mr Kaldas or anyone else who was the subject of an investigation by Mascot?

**Mr BRAMMER:** No.

**Mr DAVID SHOEBRIDGE:** Are you saying, as you sit there now, that you are not aware of any antipathy between Mr Dolan and Mr Kaldas?

**Mr BRAMMER:** No specific antipathy.

**Mr DAVID SHOEBRIDGE:** Was it ever raised with you by Mr Dolan an altercation with Mr Kaldas regarding the alleged plagiarism of some work, that there had been a very heated exchange which almost came to physical blows?

**Mr BRAMMER:** I am aware of that allegation. John Dolan has always denied to me that that occurred since that was exposed at some stage or other.

**Mr DAVID SHOEBRIDGE:** Do you have any knowledge about how it was that Mr Kaldas was a name that was put to M5 by Mascot investigators when M5 himself had not raised it with Mr Kaldas?

**Mr BRAMMER:** I am not aware of his name being put to M5 or the situation where it was raised as far as M5.

**Mr DAVID SHOEBRIDGE:** The evidence that we have had earlier today was that in the initial five-day debrief of M5 the two officers who conducted the debrief positively put Mr Kaldas' name to M5 asking whether he knew of any adverse allegations against Mr Kaldas, and that was the only police officer's name that was put in the course of those five days of investigations.

**Mr BRAMMER:** I am not aware of that. I was not present; I am not aware of that.

**Mr DAVID SHOEBRIDGE:** That would be highly unusual though, would it not, to just in the course of five days single out just one officer?

**Mr BRAMMER:** I would find that surprising because basically the purpose of debriefing M5 was to identify who he might make allegations against, not putting suggestions in his mind—if that occurred.

**Mr DAVID SHOEBRIDGE:** Indeed, that process of putting suggestions in the mind would be potentially detrimental to the debrief process because you would want to be getting an unalloyed recollection of the witness rather than prompting them in that way.

**Mr BRAMMER:** It certainly would not be an approach I would take. It would basically depend on how that person, M5, responded to it and what he said, whether he raised issues there and then about Mr Kaldas, whether there was some basis for him making it. I do not know.

**Mr DAVID SHOEBRIDGE:** The evidence we have is that his response was negative—he had nothing.

**Mr BRAMMER:** Again, I was not present—privy. To be perfectly frank, in the initial debrief—I think he was debriefed before I even became aware of it because that occurred in December and I was not informed of it, at the direction of Mr Ryan, until some time in January.

**The Hon. ADAM SEARLE:** Mr Shoebidge asked you some questions about your relationship with Mr Dolan. You would accept that it was a very close relationship?

**Mr BRAMMER:** It is probably far more closer now than it was then, in a way that there is not constant interaction; it is more because of Mr Dolan's health and welfare issues.

**The Hon. ADAM SEARLE:** Your evidence in your submission is that in relation to Mascot you did not have any hands-on or operational role. Is that your submission?

**Mr BRAMMER:** True.

**The Hon. ADAM SEARLE:** I think you put Mr Dolan in charge of that operation, did you?

**Mr BRAMMER:** Mr Dolan was in charge of Special Crime Unit and they have responsibility for servicing a number of references from the Crime Commission. I suppose it happened, basically, rather than me directing it that it was put under his responsibility, Mascot.

**The Hon. ADAM SEARLE:** At the time that he was in charge of Mascot, Ms Burn described your relationship with Mr Dolan this way: that you had a very close relationship, "I think they speak every day and after work as well, travelling home quite regularly, operational updates all the time". Is that a correct characterisation of your relationship?

**Mr BRAMMER:** Yes, I certainly had conversations with Mr Dolan, as I did with other commanders at the end of the day just to get updates of what was occurring.

**The Hon. ADAM SEARLE:** But you would not travel home with all of the other commanders, would you?

**Mr BRAMMER:** I did not travel home with Mr Dolan either.

**The Hon. ADAM SEARLE:** So that description by Ms Burn in 2002 was not correct, you would say?

**Mr BRAMMER:** No, they were by telephone.

**The Hon. ADAM SEARLE:** Ms Burn also indicated in a record of interview that proactive targeting or deciding who to target would come down to decisions made by the Crime Commission and PIC and "mainly John Dolan, me, Brammer as to what our next strategy would be".

**Mr BRAMMER:** That is incorrect.

**The Hon. ADAM SEARLE:** That is not correct?

**Mr BRAMMER:** No. There was, as from July—previous to that there might have been some discussions and so forth, but the active targeting, my understanding, occurred in 2000 and that related to the north-side issues. Once the PIC came in there was a strategic level committee which consisted of Mr Ryan, Judge Urquhart and Mr Bradley, myself and Mr Sage and they were briefed by Mr Dolan and Ms Burn and others in regards to where the investigation was at that time and then they had their regular meetings every month. Then there was a sub-committee which comprised generally of Mr Dolan and the Crime Commission and the PIC. I did go to it occasionally. I reported to the PIC every week at a meeting with Mr Sage. Generally where they were going was put to that committee and endorsed by the committee.

**The Hon. ADAM SEARLE:** In a record of interview with the Strike Force Emblems team Ms Burn attributes to you an operational role of deciding proactive targeting. You reject that, is that correct?

**Mr BRAMMER:** No. We were relying on information that they developed and who they were identifying as potential targets.

**The Hon. ADAM SEARLE:** You say you were not part of making that decision?

**Mr BRAMMER:** Did I sit down and say, "Investigate this person. Investigate that person"? No. I mean I might well have endorsed it but I did not say, "Do it".

**The Hon. ADAM SEARLE:** So you might have been part of reaching the formal decision to do those things?

**Mr BRAMMER:** After verification with the other members of the committee and Commissioner Ryan.

**Mr DAVID SHOEBRIDGE:** So the proposal would potentially come from an investigator—probably normally Ms Burn, given the structure. Is that right?

**Mr BRAMMER:** Yes. A lot of it was left to the day-to-day running and sometimes they did their own work and working on different people, deploying resources and all those things and responding to events that may be identified with telephone interceptions, listening devices and all those sorts of things. I think at different times it radiated amongst a number of people who they were working on.

**Mr DAVID SHOEBRIDGE:** But then the proposal having come forward, do you agree with Ms Burn's statement in that record of interview that it would then come down to a decision made by the Crime Commission, the PIC and "mainly John Dolan, me, Brammer as to what our next strategy would be"?

**Mr BRAMMER:** I think every month there was a meeting with Judge Urquhart and the other people to ratify to us where they were going.

**Mr DAVID SHOEBRIDGE:** You have said that you were not aware of any antipathy between Mr Dolan and Mr Kaldas. Again, in her record of interview to Strike Force Emblems Ms Burn was asked about, and I will read the question:

We've been informed that the general feel from some of the staff in the Mascot team, is that the selection of some of the integrity test targets were subjective and that with many of them, Dolan had an axe to grind from past experience with the person selected. Are you able to comment on that statement?

To which she responded:

Oh look, look John Dolan might have had an axe to grind with a lot of people 'cause he put a lot of people offside. I don't think he was a particularly liked person, but the actual targeting of some of the people, (stutters) he'd make it known that he had a conflict or that there was a problem. For instance, with—

and the person is named—

he made it known that um there could have been an issue there. Nick Kaldros um, he made it known there could have been an issue there, but it wasn't solely his decision and when you say subjective, I don't think it's subjective. Names came up, M5 gave information ...

That seems to suggest, at least from Ms Burn's recollection, at the time of Strike Force Emblems that it was known that there at least could have been an issue.

**The Hon. TREVOR KHAN:** No, that she was identified. You have asked about what his perception is.

**Mr DAVID SHOEBRIDGE:** "Nick Kaldas, he made it known that there could have been an issue there". Mr Dolan is making known that there could have been an issue there. I am asking you if that accords with your recollection.

**Mr BRAMMER:** I am not aware of what you are talking about there. It was never brought to my notice that we had a conflict or a possible conflict. Can I just add this? A problem for John Dolan was Phillip Bradley continually referring to him as the most hated man in the NSW Police, and that did have some effect on John as far as his esprit de corps. I just thought it was unfortunate that that was said.

**Mr DAVID SHOEBRIDGE:** These matters need to be addressed, Mr Brammer.

**Mr BRAMMER:** I am sorry?

**Mr DAVID SHOEBRIDGE:** These matters need to be addressed for us to have those answers.

**Mr BRAMMER:** Sure.

**Mr DAVID SHOEBRIDGE:** It is awkward, but necessary.

**Mr BRAMMER:** Sure, sure. I am not saying you should not address them. I am just saying—and I am not making any submission on behalf of John Dolan. I am just saying the pure fact was, which was reinforced with him quite a few times by Mr Bradley and other people, that he was the most hated man in the Police Service. I do not know on what basis they made that.

**The Hon. LYNDA VOLTZ:** He was running internal affairs, was he not?

**Mr BRAMMER:** I am sorry?

**The Hon. LYNDA VOLTZ:** That would not have helped.

**Mr BRAMMER:** No, and there was certainly a lot of agitation from crime agencies in regards to operation Bax and other issues that we were doing work that they thought they should be doing. That was a decision of Mr Ryan, not my decision, and I think there were those sorts of things as well.

**CHAIR:** Mr Brammer, at clause 68 on page 13 you say, "Mr Small harboured an unrepentant and intense animosity towards me." What in your view brought that about?

**Mr BRAMMER:** I was in the cadets with Mr Small and did the detectives course with Mr Small. I never had any problems with Mr Small until we went to internal affairs and until Commissioner Ryan made that decision about internal affairs at that time undertaking an investigation in regards to organised crime. Certainly Mr Small was quite open about his view about that and actually spoke to the commissioner about it; also then with Task Force Bax, what occurred with Task Force Bax and the position he was placed in, and other issues that evolved.

There were also other issues where there were members of crime agencies at the academy who harassed two female officers from the special crime unit at the detectives course. That was raised with or made to crime agencies. They resisted taking any action. It was persisted with. Also there was another issue up on the North Coast where some of his officers harassed Special Crime and Internal Affairs and also some people from the technical unit about what they were doing. One other issue was the issue that I raised in my submission about the undercover working party that was put in place by Mr Moroney and the vitriol and so forth expressed towards SCIA persons. Mr Small's view, which is still persists with, was that I wanted to take over the undercover unit. That was totally untrue. He knew that was untrue. It was never my intention whatsoever, or want.

**Mr DAVID SHOEBRIDGE:** The terms of reference of Mascot were greatly expanded at one point. Originally it was a set of offences and 19 names. Then it expanded to include any former or current police officer who may have been involved in a list of offences. Does that ring a bell?

**Mr BRAMMER:** It does not ring a bell, but could just tell me when that occurred?

**Mr DAVID SHOEBRIDGE:** I will.

**Mr BRAMMER:** Is that Mascot II?

**Mr DAVID SHOEBRIDGE:** That is right. In November 2000, a new New South Wales Crime Commission reference was approved called Mascot II. A list of suspected persons was broadened significantly to be, and this is a quote from the terms of reference, "not be limited to the persons named in the original reference but extend to all police (former and serving) suspected of engaging in the offences, the subject of the reference." Do you remember that happening?

**Mr BRAMMER:** No, I do not remember that happening.

**Mr DAVID SHOEBRIDGE:** Do you have any—

**Mr BRAMMER:** That could have been an issue dealt with by Mr Bradley and Mr Ryan. I was not aware of that.

**Mr DAVID SHOEBRIDGE:** No-one sought any advice from you about the expansion of the terms of reference?

**Mr BRAMMER:** No, not that I recall. I mean, it was a New South Wales Crime Commission reference and the Crime Commission was oversighted by the New South Wales Crime Commission Committee. That would have been a proposal put to them. I was not aware of it and it has confounded me sometimes when I have heard about Mascot II because I had never ever heard of Mascot II.

**Mr DAVID SHOEBRIDGE:** But that broad terms of reference that just allows the task force to investigate all police, former and serving, is pretty much like open season on the police, is it not? It lends itself to overreach and potential abuse.

**Mr BRAMMER:** I have not seen the reference. If I could see it, I might be able to assist you. I am not questioning you or what you are telling me.

**Mr DAVID SHOEBRIDGE:** I think this comes from the Ombudsman's submission.

**Mr BRAMMER:** Okay.

**Mr DAVID SHOEBRIDGE:** I am happy to show it to you, but it comes from the Ombudsman's submission. Do you want to see?

**Mr BRAMMER:** Oh, no. I mean, the interpretation that you are putting on it may be right.

**Mr DAVID SHOEBRIDGE:** I am asking you about your views of that interpretation.

**Mr BRAMMER:** Can you tell me the terms of those references and the context that they are in? Maybe if you show me the document?

**Mr DAVID SHOEBRIDGE:** I am more than happy to do that. You will have to ignore my handwriting on the right. You will see it in paragraph 58 and then paragraph 61.

**The Hon. LYNDA VOLTZ:** You will not be able to read it anyway. It is illegible.

**Mr DAVID SHOEBRIDGE:** It is normally illegible, yes. I refer you to 58 and 61, but the expansion is in paragraph 61, Mr Brammer.

**Mr BRAMMER:** It does say, "not to be limited to the persons named in the original reference but extend to all police, former and serving, suspected of engaging in the offences, the subject of the reference".

**Mr DAVID SHOEBRIDGE:** Yes. I ask you whether or not you think that having such an extraordinarily broad terms of reference is appropriate, or does it lend itself to overreach and potential abuse?

**Mr BRAMMER:** There is that capacity.

**Mr DAVID SHOEBRIDGE:** Do you think, looking back, that that might be a significant issue for us to consider?

**The Hon. TREVOR KHAN:** Perhaps looking forward?

**Mr DAVID SHOEBRIDGE:** Well, yes. In the light of what has happened, looking forward, should that be a matter we should consider?



**Mr BRAMMER:** It is probably relevant to your considerations.

**Mr DAVID SHOEBRIDGE:** Could I ask you this: You were closely involved in this for a number of years. Is that right?

**Mr BRAMMER:** Yes.

**Mr DAVID SHOEBRIDGE:** Is there not a fundamental problem when you have police internal affairs, you have the Crime Commission and you have the Police Integrity Commission [PIC] all working together under a memorandum of understanding and a joint operation of some degree? When something goes wrong with it, or it is alleged that something goes wrong with it, there is nobody independent to complain to. Is that not a fundamental problem?

**Mr BRAMMER:** I perfectly agree with you. I think there is a fundamental problem myself with the NSW Police complaints management system, particularly given what has occurred with this.

**Mr DAVID SHOEBRIDGE:** The fact that those three agencies have all been alleged to be culpably involved in it potentially explains the enormous difficulty in getting resolution of this over so long.

**Mr BRAMMER:** Certainly the secrecy provisions are an impediment to that, and I understand that—the frustration. I might be critical of Emblems mainly for a range of issues, but at the end of the day I understand clearly the impediment they have in trying to resolve that with the secrecy provisions and the problems that people they interviewed had with it. I suppose it might be something that might have occurred to me if I had been interviewed, but at the end of the day it had to be resolved some way or the other. I think someone needed to take over—whether that was the government at the time or something, or to have an independent inquiry, whatever it may be. It had to be resolved there and then, not now. I mean, I tend to agree it should have been resolved. I do not object to it being resolved now, but it should have been resolved at the time.

**The Hon. LYNDA VOLTZ:** Mr Brammer, in her evidence, Cath Burn was asked a question by Mr Shoebridge about whether Mr Dolan had ever declared anything to you and she replied, "I cannot remember specifically in relation to Mr Kaldas."; "Did Mr Brammer ever declare anything to you?"; "Yes, he did at a later stage."; "What did he"—I should say that it is a bit of preamble in there. She says, "I'm just trying to remember. I think it was late 2001."; "What was the effect of what Mr Brammer said to you in late 2001?"; "Well, it was really he was setting out issues between Mr Dolan and Mr Kaldas that were their history." She goes on, "It was about their history." I will leave out the bits about Mr Shoebridge asking her not to be coy. "What was it?"; "I do not have a great recollection. It was a document I saw when I was being examined by the Ombudsman. I do not have the document but I do recall that I looked at that document, but I do not have a great recollection. But he did set out that there was a history between them." Do you recall that? I know it is a long time ago. Do you recall that at all?

**Mr BRAMMER:** I do not recall providing any document to Ms Burn in late 2001. There was one incident before I went to ICAC, I think, in July 2001, where Mr Dolan contacted me in a most distressed state following disclosures arising from a telephone intercept between Mr Kaldas and another superintendent where they were discussing the future of Mr Dolan under Mr Scipione. Basically, the agenda was that he would be soon gone, or something to that effect. There were other aspects that occurred that day in regards to an incursion at the Crime Commission and search of property of Mr Dolan and those sort of issues. They were addressed in an email that I sent to Ms Burn. I was concerned that Mr Dolan told me those issues because, basically, they were contrary to the secrecy provisions, but obviously he was in a very distressed state.

He raised those issues with the commissioner and he also raised it with Mr Bradley and with the PIC, I understand. As I understand it, Mr Dolan was never ever spoken to. I think that related to the issue that was resolved which was mentioned in the paper in the last week or so about the short investigation in regards to Mr Scipione before he was promoted to deputy commissioner. But at no stage did the PIC interview Mr Dolan and there was another issue Mr Dolan raised, which he told me later, with regards to a conversation he had with Mr Scipione, which he raised with the PIC. Mr Dolan was never interviewed about that. That was raised with Mr Ryan again.

**The Hon. LYNDA VOLTZ:** When Ms Burn is referring to your outlining their history, it is in regards to those issues and the concerns that Mr Dolan raised with you.

CORRECTED

**Mr BRAMMER:** Yes.

**CHAIR:** Thank you very much, Mr Brammer, for coming. I do not think there are any questions taken on notice. We will now adjourn until 1.00 p.m.

**(The witness withdrew)**

**(Luncheon adjournment)**

**CHAIR:** Before we resume evidence, I would like to make a brief statement. The Committee has resolved today that it will not be publishing the two warrants known as the Dowd and Bell warrants. The Committee has previously resolved it would not publish the affidavit supporting the Bell warrant, therefore, all documents will now remain confidential. A notice has been placed on the Committee's website to this effect.

**ANDREW PHILLIP SCIPIONE**, NSW Police Commissioner, NSW Police Force, sworn and examined:

**CHAIR:** Welcome, Mr Scipione. Would you like to start by making a short statement?

**Mr SCIPIONE:** Yes, sir, if you might allow me. Thank you for the opportunity to address this Committee today. Let me start by saying I am more than willing to assist this Committee to the best of my ability, and I believe it will allow me to clear up a number of misconceptions that have arisen during the course of these hearings to date. As stated, my name is Andrew Phillip Scipione. I have been a police officer since 1980, coming up to 35 years service I might add. I was appointed to the role of Commissioner of NSW Police Force in September 2007 and I am proud to lead a police force made up of more than 20,000 dedicated police officers and civilians. At the outset, I should indicate my support for the immense amount of work the Ombudsman and his office have undertaken to date in respect of their inquiry, Operation Prospect. Indeed, I echo the Ombudsman's concerns that these hearings have the potential to prejudice the integrity of Operation Prospect, and I would hope that the Committee would seriously consider any such ramifications in their deliberations.

Previously as a Deputy Commissioner of Police and now as the Commissioner, I have been part of the NSW Police Force executive team for more than a decade. I am extremely proud of what the men and women of the NSW Police Force have achieved over the past 10 years. Over this period, we have reduced crime to the lowest levels in decades and the road toll to the lowest level since the 1920s. Whilst I agree that the matters that are the subject of these hearings have caused tension in the NSW Police Force executive. I do not believe that it has hindered us in providing a world-class service to the people of New South Wales. Individually and collectively the executive team is delivering outstanding results, results that communities across New South Wales both demand and deserve. I will return to those in a little more detail shortly.

Let me first, however, address some of the incorrect information that is now on the public record in regard to this matter. While errors of facts may not be surprising considering the age and confidentiality of these issues, this misinformation damages the NSW Police Force and I am intent on correcting them today. Firstly, I would like to clarify my involvement with the Special Crime and Internal Affairs unit, otherwise known as SCIA. In April 2001 I was appointed to the position of Commander at SCIA, a position that I held until December of that year—less than 12 months. During this time I oversaw a major review, which ultimately led to a restructure of that command. On 14 December 2001 I was appointed as the Acting Deputy Commissioner of Support pending the outcome of investigations into a complaint against me. Following the finalisation of investigations and my subsequent clearance by the Police Integrity Commission, I was permanently appointed as the Deputy Commissioner, Support on 13 March 2002. That role is now known as the Deputy Commissioner, Specialist Operations.

Now, these dates are important as they clarify a number of errors that have been reported or claimed in the past week. Specifically, in evidence presented to the Committee, it has been suggested that I was involved in the seeking and obtaining of Crime Commission listening device warrants in 2000. That is not the case. I did not transfer into Special Crime Internal Affairs until April 2001. Further, on 29 November 2001, the then Inspector, Brett McFadden, spoke to me regarding a number of complaints that he had received from officers at the Special Crime Unit concerning certain activities within that unit. It has been suggested that I did not take these seriously, nor did I act on them. Nothing could be further from the truth. In fact, that afternoon, that very afternoon when Brett McFadden raised these matters with me, I arranged for him to meet with Deputy Commissioner Moroney to discuss and canvass his concerns. Shortly thereafter, Inspector McFadden provided me with a nine-page report—this is on the same day—which, on 30 November, the following day, I forwarded to Deputy Commissioner Moroney where it was registered as a formal complaint and it was subsequently fully investigated.

It has been suggested in evidence presented to this Committee that I was the commander of SCIA when a *60 Minutes* interview with Commissioner Ryan regarding Mascot/Florida was recorded and broadcast in April

2002. That was not the case. I had in fact transferred out of the command some months prior and a new commander was in post. It has been suggested in evidence presented to this Committee that I was provided with a briefing note signed by then Inspector Catherine Burn on 13 April 2002 prior to it being provided to Commissioner Ryan. That, too, is not the case. At no stage did I see the subject briefing note as I had left the command, again, some months earlier.

Finally, the claims that the complaint against me at the time of my promotion was cleared in one day is also untrue. My appointment to the rank of Deputy Commissioner was announced by Minister Michael Costa on 14 December 2001. I was appointed in an acting capacity until 13 March 2002. The Police Integrity Commission did not clear me for appointment, as is required in this State, for at least three months that I know of. I am not sure when that investigation commenced; I was not advised. Subsequently, I was then appointed as the Deputy Commissioner, Support.

Let me now address my discussions with the New South Wales Crime Commission regarding integrity testing. It has recently been correctly reported that shortly after I started in SCIA, the then Commissioner of the New South Wales Crime Commission raised the issue of integrity testing with me. It is important that I explain to the Committee what actually integrity testing is within the NSW Police Force. As a Force, we do conduct integrity tests. Integrity testing commenced in New South Wales in 1996 in response to outcomes of the interim report of the Wood Royal Commission to the NSW Police Service, as it was then.

From that time, and continuing right through to the present date, integrity tests have been and are used to assist in examining the veracity of allegations of corruption. They provide not just inculpatory evidence but exculpatory evidence. In layman's terms, they establish innocence as well as guilt. You either pass the test or you fail the test. The testing model that we adopted is based on a New York model. However, unlike that model, our testing regime is targeted. It is never undertaken at random. Acting on the basis of intelligence and/or a direct complaint, an operation is conducted to test an officer against a specific scenario and criteria.

The provisions that allow for the integrity testing in New South Wales are contained in section 207A of the Police Act of 1990. The operation of this testing, of course, is subject to oversight, and it should be. Each quarter the Police Integrity Commission is provided with a report on all integrity testing programs that have been conducted during that period. Integrity testing is a vital investigative tool, ladies and gentlemen, that is now adopted by other law enforcement agencies and oversight organisations within Australia, including the Victoria Police, South Australia Police, Western Australia Police, the Western Australian Anti-Corruption Commission, and the Queensland Crime and Misconduct Commission. As noted above, it is also practised by international agencies such as the New York Police Department.

Let me turn now to the details regarding the extent of my involvement in and the first reading of the Emblems report. Strike Force Emblems was created by Commissioner Ken Moroney. It was established under Deputy Commissioner David Madden, who was the then Deputy Commissioner of Field Operations. The strike force did not report to me and therefore, quite properly, I had little involvement with their work. I was, by design, excluded from any role by direction of the commissioner of the day, Commissioner Ken Moroney. This was appropriate and not an unusual direction. This direction was reiterated in a letter dated 8 May 2003 from the then Commissioner of Police to the Deputy Commissioner, Operations in the following terms. Ladies and gentlemen, chair, I have details here of a letter. I am not going to waste your time. This letter is contained within documents, which I am sure you have. I will go to the salient sections, if you might allow me, only in the interests of saving time.

**The Hon. ADAM SEARLE:** Chair, can we request a copy of the letter?

**CHAIR:** Can we have a copy of that letter?

**Mr SCIPIONE:** I will be providing you with a copy of my presentation and certainly it will be contained in its full extract.

**Mr DAVID SHOEBRIDGE:** You will tell us who the letter is from and who it is to?

**Mr SCIPIONE:** Correct. It sets it out. The letter that I have referenced here comes from a document which I received from Mr Levine, and it was his report, including annexures, into the earlier matters surrounding Emblems prior to him referring these matters to the Ombudsman in September 2012. I understand that you have a copy of that document. That is the entire Levine report, not just the two-page—

**The Hon. LYNDA VOLTZ:** No, we do not have a two-page report.

**The Hon. ADAM SEARLE:** No, we do not have a copy of that report.

**CHAIR:** We have never seen it; the Government has not provided it.

**The Hon. ADAM SEARLE:** If you have a copy we would like to—

**Mr SCIPIONE:** Chair, I will take your direction in terms of what I can and cannot, should and should not—

**Mr DAVID SHOEBRIDGE:** We would ask you, if you could, to provide us with the letter and the report.

**Mr SCIPIONE:** I have no reason why I would not.

**CHAIR:** I cannot make a judgement in terms of what I should hear and should not hear.

**Mr SCIPIONE:** Perhaps I might finish and, if you like, you could give me some further advice down the track.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, can I say for the record now I would ask you to table the letter and the report whenever it is first convenient to you.

**Mr SCIPIONE:** The letter?

**Mr DAVID SHOEBRIDGE:** The letter that you are reading from and the report that you have referred to from Mr Levine.

**The Hon. LYNDA VOLTZ:** Is it Mr Levine's letter?

**Mr SCIPIONE:** No. I will repeat. The direction, that letter I am going to talk to you about, was reiterated in the letter dated 8 May 2003 from Commissioner Moroney to Deputy Commissioner Madden, which is referenced and drawn down and is part of the Levine report.

**Mr DAVID SHOEBRIDGE:** All right.

**CHAIR:** We have seen neither.

**Mr SCIPIONE:** The Levine report, sir, I might suggest, is one that is—it is large. It is certainly the advice that I received in the report related to its distribution and I was but one of a handful of people that was allowed, or in fact sent a copy.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, I reiterate the request that you table the report and the annexures. This is clearly one of those annexures and the annexed documents.

**Mr SCIPIONE:** Thank you. I might take some advice from the chair.

**The Hon. LYNDA VOLTZ:** You can take that on notice.

**The Hon. ADAM SEARLE:** You can take that on notice, Mr Scipione.

**CHAIR:** I note in Mr Levine's letter when writing to Mr Gallagher at the time, he says at the bottom of the second page, "I advise against publication of the Strike Force Emblems report", which we all know about, "and my report and review of it."

**Mr SCIPIONE:** That is the report. I refer to that letter and to the section of some import. This was a letter to the person charged with responsibility for and the commander of—

CORRECTED

**Mr DAVID SHOEBRIDGE:** This is the letter dated 8 May 2003?

**Mr SCIPIONE:** This is the letter dated 8 May 2003 between Commissioner Ken Moroney and then Deputy Commissioner David Madden. I will read two paragraphs:

Given that some members of the Special Crime Unit are still attached to SCIA and who may be the subject of any consequent investigation, it is not appropriate that the command undertake any investigations associated with this complaint.

After assessment and initiation, I have asked Commander Reith to refer all relevant papers to you for further attention.

This is the salient piece:

On receipt of the original documents, I ask that you convene an executive complaint management team meeting.

That was the team that was charged with pulling together the management of the complaints that were sent to the then commissioner. The letter continues:

Given that the current Deputy Commissioner, Support—

And that was me—

was the Commander, SCIA during an important phase of Mascot/Florida, it is not appropriate that he participates in the management team. The latter aspect is more for transparency and openness.

This action in terms of my exclusion was supported by what is known as the "Dresden protocol", which was a recommendation made by the Police Integrity Commission in May 2000. In part it states:

Conflicts of interest by investigators should be countered by making it mandatory that a category 1—that is, a serious complaint or a complaint about a very senior officer—in a particular area command or unit—

Which was SCIA—

should be investigated by an officer from another local area command or unit.

Effectively that meant that you could not investigate your own staff, which was entirely appropriate. The NSW Police Force implemented this and other recommendations during 2000. The Dresden protocols remained in place until late 2006, when they were replaced by what were then newly developed complaint allegation risk appraisal guidelines, or what we know as CARA.

Before I turn to comments regarding my reading of the Strike Force Emblems report, I will make a couple of observations. The NSW Police Force has a robust complaints management framework. I assure the Committee that the force does not balk at investigating genuinely held complaints from any person, inside or outside the Police Force. That process is critical to our continuous improvement in identifying and driving out corruption, which is a priority, and in ensuring customer satisfaction. In the past reporting year—that is, 2013-14—there were 4,995 such complaints making 9,150 separate allegations, 18 per cent of which were sustained.

While every complaint is treated seriously, many of these matters would have been quite minor—perhaps a poor customer service experience or a failure to fully meet a standard—while others would have been quite serious. In fact, some would have been very serious and completely at odds with an officer's oath of office. In the reporting year prior to my becoming commissioner, there were 5,382 complaints against police officers from internal and external sources identifying 7,982 issues. It would be reasonable to say then that a number of those issues would have been extremely serious; again, what I would class as a betrayal of an officer's oath of office.

While I took briefings from all of my senior commanders on becoming commissioner, including the Professional Standards Command—which was SCIA some years on—I did not and could not go back and read every one of those complaint matters. I rely upon my chain of command. Set against that backdrop, it is fair to say that I was aware of the general history of the Emblems investigation and the related report, even though as previously expressed and explained I was rightly excluded from its management and from any resolution by the then commissioner. That was consistent with Dresden.

On commencing as the Commissioner of Police in September 2007, I was of the belief that the matter had been finalised. I had been advised in 2005 by Commissioner Moroney that the matter had been finalised and that no further action could be taken. I am aware that on 15 June 2011 the Ministry for Police and Emergency Services requested advice on behalf of the Minister's office regarding the outcomes of the strike force and what actions had been taken in response to its recommendations. As per the usual protocols of my office, the Office of the Commissioner provided that advice on 16 June 2011, and then further advice on 20 June 2011. I was out of the country on business at that time.

**Mr DAVID SHOEBRIDGE:** Did you say 2007?

**Mr SCIPIONE:** No, I said 2011. There was advice on 16 June 2011 and further advice on 20 June 2011. It was then reported on 30 May 2012 that I had stated I had not seen the Emblems report. Certainly, at that time I had not read the Strike Force Emblems report. Due to the many previous exclusions in dealing with the matter, the report—at least I believed—had restricted access and limitations regarding its access and dissemination due to the involvement of the New South Wales Crime Commission. I additionally believed that I was restricted in referring to the document or its context because it likely named officers involved in covert investigations. Since having had the opportunity to read it, I know that it names New South Wales Crime Commission registered informers.

As to why my office dealt with this earlier and I personally did not, my office handles thousands of reports of correspondence and ministerial responses every year. Given the large number of files travelling through my office and having regard to the advice that had previously been provided by my predecessor that the matter had been progressed as far as it possibly could be, I did not read the report earlier—notwithstanding other issues relating to sensitivity and restricted dissemination.

I now refer to Strike Force Jooriland. In evidence presented to this Committee regarding Strike Force Jooriland it was stated that I had signed off and authorised the investigation. That was not the case. I refer members to paragraph 83 of the Ombudsman's letter dated 28 January 2013, and in particular the full terms of reference. They will be instructive in terms of what was covered in Jooriland. I have with me a full copy of the terms of reference, but they are covered in the document that is before the Committee.

**Mr DAVID SHOEBRIDGE:** Are they any different from what is in paragraph 83?

**Mr SCIPIONE:** The terms of reference will go straight to the heart of one of the issues that I need to clarify for the Committee. First and foremost, this matter was transferred—in fact, taken—by the Ombudsman and now forms part of the terms of reference for Operation Prospect. I am advised that no obtaining of any journalists' phone records had been or has been undertaken by the NSW Police Force. These matters are no longer with us. The other thing that I need to clarify is that this document, those terms of reference and this sign-off were a matter exclusively for the Professional Standards Command. The decision was made by the commander of the day, Paul Carey. That in itself clearly identified that the establishment of Jooriland was not a matter for which I had any responsibility. In fact, I am happy to make those terms of reference and the signed documents available if the Committee wishes.

I refer now to the issue of term of reference 1(b) and the impact on the NSW Police Force of the Ombudsman's inquiry. I will address term of reference 1(b), including some of the commentary on suggested—and it is only suggested—favouritism and promotions. When I commenced as the commissioner in September 2007, there were two vacant deputy commissioner positions. One of the first tasks that I undertook was to recruit to both of those positions. In late 2007, I appointed Nick Kaldas and David Owens to those positions. I could not and would not have appointed Mr Kaldas had he not been cleared by the NSW Police Force Professional Standards Command and the Police Integrity Commission. It is important to note that Catherine Burn was an applicant, but she was unsuccessful. In 2008, Deputy Commissioner Kaldas approached me to request 12 months' leave without pay to work overseas, which I granted.

As a consequence, expressions of interest were called for his position as well as the recently vacated senior executive position in Corporate Services. Assistant Commissioners Carey and Hudson were successful with regard to the Specialist Operations position. That was the position occupied by Mr Kaldas. They performed the role in six-month rotations. Catherine Burn was successful in gaining the Corporate Services position and was temporarily appointed to that role. Twelve months later, the Corporate Services position became permanently vacant. Following a formal and open recruitment process, Catherine Burn was appointed to the position of Deputy Commissioner, Corporate Services in July 2010. To be very clear, this was now some three

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years after I had permanently appointed Mr Kaldas as my Deputy Commissioner, Specialist Operations. To suggest that I have favoured one over the other is simply not true.

To address the impact this inquiry has had more broadly on the NSW Police Force and our performance, I will provide a list of successes over the nearly eight years that I have been its commissioner. We have continued to reduce crime across all major categories. This is what it really comes down to. That represents tens of thousands of people in the community across this State who have not become victims of crime. They are not my words; this is the Bureau of Crime Statistics and Research data. We focus the organisation on targeting road safety with motor vehicle crashes, which have fallen 14 per cent since 2008. We have the lowest number of motor vehicle fatalities in New South Wales since 1924.

We have led community efforts to curb anti-social behaviour and alcohol-related harm by driving what I would say is innovative legislative change in the area of alcohol-related violence by ensuring a high visibility policing presence and delivering ongoing public safety messages. We established a customer service program in 2007 to ensure that there were clear standards of officer performance and meaningful customer service through the application of a range of education, corporate planning reporting and accountability mechanisms.

Why is that important? It has led to a range of positive outcomes, including improved victim follow-up. We have gone from 8 per cent victim follow-up in 2008 to 82 per cent in 2012. We have seen a continuing reduction in customer service related complaints, which were down by 14 per cent in 2012 alone. We have also had a 10 per cent increase in surveyed respondents' general satisfaction with police from 63 per cent in 2006-07 to 73 per cent in 2011-12. We have delivered some of the biggest security operations this world has seen. We have provided security for the 2007 APEC meeting and 22 heads of state and internationally protected persons.

We delivered the security for the single biggest gathering of youths on the planet at World Youth Day in 2008 and we have provided support to various jurisdictions, including New Zealand. We sent hundreds of police officers to assist in response to the Christchurch earthquakes. We have also sent officers to Japan in response to the tsunami and to assist after the Victorian bushfires, the Queensland floods and the list goes on. We have continued to carry out a large number of terrorism investigations and operations. In short, we have delivered strong, effective and focused leadership to one of the largest policing organisations in the English-speaking world with more than 20,000 staff and, I might add, a waiting list of thousands wishing to join the organisation.

We are achieving results. I am well aware that this matter has caused conflict between Deputy Commissioners Kaldas and Burn. That conflict has been felt by my executive team. For that reason at the very least, this matter needs to be thoroughly investigated, the findings made public and the matters dealt with once and for ever. That said, I am satisfied that individually and collectively the executive team is meeting and exceeding the expectations of the community and of the Government. The short list of achievements I have offered is evidence of that, I might think. Deputy Commissioners Kaldas and Burn are both highly experienced officers of considerable ability. To their credit, they have committed themselves to their commands and to the officers who work to them and more importantly, to the people of New South Wales.

In particular, I want to assure the community that the matters that are the subject of this Committee's and the Ombudsman's investigations have not and will not diminish the NSW Police Force's resolve to keep them safe. We have not and will not lose sight of the community that we exist to serve. This police force is made up of more than 20,000 dedicated men and women, police and civilians and an executive team whose mission it is to reduce crime and the fear of crime. We are committed to doing that. Thank you for allowing me to bring that presentation. I have one question about the matter that was raised by Mr Shoebridge. Is it appropriate that I take on notice your request for Mr Levine's document?

**CHAIR:** Yes please.

**The Hon. ADAM SEARLE:** You indicated that surveillance of journalists' phones was no longer with the police. Since when was that the case?

**Mr SCIPIONE:** In terms of Strike Force Jooriland?

**The Hon. ADAM SEARLE:** Yes.



**Mr SCIPIONE:** I might give you some background. On the 9th of the 9th 2012 I am advised a number of complaints were received by the Professional Standards Command. That was both directly and via internal and external referral from 13 separate parties. A number of those complaints were deemed to be public interest disclosures and we know the impact of those. These included the matter that was referred to by Deputy Commissioner Kaldas in his evidence before this inquiry. It was given directly to me on the 13th of the 9th 2012. I, in turn, referred that to Assistant Commissioner Carey and, in fact, I can tell you the advice I put on that document, once I received it, was: immediate assessment and necessary attention. So from the 9th of the 9th in 2012 we received a range of different complaints.

On the 19th of the 9th, Deputy Commissioner Kaldas' complaint and all the other complaints that were then on hand were subject to that risk assessment process that I talked to you about—CARA. That was as a result of, and a requirement of, the Police Act Part 8A which is an 8A complaint. This resulted in the identification of a number of issues where no subject officers were identified. But it could be loosely grouped into two categories: One, they were matters related to the conduct of Operations Mascot and Florida and the former Special Crime Unit and secondly, the subsequent release of sensitive information related to Operation Emblems. On the 21st of that month Jooriland was created. It was created in a database—we call it the e@gle.i database—to manage the investigation of all of those complaints.

The report that I was talking about that was signed off by Mr Carey was put together and it was never meant to be sent beyond the Professional Standards Command. It was the way that we struck off or started the formal investigation. That is the 21st. On the 24th an internal police report was submitted to the Ministry for Police and Emergency Services where we actually asked to consider appointing an external party to oversee the conduct of the investigation. That was pursuant to section 217 of the Police Act. The report was discussed with me but it was not ultimately progressed because the Ombudsman decided to take carriage of the matter. That was on the same day.

On the 24th of the 9th 2012 advice was provided by the Ombudsman about his intention to monitor the conduct of the investigation. Pursuant to section 146 of the Police Act they can take and monitor these types of investigations, including a request from the Ombudsman that no investigative steps be taken prior to them being able to meet with us. So between the 25th of that month and the 8th of the 10th—that is the following month—in consultation with the Ombudsman various non-investigative tasks were conducted. Things like welfare, security, identification of conflicts of interest, those things that we would term non-investigative.

On the 9th of the 10th we received formal advice to Mr Carey from the Ombudsman of his intention to take carriage of the investigations of all complaints received to that point. That was all 13 parties referred to. He also requested that no further investigations be conducted. Whilst some things had happened, these matters were not to be proceeded with due to his taking carriage of that matter.

On the 18th of the 10th I was provided with formal advice from the Ombudsman that he was taking carriage. So I got the formal documents and at the same time we received what would be a number of notices to produce documents to assist him in his Prospect investigation. So from the 18th of the 10th onwards, the operation of Jooriland continued, albeit only as a means by which to record administrative and the other support provided by us to the Ombudsman. As I said in my opening statement, I am advised that there were no investigative matters that had been commenced that we had not searched against any telephones or other electronic devices that journalists might have. We were stopped before we could even contemplate it.

**The Hon. ADAM SEARLE:** You indicated that in response to the complaint brought to your attention by Mr McFadden, you were satisfied that had been fully investigated. Can you tell the Committee by whom it was investigated and when?

**Mr SCIPIONE:** It is always good to put these things in context, so if I might take you back. I indicated that these matters had been raised with me. The then Inspector McFadden came to me on 28th November and brought to me a series of concerns that he had regarding some supposed or alleged activities within the Special Crime Unit that he had been made aware of by members of that unit. I dealt with those seriously. I thought—and still believe to this day—that those matters that were raised with me were very, very serious. I immediately caused a range of things to happen, as I said. First and foremost, I spoke with Brett. He took me through the allegations. I then thought so much of it that I contacted, by phone from my office, the then Deputy Commissioner and informed him of what I had just been told.

**The Hon. ADAM SEARLE:** That was Mr Moroney?

**Mr SCIPIONE:** Mr Moroney. I made arrangements for Brett, and I think a support person to go down with him, to let him talk to the Deputy Commissioner himself face-to-face, so that he could get a sense of just how serious this was. Brett returned, indicated he had been spoken to and been given a very generous amount of time to talk through the issues. Upon returning I said, "Brett, I now need you to document these because to formalise these complaints I would like to have a record". He did that that afternoon and in formalising them, he sent to me that day an email—it was later that night—an email indicating just exactly what it was that he had formally advised me of earlier in the day. I immediately turned that around on coming to work on 30 November and that was made available to the Deputy Commissioner.

I indicated to the Deputy Commissioner at the time that I would not be launching an investigation within Special Crime and Internal Affairs because of the Operation Dresden protocols. It would have been inappropriate to have an Internal Affairs investigator conducting an investigation into an Internal Affairs officer over some of the most serious allegations that you could have made against you as an officer in Internal Affairs. For me to have used my resources to do that would have been wrong and I was not going to allow it to happen. I can assure you that Ken Moroney took it seriously. I understand that he registered it, allocated it to a command outside Internal Affairs and brought in Chief Superintendent Brian Reith at the time. That is my recollection. Again, from that point forward I was not consulted or engaged. We basically handed everything over.

**The Hon. ADAM SEARLE:** So your evidence is that you believe it was fully investigated by Mr Reith but you do not know what he did and you do not know what the outcomes were at that time?

**Mr SCIPIONE:** Correct. It might be appropriate to ask Mr Moroney.

**Mr DAVID SHOEBRIDGE:** So how do you know it was fully investigated then?

**Mr SCIPIONE:** Only from the notion that, when I was told—I assume, because I excluded myself from this investigation. I assumed that it would have been rolled up and become part of what was ultimately known as Emblems.

**Mr DAVID SHOEBRIDGE:** So you are speculating?

**Mr SCIPIONE:** No, I have since read Emblems, remember? I got a copy of Emblems sent to me, certainly by Mr Levine, and I had read it earlier in 2012. So I was not speculating because a number of those matters that I understand were the subject of those complaints by Mr McFadden were caught up, in fact, in matters that were looked at as part of the Emblems investigation.

**Mr DAVID SHOEBRIDGE:** So when you say "fully investigated", you say "fully investigated by Strike Force Emblems"?

**Mr SCIPIONE:** Well, Strike Force Emblems would have done as much as they possibly could, bearing in mind they were under terrible constraints with those restrictions that were placed on them regarding secrecy provisions of the Crime Commission. But my understanding was that Mr Reith had conducted a full and thorough investigation.

**Mr DAVID SHOEBRIDGE:** You say "full and thorough"—how do you know? You know he was being tasked with an investigation but how do you manage to say to us it was fully investigated and full and thorough? That is purely speculation on your behalf.

**Mr SCIPIONE:** What I did say, in response to three questions ago was, it might be appropriate that you ask Mr Moroney.

**Mr DAVID SHOEBRIDGE:** But you told us, in your evidence, that it had been fully investigated.

**Mr SCIPIONE:** Well that is my understanding. I know the calibre of Mr Reith; I know how committed Ken Moroney was to resolving these matters; and I know that certainly it was something that he took very seriously.

**Mr DAVID SHOEBRIDGE:** So when you said to Mr Moroney in that regard, "I will have the matter handled personally by the manager SASC and provide you with advice accordingly", in your email to Mr Moroney on 30 November, what advice did you provide him with accordingly?

**Mr SCIPIONE:** I do not know what document you are referring to and I am happy to have a look at any document.

**The Hon. ADAM SEARLE:** Getting back to your evidence, when you say "fully investigated", that is an assumption you make based on your knowledge of Mr Reith?

**Mr SCIPIONE:** Yes and wrongly of me to assume that.

**The Hon. ADAM SEARLE:** There was a two-year gap between your referral of those matters to Mr Moroney that had been raised with you by Mr McFadden and Strike Force Emblems being asked to look into it. Do you know why there was that gap before the matter was looked at more thoroughly?

**Mr SCIPIONE:** Sir, I have no idea. I was not consulted and rightly, I was excluded, as I indicated in my earlier evidence.

**The Hon. ADAM SEARLE:** Even to this day you do not actually know why there was that delay?

**Mr SCIPIONE:** No.

**The Hon. ADAM SEARLE:** When you left the Special Crime and Internal Affairs Unit [SCIA], your new role was still in charge of Internal Affairs, was it not, further up the chain of command?

**Mr SCIPIONE:** No. When I left Special Crime and Internal Affairs, I was promoted in December 2001 in an acting capacity, subject to investigations being completed. My report at the time was Deputy Commissioner Ken Moroney. When I was promoted, there was a shift, obviously, in terms of the responsible reporting lines. From early 2002 through until, it looks like the 30th of the 8th 2003, the temporary commander was reporting to Senior Assistant Commissioner Walsh. When I was promoted, Ken Moroney was also promoted. He was not promoted to the rank of Commissioner which—I think there was some evidence to that effect—at that time he was not.

There was a position created within the Police Force known as the Senior Deputy Commissioner, and Commissioner Moroney took that position, understandably—there were two young deputy commissioners and a wiser, more experienced Senior Deputy Commissioner; it makes good sense. He took responsibility at that time for Special Crime and Internal Affairs Unit. It was but a short time before he was promoted to the rank of acting commissioner, and Senior Assistant Commissioner Walsh, as I understand, took his place. And so in terms of reporting Mr Reith was reporting through to Mr Walsh who was reporting through to the acting commissioner.

**The Hon. ADAM SEARLE:** So when Ms Burn did her memo of 13 April 2002, is it your evidence that you were not in the chain of command to receive that memo then?

**Mr SCIPIONE:** Absolutely. Not only was I not in the chain of command; I never, ever saw it—I would say for all the right reasons.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, I will show you that document that we briefly discussed earlier. You will see that there is an email—it appears to be on 30 November 2001—from you to Mr Moroney, which was in an email trail forwarding on the email from Mr McFadden on 29 November. Do you see that?

**Mr SCIPIONE:** Yes, I will read this document.

**Mr DAVID SHOEBRIDGE:** Is that the email that you sent to Mr Moroney?

**Mr SCIPIONE:** Yes.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, there is no reference anywhere there to the Dresden principles, a conflict or you stepping aside, is there?

**Mr SCIPIONE:** Of me stepping aside?

**Mr DAVID SHOEBRIDGE:** Of you having no part in the investigation.

**Mr SCIPIONE:** No, I have not mentioned Dresden as a protocol.

**Mr DAVID SHOEBRIDGE:** No, in fact, far from you saying you should not have any involvement in the matter because of a potential conflict, you say, "I would be pleased to assist in any way that you may see fit." Do you see that?

**Mr SCIPIONE:** That relates to what has to happen when a complaint is handled in the NSW Police Force. I am happy to provide to you the Dresden protocol. It is a publicly available document, and I will come back to that. The issue you raise is a good one. It is important that we clarify that. When a complaint is received in a command, it needs to be assessed and put on the system; and it is then distributed to whoever it is who is going to take responsibility—at least that is what was operating at that time. And that is what the manager of SASC would do.

As you see, it goes on to say, "In the meantime, I believe that the document should progress for assessment consistent with current service policy. I will have the matter handled personally by the manager of SASC and provide you with advice accordingly." Let me assure you, Mr Shoebridge, that I had no contact with and I had no involvement in this. The Dresden protocols were operating. In fact I contacted a senior Police Integrity Commission officer on that afternoon and advised them that we would not be handling it because of the Dresden protocols.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, you say at the end of that email, "I will have the matter handled personally by the manager of SASC." What does the acronym SASC stand for?

**Mr SCIPIONE:** You are testing my memory there.

**Mr DAVID SHOEBRIDGE:** If you cannot remember the exact acronym, what was the function of that?

**Mr SCIPIONE:** I think it was the person who did the assessments, if you like, because that relates to the sentence before it, which says, "I believe the document should progress for assessment consistent with current service policy." It was assessed and it was determined to be a complaint under part 8A of the Act, which then becomes automatically notifiable to the oversight agencies. The Police Integrity Commission was obviously advised, as would have been the Ombudsman.

**Mr DAVID SHOEBRIDGE:** Do you know that the Ombudsman was advised?

**Mr SCIPIONE:** No, I said consistent with service policy and that was the service policy.

**Mr DAVID SHOEBRIDGE:** When you said, "I will have the matter handled personally by the manager of SASC and provide you with advice accordingly," did you provide Mr Moroney with any further advice?

**Mr SCIPIONE:** I would need to go back and check those records. We are now talking about almost 15 years ago—one email from 15 years ago. I have not checked those records. I think the other thing that might be worth bearing in mind is that I have a feeling, although it might be better if I do not state it. I actually seem to think that the manager of SASC may have been the support person who went forward. I would need to clarify that as well.

**Mr DAVID SHOEBRIDGE:** You can provide us with some further detail in an answer on notice. But your last substantive involvement in this matter that you can recall was you referring it up to Mr Moroney and then referring it across, as you have set out in your evidence just now?

**Mr SCIPIONE:** Correct.

**The Hon. NIALL BLAIR:** As per the protocols.

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**Mr SCIPIONE:** Yes.

**Mr DAVID SHOEBRIDGE:** And beyond that you speculate as to whether or not the matter had been resolved?

**Mr SCIPIONE:** Yes, and wrongly so; I should not have speculated. At the end of the day I guess there is a witness who is coming after me who will be able to fill in all of the blanks.

**Mr DAVID SHOEBRIDGE:** You gave some evidence about having not read the Strike Force Emblems report and the supporting material. I think at the time you gave an interview with Channel 7. Correct me if I am wrong, but I think that interview was about the end of May 2012. Would that be right?

**Mr SCIPIONE:** Is this an interview I gave with Channel 7?

**Mr DAVID SHOEBRIDGE:** Yes, there was an interview you gave with Channel 7.

**Mr SCIPIONE:** I am not sure if I gave Channel 7 an interview. It may have been something that was reported by Channel 7.

**Mr DAVID SHOEBRIDGE:** Yes.

**Mr SCIPIONE:** And your question was?

**Mr DAVID SHOEBRIDGE:** Would that be right? As at the end of May 2012 you had said publicly that you had not read the Strike Force Emblems report or the affidavit and warrant material underneath it?

**Mr SCIPIONE:** Certainly as at 30 May 2012 I had not seen the Strike Force Emblems report and I had not seen the affidavit nor the warrant.

**Mr DAVID SHOEBRIDGE:** So when did you eventually read the Strike Force Emblems report?

**Mr SCIPIONE:** Having some understanding that you may ask that question I have turned my mind to it. I am thinking that it was probably around June of that year but I have no formal record. It was as a result of what was happening in and around that time that it became apparent that I needed to look at it, bearing in mind that, as I have indicated in my evidence, I was told by the former commissioner that this matter, Strike Force Emblems, had gone as far as it could.

**Mr DAVID SHOEBRIDGE:** What did that mean—that it had gone as far as it could?

**Mr SCIPIONE:** That it had been investigated—that the Strike Force Emblems staff, under very difficult circumstances, had investigated all of the matters that were before them. The problem seemed to be getting access to material from another agency. In seeking that material, it was not provided. I know that the Strike Force Emblems investigators sought to get that material on a number of occasions through a number of different means. Commissioner Moroney was advised accordingly, and from my memory of what I have read he tried on a number of occasions in a number of different ways to get this resolved as well.

**Mr DAVID SHOEBRIDGE:** Meaning to get the information from the Crime Commission of NSW so as you could find answers?

**Mr SCIPIONE:** Yes, so that he could get access to the information for those investigators because he believed clearly—I should let him talk for himself. So in attempting to do that I was advised, and I know, that he sought advice from, if you like, the head of our police legal services branch. The matters had been referred to the Director of Public Prosecutions for the consideration of any prosecution. He had engaged people like Ian Temby to get involved in the negotiation for the information that was required. He took advice from people like Mr Bartley, who was a practising barrister at the time and I understand is now a magistrate, with regards to getting access to that very information.

**Mr DAVID SHOEBRIDGE:** And he told you all of this in 2007?

**Mr SCIPIONE:** No, I am aware of this now because I have read the material. It was all part of what was in the report that was provided by Mr Levine to me in 2012.

**The Hon. ADAM SEARLE:** So when Mr Moroney indicated to you in 2005 that the matter had been addressed as far as possible in his view did he convey to you the limitations under which Strike Force Emblems had operated?

**Mr SCIPIONE:** No, other than to say that he was not able to get access to material. Let me just say this, and this is a personal observation, Commander Moroney was very frustrated. He, like all of us, just wanted this resolved. Thinking back, if this had been dealt with by getting access to that material at the time then these matters, I believe, would have been finalised—they would have been finished. And that would have been in everyone's best interest.

**Mr DAVID SHOEBRIDGE:** Commissioner, you were on the management committee of the Crime Commission of NSW. Did you raise it and say, "Cooperate with us, provide us with the material and let us get this finished"?

**Mr SCIPIONE:** You are probably wrong there. At the time I was not on the management committee—

**Mr DAVID SHOEBRIDGE:** But from 1 September 2007 you would have been.

**Mr SCIPIONE:** If I can answer the question, this needed to be dealt with there and then. Commander Moroney was on that management committee as the New South Wales Police Commissioner until 31 August 2007—many years after Strike Force Emblems had finished. Of course my understanding was that, despite every valid and appropriate attempt made by the Commissioner, he was thwarted. So I was told effectively these matters had closed—unless there is another way that we can get access to this material we will not go any further with this.

**Mr DAVID SHOEBRIDGE:** From 1 September 2007 you were on that management committee of the Crime Commission.

**Mr SCIPIONE:** Correct.

**Mr DAVID SHOEBRIDGE:** Why didn't you raise it and seek the material?

**Mr SCIPIONE:** Because there was nothing that had changed fundamentally. The Crime Commission had made a decision, and it was not something that I could exercise any influence over as I did not run that organisation.

**The Hon. ADAM SEARLE:** But many of the people who might have been the subject of the investigation were police officers, even though they were working on a joint operation. Insofar as they were police officers and discharging police duties could they not be investigated by members of their Police Force?

**Mr SCIPIONE:** I think the problem was, Mr Searle, that in order to investigate it any further they needed to get access to the material that was restricted by way of the secrecy provisions of the commission.

**The Hon. ADAM SEARLE:** So in 2005 you knew that was the problem?

**Mr SCIPIONE:** It was clear that that was the problem. I was advised of that. Even if you said, "You are police officers; you need to get in front of an Electronically Recorded Interview of a Suspected Person [ERISP] machine, an electronic recording machine, and give a version," and I am sure that many of them would have been very happy to do it, they would have rightly said, "I am not in a position to. For me to actually disclose that without authority from the Commissioner of the Crime Commission of NSW would be to commit an offence".

**The Hon. ADAM SEARLE:** So in 2005 were you aware that the central controversy was the suggestion that police and other persons had been either illegally or improperly subject to surveillance?

**Mr SCIPIONE:** I think that had been running in the media by that stage.

**The Hon. ADAM SEARLE:** So you knew that was the issue?

**Mr SCIPIONE:** Clearly, and I think so did half the world.

**The Hon. ADAM SEARLE:** And you think it is reasonable, do you not, that the people who were the subject of that controversy—the surveillance—have the right to have the matter properly resolved?

**Mr SCIPIONE:** Absolutely. The best way for anyone to answer that question is to put themselves in their shoes. What would you want? What would I want? I would want it resolved. Both sides of the equation would want it resolved once and for all.

**Mr DAVID SHOEBRIDGE:** So from 1 September 2007 what have you done to get that resolved?

**Mr SCIPIONE:** As I said, when it became clear that the Crime Commission had made a decision and there was nothing that had changed or shifted I was not in a position to do it. What did change was that in 2012 these matters became much more high profile as a result of more media reporting around this. The minister of the day at that stage decided and in fact told me that he was going to refer these matters through to the Inspector of the Police Integrity Commission. If it were not for the fact that the Ombudsman today has powers allowing him to get behind those secrecy provisions, we would be no further advanced, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** You did nothing until it became a crisis point and then you followed the direction of the Minister. Is that the long and the short of it?

**Mr SCIPIONE:** No, they are your words and I am not agreeing to those words. They are your words; they are not mine.

**The Hon. NIALL BLAIR:** Point of order: If Mr Shoebridge is going to ask a question he should give the commissioner the courtesy of allowing him to answer the question before he fires off the next question midway through the commissioner answering the first question.

**CHAIR:** Order! I uphold the point of order.

**The Hon. ADAM SEARLE:** A number of people were subject to surveillance in Mascot-Florida including one journalist, Mr Barrett. Can you tell the Committee whether other journalists were the subject of any police surveillance in that operation or other operations?

**Mr SCIPIONE:** I am not aware of that. In terms of what is on the record, the only names that I am aware of are the names that you are aware of.

**The Hon. ADAM SEARLE:** But you cannot rule out the possibility that other journalists may have been the subject of police surveillance?

**Mr SCIPIONE:** At any stage? At any time?

**The Hon. ADAM SEARLE:** Yes.

**Mr SCIPIONE:** You could never rule that out. We know that we have matters where people who have been journalists or otherwise have been charged with criminal matters. They may well have been the subject but that is completely unrelated to this. Completely unrelated.

**The Hon. ADAM SEARLE:** But they were subject to surveillance because they were journalists?

**Mr SCIPIONE:** No, it is not a criterion that would allow us to do that.

**Mr DAVID SHOEBRIDGE:** That should allow you to do it, in any event.

**Mr SCIPIONE:** You think it should?

**Mr DAVID SHOEBRIDGE:** No, it is not a criterion that should allow you to do it but Mr Barrett seems to have had warrants issued against him simply because he was doing his job as a journalist.

**Mr SCIPIONE:** I guess that is what the Ombudsman is looking at right now.

**Mr DAVID SHOEBRIDGE:** Do you have any reason to believe there was a proper basis on which to issue those warrants against Mr Barrett?

**Mr SCIPIONE:** None at all, but of course that is why we want the Ombudsman to actually investigate this thoroughly, do it appropriately and then come to a conclusion which will, as I say, deal with this matter once and for all.

**Mr DAVID SHOEBRIDGE:** But in material that came across your desk in September 2012 your police force then commenced an investigation about how another journalist, Mr Mercer, found materials. This is not ancient history. This is only 2 ½ years ago.

**The Hon. TREVOR KHAN:** Let him answer the question if you are putting a question as opposed to making a speech.

**Mr SCIPIONE:** I am happy to address that. As I have indicated to you, we received a number of complaints that formed part of and became what was known as Strike Force Jooriland. Two of the complaints that we received, we have no control over determining whether we should or should not, based on one's profession, conduct an investigation—two of those complaints related to information supplied by a person or persons unknown to Mr Mercer and they formed but a small part of what ultimately became Jooriland. As to the other complaints, I can see there are at least six issues here that touch on, again captured by Jooriland, offences like: person or persons attached to the former Special Crime and Internal Affairs knowingly swore an affidavit or affidavits containing false or partly false information; unlawfully monitored and/or recorded conversation in the office of—I do not want to name them unless you want me to name the person.

**The Hon. LYNDA VOLTZ:** No.

**Mr SCIPIONE:** Unlawfully monitored or recorded conversations on the mobile telephone services of person named; unlawfully monitored and/or recorded conversations on the former home telecommunication service of; a person or persons undertook detrimental action against the now person named substantially in reprisal for him making protected allegations; and a person or persons attached to the former Special Crime Internal Affairs Command failed to comply with section 7 of the Police Act. They were the bulk of what Jooriland was all about. There were two matters that related to a complaint.

Again, we do not have the liberty of simply putting a filter across the complaints that we get in that says, "We don't need to investigate that", or, "We don't want to investigate that", unless it does not constitute a complaint under the Act. Clearly, what was received here constituted a complaint and that is why it was actioned. But remember what I said was that we at no stage even got to the point where we were able to conduct investigations on this matter because it was taken by the Ombudsman.

**The Hon. NIALL BLAIR:** You mentioned earlier that the Ombudsman had asked your police force for documents associated with this. Do you believe that the Ombudsman has the relevant information to get to the bottom of all of these issues and to make the findings and achieve the outcomes to try to put these issues to rest?

**Mr SCIPIONE:** It would be very difficult for me to comment in terms of what has been provided by other agencies but from a New South Wales police perspective I can assure you that the direction I gave my people was, "You give the Ombudsman absolutely everything that there is." Let me assure you I think you almost needed a tipper truck to take it all down there. I heard the Ombudsman's evidence and he talked about millions of pages. I am surprised that was not alone from my organisation because we provided absolutely everything that we could. I know I provided much of my material to him because I have been called and I have been required to give evidence before him. If my information and my records are anything to go by there would be a lot of information he has got. From a police perspective, yes, I am confident. If anyone knows of somebody that withheld and I found out about it I would deal with it in the most serious terms.

**The Hon. ADAM SEARLE:** In terms of your knowledge, in 2005 when you say Commissioner Moroney told you that the matter had gone as far as it could you were aware then that it had not been resolved. You were aware that the matter had not been fully and thoroughly investigated and the truth gotten to as to



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whether the surveillance of officers and others was legal or proper or not. That fundamental issue had not resolved.

**Mr SCIPIONE:** That is true.

**The Hon. ADAM SEARLE:** You knew that in 2005?

**Mr SCIPIONE:** I think I may have been advised, to use the terminology—again I am really testing my memory here—it was something along the lines of it was an incomplete investigation.

**The Hon. ADAM SEARLE:** You knew there was no closure or resolution for the people—

**Mr SCIPIONE:** In terms of closure and resolution, what I was aware of was that it had not gone to the point where anyone could take any comfort from what had been done to date because there were inquiries that could not be made simply on the basis that people could not get access to the material.

**The Hon. ADAM SEARLE:** There was potentially at least and in fact a cloud still hanging over a number of those persons?

**Mr SCIPIONE:** Clearly, in my view, it was not something that was acceptable but again I reiterate that these were things that were beyond my control. Ken Moroney, to give him his dues, tried very hard to get access to—I have since seen records of meetings with Mr Bradley. I have seen a lot of documents which would indicate to me that Commissioner Moroney certainly did all he could, I believe. That ranges from taking the best legal advice, from dealing direct with the commissioner of the commission right through to submitting absolutely everything he could to the Director of Public Prosecutions and then—even then—seeking some other way that he could get access to the material.

**The Hon. ADAM SEARLE:** No substantive action then occurred until Parliament made legislative changes in 2012; is that correct?

**Mr SCIPIONE:** I am not aware of any so let me not speculate on that but what I can tell you is that what I do know is when those changes were made materials that needed to be accessed were accessible.

**The Hon. ADAM SEARLE:** Was it on your recommendation that the Minister pursued those changes that enabled the Ombudsman to look into this matter?

**Mr SCIPIONE:** In terms of the changes I think Minister Gallacher, the police Minister at the time, must have been in discussion with somebody and determined that if they were going to get behind these records it needed to be done with some legal authority and to do that there needed to be a change to the legislation. Certainly it was not my recommendation that they needed to change the law. I did not need to do that. I was told by the Minister that this is what is going to happen.

**The Hon. ADAM SEARLE:** That only occurred in the wake of public disclosures of this material in 2012.

**Mr SCIPIONE:** It certainly happened in 2012. I do not know what caused the Minister to do this but I would assume that you could well—

**Mr DAVID SHOEBRIDGE:** There was a temporal connection.

**The Hon. ADAM SEARLE:** If it had not been the subject of public controversy those changes would not have occurred?

**Mr SCIPIONE:** You are telling me that.

**The Hon. ADAM SEARLE:** I am asking you to agree with that proposition.

**Mr SCIPIONE:** It would be best for me perhaps not to offer a view only on the basis that I might be wrong and I might be right.

**The Hon. ADAM SEARLE:** If in 2005 you knew there was an impediment to getting to the truth of the matter, why then when you became commissioner in 2007 did you not make recommendations that there be some legal change that would facilitate a proper investigation and resolution of this matter?

**Mr SCIPIONE:** Because, as I said, the impediment was sitting within the NSW Crime Commission. I was not responsible for the Crime Commission and at that stage to the best of my knowledge these matters had been resolved, finalised—not satisfactorily, but finalised.

**The Hon. ADAM SEARLE:** You knew that the impediment was said to be the secrecy provisions of the Crime Commission Act. There was a legislative impediment. You understood that?

**Mr SCIPIONE:** Yes.

**The Hon. ADAM SEARLE:** And you understood that the allegations were allegations against at least in part police that they had improperly or perhaps illegally engaged in subjecting others including other police to surveillance. You knew that was the central controversy?

**Mr SCIPIONE:** The allegations related to supposedly the unlawful swearing of affidavits allowing surveillance.

**The Hon. ADAM SEARLE:** You knew those were allegations made against police?

**Mr SCIPIONE:** Yes.

**The Hon. ADAM SEARLE:** And you knew that those allegations would reflect poorly on the police force?

**Mr SCIPIONE:** My view was that they had already reflected poorly and that still is my view to this day.

**The Hon. ADAM SEARLE:** They continue to do so?

**Mr SCIPIONE:** Absolutely.

**The Hon. ADAM SEARLE:** Despite that knowledge that you had you did not make any proposals for legislative change from 2007 onwards to address those matters so that there could be a thorough investigation of this matter and a resolution of those issues?

**Mr SCIPIONE:** No, certainly I did not make any recommendations, understanding this though: You talked about my involvement on the management committee—

**The Hon. ADAM SEARLE:** I did not.

**Mr DAVID SHOEBRIDGE:** I think that was me.

**The Hon. ADAM SEARLE:** But I am asking the question.

**Mr SCIPIONE:** Let me just also tell you who was on that management committee. Not only was there the Commissioner of the Crime Commission but there were a range of people including the Commissioner of the Australian Federal Police. Let us move that to one side. There was also the Minister for Police, who had responsibility for the Crime Commission of New South Wales and who had been dealing with these matters in their capacity as a Minister for Police. Minister Costa I think when he was the police Minister referred matters through to Justice Finlay. Justice Finlay responded to Minister Costa and, clearly, the government of the day decided that they would take Mr Finlay's advice. In fact, Mr Costa put out a press release that I have since seen effectively saying that these matters are finished.

**Mr DAVID SHOEBRIDGE:** What year are we talking about? It would be predating Emblems?

CORRECTED

**Mr SCIPIONE:** Certainly in terms of the warrants and the obtaining of those warrants and the affidavit, which is what Finlay talked about, Minister Costa made those decisions and, yes, that was predating Emblems.

**Mr DAVID SHOEBRIDGE:** You cannot rely upon that to resolve the controversy in Emblems; it predates it.

**Mr SCIPIONE:** No, but the Government still had chairmanship of that management committee. The Minister of the day was chair of the New South Wales crime management committee. So the chair decided it certainly was not worthy of progression.

**Mr DAVID SHOEBRIDGE:** Did you raise it with him?

**Mr SCIPIONE:** No, I did not.

**Mr DAVID SHOEBRIDGE:** Wouldn't that have been beneficial?

**Mr SCIPIONE:** As I said, it is pretty clear to me that the Government had made a decision. The government of the day had made a decision and certainly—

**The Hon. ADAM SEARLE:** But on what information?

**Mr SCIPIONE:** When I look at Mr Costa's release—it is dated 1 May 2002, so you are right—it says that Minister Costa has received a report from the Inspector of the Police Integrity Commission into the issuing of a listening devices warrant in September 2000. Mr Costa asked Inspector Mervyn Finlay to review Operation Florida warrant on 15 April 2002 to confirm three things: (a) the warrant was justifiably sought; (b) the seeking of the warrant complied with the relevant legislation; and (c) the material obtained by the warrant was used appropriately. Inspector Finlay's report has confirmed all three criteria. Quote Mr Costa, "The inspector tells me the time and expense of further investigation is not required."

I probably disagree with Mr Costa.

**The Hon. ADAM SEARLE:** The Emblems report places a very different complexion on these matters.

**Mr SCIPIONE:** Absolutely.

**The Hon. ADAM SEARLE:** Why in the wake of that were there not proposals to properly and thoroughly get to the heart of the matter?

**Mr SCIPIONE:** The fact is there was. Commissioner Moroney went to great lengths to make those representations.

**Mr DAVID SHOEBRIDGE:** You did not make any representations based on Emblems because you did not read it until sometime in 2012 even though you had been the commissioner since 1 September 2007.

**Mr SCIPIONE:** No, because the commissioner of the day had done that and had gone to extraordinary lengths to get all of those restrictions lifted. In doing that he then told me—

**Mr DAVID SHOEBRIDGE:** He told you it had not been—

**The Hon. TREVOR KHAN:** Let him answer the question.

**Mr SCIPIONE:** In doing that he told me that he had finalised, as best he could, what was Emblems.

**Mr DAVID SHOEBRIDGE:** He told you it could not be resolved because of the impediments in getting information.

**Mr SCIPIONE:** Correct.

**Mr DAVID SHOEBRIDGE:** That is not finalising it—quite the opposite.

**Mr SCIPIONE:** The last part as far as it could go, and the last part was that he had taken it as far as he believed he could take it because it would take a shift in policy from another agency before it could happen.

**Mr DAVID SHOEBRIDGE:** There had been a substantial change in the information; Task Force Emblems have reported. Surely you or your predecessor, or potentially both of you, had an obligation to report that to the Government and seek for them to review the decision.

**Mr SCIPIONE:** Perhaps you might want to speak to Mr Moroney; he may well have reported it to the Minister.

**Mr DAVID SHOEBRIDGE:** From 1 September 2007 onwards you have been the commissioner. When did you ever do that?

**Mr SCIPIONE:** I only had discussions with the Minister more recently when Minister Gallacher was appointed to the position.

**Mr DAVID SHOEBRIDGE:** So you waited for it to become chronic—

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** —you waited for journalists to raise it in the newspapers and it was only after that that you decided that you would have a conversation with the Minister about it.

**The Hon. TREVOR KHAN:** Is that a question?

**Mr SCIPIONE:** I am not sure what you are asking me there.

**Mr DAVID SHOEBRIDGE:** Is that right? You only raised it with the Minister once the situation had become chronic and it is raised in the newspapers in 2012?

**Mr SCIPIONE:** As I said to you in answer to your question probably three different iterations ago, I was advised and working on the belief that this matter had been finalised, that Commissioner Moroney had done what he had to do and that there was nothing that had changed since that time. Clearly, when more information became available—and that was what led to the newspaper articles that came, I think, in 2012—by this stage the Minister had formed in his mind a view that there needed to be more work done and that is when the changes to the legislation allowed the Ombudsman to get in and behind those protections and get access to the relevant material.

**Mr DAVID SHOEBRIDGE:** Two briefings were provided by your office to the Minister, you tell us, on 16 and 20 June 2011. Did those briefings say the matter had been resolved, that it had been finalised and there was no need for any further action?

**Mr SCIPIONE:** I would need to take that on notice. I have not got those briefings with me.

**The Hon. ADAM SEARLE:** Are you able to provide us with copies of those briefings?

**Mr SCIPIONE:** Sure, no problem.

**Mr DAVID SHOEBRIDGE:** Surely though, any rational review of the matters as at June 2011 would have had to conclude that it had not been resolved, that there was a substantial amount of information outstanding for the police as at June 2011 and that something should be done. Any rational review of the situation then would have had to conclude, would it not?

**Mr SCIPIONE:** I would like to see the reports. I would like to see what has gone on. I have taken it on notice and I am happy, Chair, to provide that to this Committee.

**Mr DAVID SHOEBRIDGE:** You said that as at, I think it has been established, 30 May 2012 you had not read Emblems or the affidavit material or the warrants. Is that right?

**Mr SCIPIONE:** Certainly on 30 May at that time I had not read Emblems or the affidavits or warrants.

**Mr DAVID SHOEBRIDGE:** Forgive me if I am wrong but as I understood it you said you thought you were not the right person to do it because there was potentially some Dresden protocol or the further iteration of the Dresden protocol which suggests you should not be the right person. Is that why you did not read it?

**Mr SCIPIONE:** I have never said that.

**Mr DAVID SHOEBRIDGE:** Well, why did you not read it?

**Mr SCIPIONE:** As I said to you probably four questions ago, I thought the matter had been finalised and, clearly, there were other issues touching on secrecy, which was the whole reason why it had not gone any further. That document, I subsequently found out when I did read it, did contain details of undercover officers; in fact, it named a NSW Crime Commission registered informant. Clearly, I was not going to be in a position to talk to anyone about that and, having said that, I had satisfied myself, based on the advice received from the commissioner at the time when this investigation was on foot that they had gone as far as they could and nothing had changed since.

Subsequent to that, I realised—and I am talking about when I actually got to read it—that there was more that needed to be done, but that could only be done if there was a change to the legislation, and the authority was given to the Ombudsman allowing him to get those records.

**The Hon. ADAM SEARLE:** Do you know why the Minister chose the Ombudsman to be the agency of this investigation?

**Mr SCIPIONE:** I have no idea. I think in the first instance he referred it to the Inspector of the Police Integrity Commission.

**The Hon. ADAM SEARLE:** Mr Levine.

**Mr SCIPIONE:** Yes, not the Ombudsman.

**Mr DAVID SHOEBRIDGE:** Was there any discussion of a special commission of inquiry or a royal commission being established with exactly the same powers that the Ombudsman now has?

**Mr SCIPIONE:** With me?

**Mr DAVID SHOEBRIDGE:** With you.

**The Hon. ADAM SEARLE:** Or to your knowledge.

**Mr SCIPIONE:** No.

**The Hon. ADAM SEARLE:** In terms of the production of the Emblems report, we are not aware of any criticism of that report as it went up through the chain of command after it had been finalised by the investigators. Former Justice Levine tells us that when he was asked to review the Emblems report it came to him together with a volume of material and he was not certain of the relationship of that material to the report, whether they were attachments or not, but he tells us that there was a significant number of internal police documents that were highly critical of the Emblems report, which was not a matter that we were previously aware of. Are you aware of all of the information that Mr Levine had and what those critical documents may have been?

**Mr SCIPIONE:** No. I had a conversation with the inspector; it was along the lines of, "We will give you whatever you need because we need to make sure you get access to all of the material that you can lawfully get access to". So we provided him with everything. That accounted for a lot of documents. There were though, I understand, and if I go back to Mr Levine's evidence, he said, in fact, he took complaints—I think he used the word "complaints"—and not only did he get access to material from the Police Force but from others that were serving police that actually sent information direct to him.

CORRECTED

So I do not know what he got, I do not know what commentary whatever he may have got contained and I am not sure who it was that would have sent it, because clearly he would have been taking material from a range of people. By way of example: I was contacted by Deputy Commissioner David Hudson at the time—I think it was on a weekend. He said, from memory, "A stack of material anonymously has been sent to me. What do I do with it?" I said, "You secure it in the safe now. You contact Mr Levine as soon as possible and you make sure safe-hand it gets there". I do not know what was in that material, I have no idea.

**The Hon. ADAM SEARLE:** In terms of the Finlay review, do you know what material Mr Finlay based his review on?

**Mr SCIPIONE:** No. I did not even know the Finlay review had happened or was happening.

**The Hon. ADAM SEARLE:** In material that we have received there are two affidavits, one seeking a listening device and the other a telephone intercept, and it includes a number of people on both warrants, but the affidavits, in the grounds and the reasons and the facts set out, fail to make allegations against a range of people. Despite that, those people are still included in the affidavit as people against whom a warrant is sought and in the warrant itself. That does not seem to be a satisfactory procedure. Would you agree with that?

**Mr SCIPIONE:** Certainly in my mind that makes those matters worthy of significant investigation, which is why I am very pleased that the Ombudsman is doing that. Mr Searle, I agree, this is something that needs to be looked at and that is why I am pleased and I am confident that Mr Barbour is doing that. We await the outcome of his report just as earnestly as you do.

**The Hon. ADAM SEARLE:** When you were talking about Mr Kaldas being made deputy commissioner, when that appointment took place, you are satisfied, are you not, that there is no cloud that now rests over him?

**Mr SCIPIONE:** Absolutely. He would not have been promoted—I would not have put his name forward if I believed that he was not clear and absolutely appropriate, as fit and proper to occupy that position.

**Mr DAVID SHOEBRIDGE:** To the best of your knowledge, has there ever been a statement associated with Mascot that the people who were the subject of the investigation and against whom no criminal prosecutions have been brought are clear of the taint of the investigation?

**Mr SCIPIONE:** Certainly I have not made such a statement, I am not aware of any such statement and I do not believe there is such a statement. That is why it is so important that the Ombudsman gets the chance to actually deal with this once and for all.

**Mr DAVID SHOEBRIDGE:** But it is now February 2015. You have been commissioner since 1 September 2007. You have been aware of very substantial concerns in relation to the conduct of Mascot since at least November 2001. What have you ever done to actually overcome the barriers to investigation and have this matter finally resolved? What have you ever done?

**Mr SCIPIONE:** The way you are portraying it I have done nothing.

**Mr DAVID SHOEBRIDGE:** Correct.

**Mr SCIPIONE:** Again, that is not right. When Brett McFadden brought those matters to me in November, almost the end of 2001, I dealt with them at the time almost within the one day.

**Mr DAVID SHOEBRIDGE:** You got them off your desk.

**The Hon. TREVOR KHAN:** Let him answer the question.

**The Hon. NIALL BLAIR:** He followed the procedures and you know that; you have been told 10 times.

**Mr SCIPIONE:** They are the procedures. I am happy to leave a copy of that Dresden protocol—in fact, if I could I would love to leave a copy of it—which clearly sets out again, for the purpose of the record, "Conflicts of interest by investigators should be counted by making it mandatory that a Category 1 complaint

about an officer in a particular unit be investigated by an officer from another unit". Mr Shoebridge, if I had conducted an investigation and got to anything but a satisfactory outcome for somebody that was affected by that investigation there would have been doubt cast on it—absolutely I guarantee you. So in order to avoid that—because people get very upset by these matters; we have already discussed that—in order to avoid people getting to the point where they have to go through a process and say, "No wonder you have come out with an outcome I am not happy with. That is simply because you investigated your own people". We stopped that dead in its tracks before it happened, for a reason. That is the protocol; that is in place. That was a recommendation that came out of a special report to Parliament saying, "That is what we expect you to do". All I did was that.

**CHAIR:** Are you still saying that that protocol, even while you were and currently are commissioner, still applies to you and that you should not suggest, for example, to the Minister when things broke public in 2012 that something should be done?

**Mr SCIPIONE:** I am sorry?

**CHAIR:** I will rephrase the question. What I am saying is you are answering the question going back to your original exposure to it and the reason why and how you had to handle it in the fashion you did. I think the question really is: Since you became commissioner and running up to when all this became very public in early 2012, did you not have a duty to deal with it then, even if it was only going to the Minister at the time and saying, "I cannot handle this"; for all the reasons that you have just stated, "I think you need to take it over".

**Mr SCIPIONE:** My point is this: I had no control over the agency that did have the control; it was something that came down to—

**CHAIR:** With due respect, you have got control of the agency that has got the problem.

**Mr SCIPIONE:** I do not know what that means. The problem that I saw in terms of being the barrier to conducting the investigation was not something that I owned. I could not get relief, nor could the previous commissioner, of the secrecy provisions that surrounded the information, which even the Emblems report says, "All we need is access". That was the problem, that was the barrier, that was the brick wall. I certainly did not own that. If I had have had control over that I would have simply said, "Make the information available".

**Mr DAVID SHOEBRIDGE:** Why did you not raise it on the management committee of the Crime Commission?

**Mr SCIPIONE:** Because that had already been raised, and that is well documented. But from the time I became involved in the management committee these matters were quite old. I became involved—in fact I started to sit on that committee—in September of 2007. Many, many years have passed. Just let me finish. But the one thing that was consistent as well, and that you must always remember, is that the Minister of the day was the chair of that management committee. He obviously did not see fit to engage and to consider taking back to the Parliament a recommendation that ultimately came to the Parliament to allow the Ombudsman to do what he is doing now.

**The Hon. ADAM SEARLE:** Sure, but Ministers often act on the advice of the heads of their agencies.

**Mr SCIPIONE:** Excepting that you are chairing a management committee.

**The Hon. ADAM SEARLE:** Which comprises—

**The Hon. LYNDA VOLTZ:** Who would have been the Minister in 2007?

**The Hon. NIALL BLAIR:** I do not know. You changed so many during that time, it is hard to remember.

**Mr DAVID SHOEBRIDGE:** It is a bit more serious than that, Niall.

**The Hon. LYNDA VOLTZ:** That is a bit of a point because if it was not Michael Costa, it was someone else. How would they be aware that that was an issue—that there had been an ongoing issue? That is all I am asking.

**CHAIR:** We know who the Minister was in 2012.

**Mr SCIPIONE:** It was running pretty heavily in the media.

**The Hon. TREVOR KHAN:** Yes.

**The Hon. LYNDA VOLTZ:** Yes, we know who was the Minister in 2012 but I am asking about 2007.

**Mr DAVID SHOEBRIDGE:** So it is not your failure; it is the Minister's failure as the chair not to raise it.

**Mr SCIPIONE:** No, no, no, no. What has happened here—this is the problem. Do you know what I really think?

**Mr DAVID SHOEBRIDGE:** That would be helpful.

**Mr SCIPIONE:** I think in terms of the failure, for the failure here is we had three agencies trying to do the work of what should have been a single agency. Under my commissionership, the one thing I have done to make sure we never repeat this mistake—it is not okay to make a mistake, but when you do you have to learn from it. My view is this should have been a single agency that had carriage of this investigation. When there are matters involving police, allegations of police impropriety or, worse, corruption, my belief is that you should have a single agency. Why? So that you do not get this. It is very difficult when you have got three agencies, with all the goodwill in the world, with one steering the bus, one using the brake, and one using the accelerator. That does not work. In this particular example, it worked against us, so under my commissionership we would never go into this: Have not, will not, as long as I am here because I do not think this is the way to do it. In fact, I am sure it is not.

**The Hon. TREVOR KHAN:** Which agency would you have?

**Mr SCIPIONE:** You know, look, I am not sure that I am the right person to ask because I am a police commissioner so you are going to get a view that may well be police-centric. But what I can say is this: I have given this a lot of thought over many, many years from a position whereby I was once the commander of the internal affairs branch through to today as the commissioner. I do not want to enter into who it is that should be in charge, but unless you have someone charged exclusively with carriage of these matters, you are potentially going to get a repeat of this problem. My view would be that it needs to be some independent. Perhaps it is time to have a look at something like an independent police complaints authority.

**Mr DAVID SHOEBRIDGE:** Like the United Kingdom has?

**Mr SCIPIONE:** Indeed.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, you obviously had a clear problem in addressing this matter because you with the commander of the unit for a significant part towards the end of Mascot. Some would suggest—well, I would suggest to you—that it may have been convenient for you to leave this in the too-hard basket and not resolve it, which is why it remained in your too-hard basket until it became too politically embarrassing.

**Mr SCIPIONE:** Again, I would not agree with you in terms of saying I just put it in the too-hard basket. I dealt with it on the day at the end of 2001 when I was the Commander of Special Crime and Internal Affairs. One of the other things I talked about in my evidence was that I put a major review through that command and, in doing that, not long after I left there were major changes. The special crime unit, not long after I finished, was disbanded. It does not exist today. What sits in the Crime Commission now is the organised crime squad, and that is by design. If matters like this come up again I think it would be more appropriate to have these matters referred to an external agency and let them do the work rather than trying to deal with it in-house.

In terms of what we did I also brought in a business improvement process. I actually got somebody to go in and debrief every member of that special crime unit. Remember I was there as the commander from April '01 to announcements in December '01. For one month of my time I was away actually out of the State undergoing training at the Australian National University in what was an ICAC-sponsored program for



managing international and national corruption. I was actually out of the command with a relieving commander, but in the time that I was there we went through that process because we needed to make sure that not only had we identified that there was a need for change but we had done something. Not long after, the command went from being Special Crime and Internal Affairs to the Professional Standards Command with a vastly different reporting arrangement. Certainly we stopped doing a lot of things that previously had been done simply by way of process. Indeed, we did not have a special crime unit anymore.

**The Hon. ADAM SEARLE:** From the time you became aware that the impediment was legislative, you did not make any recommendations for legislative change to any of your Ministers, did you?

**Mr SCIPIONE:** No. I did not make any recommendations.

**The Hon. ADAM SEARLE:** Can you tell us why that was the case?

**Mr SCIPIONE:** Because I thought that at that stage certainly the Minister of the day in his role as the chair of the committee—the management committee of the Crime Commission—was well aware of those arrangements. I had been advised by the former commissioner that these matters had gone as far as they could and would need a government change—it would need a legislative change—before anything could happen.

**The Hon. ADAM SEARLE:** Sure, but you could have made that advice to any of your Ministers and you did not.

**Mr SCIPIONE:** Well, I had a few of them, as was indicated. I think currently I am on my eighth Minister or something.

**The Hon. ADAM SEARLE:** You did not see it as your place to make that suggestion.

**Mr SCIPIONE:** I did not see that as my role.

**The Hon. ADAM SEARLE:** No. Understood.

**The Hon. LYNDA VOLTZ:** How would the Minister know, if they were not informed?

**Mr SCIPIONE:** In terms of?

**The Hon. ADAM SEARLE:** The controversy.

**The Hon. LYNDA VOLTZ:** The controversy. If the Minister did not know and if you have got a new Minister who has come from a completely separate portfolio that is looking at Cabinet papers and who is not across everybody else's portfolio, how would they know that there was an issue there that was outstanding, that had not been progressed?

**Mr SCIPIONE:** Well, the matters relating to the Crime Commission were an issue. I would assume that the Crime Commissioner may have briefed him because that was in the same portfolio.

**The Hon. LYNDA VOLTZ:** Yes, but you had an Emblems report that could not be progressed because of a prohibition on the police accessing information. How would any Minister after Michael Costa know that was an issue, unless they were briefed on it?

**Mr SCIPIONE:** As is set out in the document I have before me, in September '05 shadow Minister, Mr Gallacher, he knew about it because he raised the matter.

**The Hon. LYNDA VOLTZ:** I understand that. Mike Gallacher is, as we know, an ex-policeman. I would be shocked if Mike did not know about it. How would a Minister who has come from a different portfolio know about it if his department had not briefed him on it?

**Mr SCIPIONE:** You may well—I do not know. Ken Moroney may have but certainly—

**The Hon. LYNDA VOLTZ:** In 2007 when Michael Daley was the Minister.

**Mr SCIPIONE:** Okay. Well, in 2007 certainly Minister Gallacher was raising this matter directly with I think the—

**The Hon. LYNDA VOLTZ:** No, in 2007 it was Michael Daley, not—

**The Hon. ADAM SEARLE:** No, no.

**Mr DAVID SHOEBRIDGE:** No, in opposition.

**Mr SCIPIONE:** But in opposition.

**The Hon. LYNDA VOLTZ:** No, sorry.

**Mr SCIPIONE:** That is how the Minister would know because, in opposition in estimates, these matters have been raised.

**The Hon. LYNDA VOLTZ:** But, sorry, estimates is the upper House.

**The Hon. NIALL BLAIR:** Yes, which the Minister goes to and shadow Minister Gallacher would have asked him the questions in those estimates.

**The Hon. NATASHA MACLAREN-JONES:** The Minister was made aware.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, it was a matter of controversy in 2007 and you did nothing.

**Mr SCIPIONE:** No. I did plenty in terms of dealing with this. Let me just say I did not see—

**Mr DAVID SHOEBRIDGE:** In 2007?

**Mr SCIPIONE:** I am happy to answer your question. You can ask it time and time and time again. I believed that as much as could be done had been done by the former commissioner. I have catalogued the things he did. He indicated to me that these matters had gone as far as they could, subject to and without any change to the legislation. That being the case I did not believe it was my role to be telling government about legislation that they should be enacting to give the Ombudsman some special powers to do what the Ombudsman may have needed to do. That was not my job, I did not see.

**Mr DAVID SHOEBRIDGE:** It is your job to deal with unresolved matters in relation to your command. This was an unresolved matter which eventually led to enormous controversy publicly. I put to you, Mr Scipione, that your failure to resolve it and manage it only made that worse by delaying it until now.

**Mr SCIPIONE:** Well, I would reject that on the basis that my belief was that these matters had been taken as far as they could. Certainly I would think that in dealing with this matter—particularly for the advice of, I think Ms Voltz, with regards to the last question I got—the briefing notes that would have been sent to an incoming Minister would have been the briefing notes particularly around house folders for budget estimates and would have identified this as an issue for the Minister.

**The Hon. ADAM SEARLE:** An issue that had been resolved as far as you are concerned, though.

**Mr SCIPIONE:** Let me just say it may have been that it has gone as far as—well, resolved as far as we could take it, but perhaps for any change it would have to go past the Police Force. It was not a problem with regards to something that I had as the commissioner or Ken Moroney had.

**The Hon. ADAM SEARLE:** Was that clearly identified to all the successive Ministers that that was the issue?

**Mr SCIPIONE:** Well, house folder notes would have been. I mean, I have not got those. I do not get access to your house folder notes.

CORRECTED

**The Hon. TREVOR KHAN:** Commissioner, there is another line of, in a sense, advice to Ministers and that is in the case of the Minister for Police he relies upon, does he not, the advice of the Ministry as well as the commissioner.

**Mr SCIPIONE:** The police Ministry would normally advise in matters where legislation was an issue. Mr Tree—I do not want to speak for Mr Tree. You may talk to Mr Tree, but my view would be Mr Tree would have more than briefed successive Ministers. He was—

**The Hon. TREVOR KHAN:** A continuing figure?

**Mr SCIPIONE:** Correct, through to Mr Gallacher.

**The Hon. LYNDA VOLTZ:** We are out of time, unless you want to stay.

**Mr SCIPIONE:** If I might, I would be happy, if I could, take just a minute to speak to my legal representation and come back in, just in case there is something I did not—

**The Hon. ADAM SEARLE:** Yes. In that case, if you need to take time, please do.

**Mr DAVID SHOEBRIDGE:** We will be here, will Mr Scipione. If you want to step outside, that is fine too.

**Mr SCIPIONE:** Thank you.

**(The witness withdrew temporarily)**

**Mr SCIPIONE:** Chair, thank you. There is nothing further I need to resolve. At this stage, we will work with you, in terms of the matters outstanding, by way of questions on notice.

**CHAIR:** Thank you, Mr Scipione, for attending the hearing. The Committee notes that you have taken some questions on notice and has resolved that answers to questions taken on notice be returned within five calendar days following the receipt of the transcript. The secretariat will contact you in relation to the questions you have taken on notice. Thank you very much for coming.

**Mr SCIPIONE:** Thank you very much for your time.

**CHAIR:** We will resume hearings at 3.00 p.m. The Committee will hold a deliberative meeting. I ask everyone to please leave the room.

**(The witness withdrew)**

**(Short adjournment)**

CORRECTED

**CLIVE THOMAS SMALL**, former NSW Assistant Police Commissioner, NSW Police Force, affirmed and examined:

**CHAIR:** Mr Small, we have read your submission and published it in a redacted form, as some matters contain issues which you have not had direct knowledge or are on matters not directly related to the terms of reference. I encourage you to contain your evidence to matters relevant to the terms of reference and about which you have direct experience. We, of course, have the opportunity to go in camera if we need to do that. Would you like to make a short statement to start?

**Mr SMALL:** Yes, I would. I thank the Committee for accepting my written submission and for giving me the opportunity to give evidence today. My submission is extensive and, with two exceptions, has been made public. I stand by that submission. While not surprisingly, there has been a significant focus on the relationship between the Police Commissioner Scipione and Deputy Commissioners Burn and Kaldas. The issues involved are, in my view, far greater than that. For example, during 1998 the Special Crime Internal Affairs conducted a seven-month surveillance operation on one of its own female operatives, yet records of that operation either went missing or never existed. No senior officer at SCIA could explain why the operation had been undertaken or what it was that officer had done to cause the operation. She had done nothing wrong. Mr Brammer refers to that matter in his evidence to this Committee, and I will refer to it later on, if that is all right. Secondly, during December 1999, an undercover SCIA officer I will call Joe was told by Detective Superintendent John Dolan, "Brammer has a little job for you."

**The Hon. ADAM SEARLE:** Point of order. These are matters that are covered in his submission. We already have cognisance of them and it is repetitive. Could you ask the witness not to repeat things that are already in his submission?

**CHAIR:** Mr Small, it seems that you are reading from your submission. We have all that on the evidence already.

**Mr SMALL:** I was reading a summary of matters that I thought were important to put this whole issue into context and needed emphasis.

**The Hon. ADAM SEARLE:** With respect, we have published his submission; elements of it are public. The witness has the opportunity to address something new, or not.

**Mr DAVID SHOEBRIDGE:** We have allowed witnesses to make a short summary when they have already provided a written statement. If it is a short summary—

**Mr SMALL:** I will move forward.

**The Hon. ADAM SEARLE:** Thank you.

**Mr SMALL:** For almost a decade and a half, the losers in this matter have been specific police, former police and private citizens who have been named in listening device warrants without justifiable cause and who, as a result, have been tainted with allegations of corruption, other criminality and misconduct and, more broadly, the integrity of the NSW Police has suffered. In the process, the Supreme Court has been brought into disrepute through the issue of many warrants based on false information. I note in annexure B, "Investigations pursuant to Operation Prospect", at paragraphs 19, 20 and page 19 of Mr Barbour's submission, dated 28 January 2015, to the chair of this Committee, that he states that a total of 210 affidavits were submitted to a justice of the Supreme Court for signature, and 708 telephone and listening device warrants were issued. We do not know how many of those contain false information.

Despite what has been demonstrated to be a widespread incompetence, misconduct and arguably systemic corruption, there has not been any open and transparent inquiry. To the contrary, it has been a decade of cover-up, including by the major political parties because the exposure of the truth would be too difficult to explain. How many judges who issued warrants containing false information have been interviewed? How many lawyers who presented the affidavits to the judges have been interviewed, and how many police who prepared those affidavits have been interviewed and interrogated?

The credibility of the Police Integrity Commission [PIC] has also suffered. One example: in 2004, the PIC told the Parliament and the public that they had identified 418 incidents of police corruption and misconduct and that 389 of those incidents were to be investigated by the police overseen by the PIC. Operation Volta was formed. What was the outcome of that investigation and why has the public never been told? The answer might lie in annexure A, "Introduction to Operation Prospect", paragraph 65, page 13 of Mr Barbour's letter to this Committee, and I quote:

On 4 July 2002 the then Commissioner of Police authorised the establishment of a new Task Force, codenamed Volta, to deal with 199 medium to low risk allegations or SODs that were not yet finally dealt with by Mascot. Whilst Operation Prospect has not investigated Strike Force Volta in its entirety it has been necessary to review Volta documents and processes as part of examining how Mascot allegations were dealt with to their finality and to determine if the Mascot allegations were appropriate and serious enough to be investigated under a NSWCC Reference/s.

It is a significantly different picture to that painted by the PIC to the Parliament and to the public of New South Wales. We have gone from 389 cases of "corruption or misconduct" to 199 medium to low risk allegations or SODs not finalised by Mascot. To quote the Police Integrity Commission, 199 cases of corruption or misconduct identified by the commission had disappeared overnight without explanation. Perhaps this partly explains the refusal of the Police Integrity Commission and the police to divulge the outcome of Operation Volta. Based on the material I have read, it appears that I was on the SCIA target list for at least two and a half years. While I was on the listening device affidavit dated 14 December 2000, I was not named in the warrant. I do not know if I was ever included on any listening device warrant, but if not, the question is why I was included on the affidavit.

I am aware that when M5 spoke to me while stationed in offices occupied by crime agencies but not under the agencies' command or responsibility, he was bugged. It was obvious by his actions and the way he even sat in the chair. Despite being a target and being given the rather clever pseudonym—if not sarcastic pseudonym—of "Big", I have never had one allegation put to me, nor have I ever been interviewed about this by any organisation, including the Ombudsman's office. That is not to say that I did not appear before the Ombudsman.

On 14 July 2014, I attended the Ombudsman's inquiry. I was advised that hearings about Operation Prospect had been divided into what I understood to be two parts. One part related to the leaking of information and the other part related to the investigation of serious allegations made about the conduct of Operation Mascot and related matters. The hearing of 14 July was to focus exclusively on the leaks. I was directed before I gave evidence that I was not to refer to the allegations either by way of question or in my answers when giving evidence before the Ombudsman that day. I was also left in no doubt—the words used were "most likely", "probably" and "likely"—that I would be recalled to give evidence regarding those allegations. However, I have never been recalled.

I heard nothing further from the Ombudsman's office until I received a letter dated 9 September 2014—which I think was given to the Committee today—advising that it was anticipated that the investigative stage would be largely finalised by December 2014. I have heard nothing further since from the Ombudsman; I have not been recalled. Despite my submissions to the Ombudsman containing a number of matters dealing with criminal offences conduct, I was not asked one question about them. I would also argue that the credibility of and confidence in the integrity and honesty of the main political parties in this matter have suffered. I am talking about the major political parties.

**The Hon. ADAM SEARLE:** We understood that.

**Mr SMALL:** I just wanted to make it clear. However, those who have suffered most are members of the public. Their confidence and trust in a number of our most important law institutions has been shattered and will continue to be. That confidence needs to be rebuilt. The question that must be asked is how we have this gotten into this mess. That is probably an understatement of what we have. Why do we have this mess? It began almost immediately following a \$70 million to \$100 million royal commission into the NSW Police Force. It started almost as soon as the commission shut its doors. From what I have heard and read, the defence in these allegations and the cover-up itself seems to be taken from Bart Simpson—"I didn't do it; nobody saw me do it; you can't prove it." Thank you.

**Mr DAVID SHOEBRIDGE:** You say in your submission that you were interviewed by the Ombudsman on 14 July 2014.

CORRECTED

**Mr SMALL:** Yes.

**Mr DAVID SHOEBRIDGE:** That was in response to a summons issued to you by the Ombudsman. Is that right?

**Mr SMALL:** Yes, it was. I produced that summons a short time ago.

**Mr DAVID SHOEBRIDGE:** When you attended at the Ombudsman's premises in accordance with that summons, who chaired the hearing at which you were questioned?

**Mr SMALL:** Mr Barbour.

**Mr DAVID SHOEBRIDGE:** I assume counsel assisting asked you questions.

**Mr SMALL:** That is correct, and so did Mr Barbour.

**Mr DAVID SHOEBRIDGE:** You say that at the beginning of the hearing a statement was made to you in relation to what you would be questioned about.

**Mr SMALL:** That is correct.

**Mr DAVID SHOEBRIDGE:** Who made that statement?

**Mr SMALL:** Counsel assisting spoke to me before the proceedings began. I think it was about 9.30 a.m. Before that I was spoken to and told what the questions would be about that day. That was the first notice I had of the limitations of the hearing. The summons itself referred it being an interview about a range of matters.

**Mr DAVID SHOEBRIDGE:** What was the substance of the limitation?

**Mr SMALL:** The direction and the explanation I received were that the investigation, or the hearings, had been broken up into essentially two parts. One part, which was the purpose of that day's hearing, was to investigate the leaks. Any questions I might have had or answers I gave should be limited to the leaks and were not to cover the other material. The other material—the allegations and issues—would be raised on a separate occasion and dealt with then.

**Mr DAVID SHOEBRIDGE:** You were then questioned by counsel assisting?

**Mr SMALL:** At that time I was in a room to the side, if you like. A short time later I was called into the hearing before Mr Barbour.

**Mr DAVID SHOEBRIDGE:** How long did that formal hearing take?

**Mr SMALL:** To the best of my recollection, it started at about 9.30 a.m. and finished at about 3.00 p.m. or 3.30 p.m.

**Mr DAVID SHOEBRIDGE:** Did you break for lunch?

**Mr SMALL:** Yes.

**Mr DAVID SHOEBRIDGE:** And the questions were asked predominantly by counsel assisting and a little by Mr Barbour? How did it break up?

**Mr SMALL:** It was predominantly by counsel assisting. But Mr Barbour had more than a little role, to quote you. He asked a significant number of questions.

**Mr DAVID SHOEBRIDGE:** What did that questioning from 9.30 a.m. through to the afternoon relate to?

**Mr SMALL:** I should explain. I asked that morning that there be an addition to the submission I made. I was asked one or two questions about that to start with. Apart from that, every question related to the leaks.

**Mr DAVID SHOEBRIDGE:** You got documents on those sorts of questions?

**Mr SMALL:** Yes. I was also accused at one point of being the organiser of the leaks and described as the "go-to man" by everybody.

**Mr DAVID SHOEBRIDGE:** What do you say to that proposition?

**Mr SMALL:** Well, a lot of people go to me, including journalists and the media. The reason is that they have confidence in the truth and in my ability to tell the truth.

**Mr DAVID SHOEBRIDGE:** What about the assertion that you were the organiser of the leaks?

**Mr SMALL:** Absolute rubbish.

**Mr DAVID SHOEBRIDGE:** You say in your submission to this Committee that you raised a number of substantive matters in your submission to the Ombudsman.

**Mr SMALL:** Yes.

**Mr DAVID SHOEBRIDGE:** One of which was allegedly false claims made by M5 about you.

**Mr SMALL:** That is correct.

**Mr DAVID SHOEBRIDGE:** Do you know the nature of the claims made against you by M5?

**Mr SMALL:** I heard rumours that I had been targeted and that there was one matter about the surveillance of Woolwich Peer Hotel for three months. I might refer to that later. Apart from that incident, I had heard rumours that some investigations had been or were being undertaken about me. I did not know any detail. Mr Mercer approached me, probably two or three weeks—it would not have been a month—two or three weeks before he wrote the story of M5 meeting Mr Bourke on The Corso and making allegations against me about two or three weeks before he wrote the story. He approached me with the allegations, showed me the affidavit and I said to him words to this effect: "Look Neil, first I have heard of it. Have you spoken to Mr Bourke?" He said, "No". I said, "I will tell you what, I know who Bourke is".

That is the former Detective Training Course officer. I had not seen him or spoken to him since about 1973, so you could not say we were close. I said to Mercer, "I will tell you what I will do Neil, I will not do an interview with you now, but if you find Mr Bourke, interview him and come back to me telling me exactly what he says, you can have a free go at me. In other words, I will answer every question you ask and there will be no limitations on the interview". He said, "Fine" and went away. He came back I think about a week or two weeks later saying that he had spoken to Mr Bourke and Mr Bourke had denied ever having had that contact with M5 on The Corso, and ever having been on The Corso at that time—in fact, I do not think he was even in Sydney at that time—and said he had made no allegations or complaints against me. He said the one thing he had remembered and did not particularly like about me was my haircut.

**The Hon. ADAM SEARLE:** Now or in 1973?

**Mr SMALL:** I have not seen him since 1973 and he has not seen me, unless he has been spying on me, so I do not know.

**The Hon. ADAM SEARLE:** The substantive matters you say you raised in your submission with the Ombudsman, have you provided those to us, to this Committee, as well?

**Mr SMALL:** Essentially my submission to you, except in part one, where I make some broad statements and part two, where I talk about the Ombudsman, but the chronology is essentially the same as I presented to the Ombudsman.

**The Hon. ADAM SEARLE:** And when you were before the Ombudsman, did they make it clear that you would be subsequently interviewed about those substantive matters, or just that you might be?

**Mr SMALL:** No, words like "might", "probably", maybe" were used but I was left in no doubt in my mind that I would be called. And the emphasis was also made to me when I left the hearing that day that I was not being excused and was likely to be recalled.

**The Hon. ADAM SEARLE:** You raised in your submission with the Ombudsman, did you, your apprehension that in your interaction with M5 he had been wired up?

**Mr SMALL:** No, I did not. Let me say this: The interview with the counsel assisting was quite—I will not say pleasant—but what I mean is, she was quite proper in the way she did it, except for one part where I thought she was trying to trick me and I told her so. But apart from that, she was quite, what I would call pleasant in the way she did the questioning. Mr Barbour, on the other hand, when he was questioning was quite aggressive, or "combative" is probably the better term.

**The Hon. ADAM SEARLE:** You were being asked questions about whether you knew who had been the source of the leaked material?

**Mr SMALL:** Not so much, it was more about: "Where did you get the material from? "You are an organiser in the leaks, what did you have to do?" There was quite a significant series of allegations put to me.

**The Hon. ADAM SEARLE:** You were a recipient of the leaked material, that is correct, isn't it?

**Mr SMALL:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you think you had valuable evidence to give, had you been asked any questions about those substantive matters, including about the false claims allegedly made by M5?

**Mr SMALL:** I think I did. I heard what Mr Barbour said the other day, where people said they had no knowledge of something that he did not pursue questioning them about those matters. What I found significant though, in terms of Mr Barbour's—

**The Hon. TREVOR KHAN:** That is not what he said. He said, when people did not have direct evidence.

**Mr SMALL:** They did not have direct evidence, okay. But the point I make is simply this: It was not put to me. I was not asked one question about the M5 allegation that I can recall. I was not asked, or told, or shown the fact that I was on three debriefings where I was named as what you could only conclude was as a target. I was not asked about the surveillance of me—the surveillance of the Woolwich pier, where I was supposed to meet a major criminal.

Despite the fact that, first of all, I had not been to the Woolwich pier since about the early 1970s and secondly, Mr Hurley—the criminal, who is now dead—I can assure you would not have spoken to me for any amount of money or for anything, given that I was one of the first police to ensure that he got a jail sentence. He accused me of organising his arrest for the jail sentence, so his wife would leave him. Not only that, Mr Hurley, at a hotel down at The Rocks, in the late 1970s had threatened to shoot me, quite publicly and quite drunkenly.

**The Hon. LYNDA VOLTZ:** How do you know you were on three debriefings?

**Mr SMALL:** I have seen the documents and they have been presented to this Committee today.

**Mr DAVID SHOEBRIDGE:** What you are saying is, you could have given a good deal of context and further information which would have assisted in vindicating you, but you were not given that opportunity by the Ombudsman?

**Mr SMALL:** Absolutely no opportunity.

**Mr DAVID SHOEBRIDGE:** And you have not been recalled by the Ombudsman to deal with that?



**Mr SMALL:** I have not.

**Mr DAVID SHOEBRIDGE:** You also say in your submission that you had material about false unchecked information alleging your involvement in corruption going back to about 1982, including by the police preparing the application and affidavit.

**Mr SMALL:** Yes, that is correct.

**Mr DAVID SHOEBRIDGE:** And I assume again, is your evidence that the questioning by the Ombudsman and counsel assisting did not cover that?

**Mr SMALL:** Did not cover that. I make a point on the question asked previously by Ms Voltz. What I found interesting in Mr Brammer's evidence is, he says he never knew I was on those target lists, yet he was in charge of SCIA at the time.

**The Hon. LYNDA VOLTZ:** Could you just refer to the number. Do you have the submissions, what number you are included in? Which number document?

**Mr SMALL:** In the documents presented to you—

**The Hon. ADAM SEARLE:** The documents from today?

**Mr SMALL:** From today.

**The Hon. LYNDA VOLTZ:** Just the number.

**The Hon. ADAM SEARLE:** Because these documents have not been published.

**Mr SMALL:** It might have been two—numbers eight and nine.

**The Hon. LYNDA VOLTZ:** Document number eight, for example—and obviously I do not want to go to it—that is not a debrief document, that is just a list.

**The Hon. ADAM SEARLE:** Just a list of names.

**Mr SMALL:** It is "involved officers" list.

**The Hon. LYNDA VOLTZ:** No I do not want you to read from it. I am saying, it is not a debrief statement, it is not even clear where it comes from.

**Mr SMALL:** It is taken from a statement of debrief.

**The Hon. ADAM SEARLE:** That is what it says, but how do you know that is its source? Presumably this was provided to you anonymously?

**Mr SMALL:** That is correct.

**The Hon. ADAM SEARLE:** I am not asking you to identify the source, but did this come in the mailbox anonymously?

**Mr SMALL:** I cannot recall specifically where this one came from.

**The Hon. LYNDA VOLTZ:** But you have seen other documents that have been out there. For example, did you see the September affidavit that went with the warrant number 266 of 2000?

**Mr SMALL:** Yes.

**The Hon. LYNDA VOLTZ:** Was your name mentioned in that document?

**Mr SMALL:** My name was mentioned in the affidavit. What I found interesting, because what caught my attention is that the meeting on The Corso is alleged to have occurred, I think it is about nine months before the warrant you are referring to in September. What I do not know is whether my name appeared on either the affidavits, the application or the warrants themselves in that previous nine-month period. I would have thought the Ombudsman, in inquiring into this, would have asked questions like that or explained to me the situation. I have never even been told to this date—

**The Hon. LYNDIA VOLTZ:** But if your name was in the affidavit but it was not in the warrant, it is almost the complete opposite of the complaints we are getting from everyone else: that their name was not in the affidavit and they were on the warrant.

**Mr SMALL:** Exactly. First of all, in this particular case I do not know why my name was in the affidavit.

**The Hon. ADAM SEARLE:** There is no allegation against you in the affidavit, is there?

**Mr SMALL:** Well, if you look at it, I think on the page after my name is mentioned in the affidavit there is a reference by M5, where he is told to "get stuff on Small" and others, which seems to even contradict the reason or conflict with the reason why I am on there. But that is not pursued, it does not appear.

**The Hon. NIALL BLAIR:** If you do not know why your name was on those documents, why would it be beneficial for the Ombudsman to ask you about that? Would he not be best placed to ask the people who prepared those documents why your name was on them?

**Mr SMALL:** Well, he has not even told me whether I am named in warrants. What I am named in is two debriefing notes. These debriefing notes are taken off, in part at least, the result of inquiries about people who are named in warrants. I am named in an affidavit and not included in the warrant that we are talking about.

**The Hon. NIALL BLAIR:** Sure, and you have said you are questioning why the Ombudsman did not ask you about your name appearing on that affidavit.

**Mr SMALL:** No, I am saying there are a number of things he did not ask me or tell me. For example—

**The Hon. NIALL BLAIR:** Is that one of the things you are concerned why he did not ask you? Because we have heard the Ombudsman say that the reasoning that he may not have asked those things was because it may be better directed to the people who prepared that information and put the names on there. I am just trying to clarify it.

**Mr SMALL:** I agree with that part of the Ombudsman's comment but, in fairness, one should be told, "Mr Small, you are named in that affidavit; you are not named in the warrant; nor are you named in any other warrant". What we have is Mr Brammer, in his evidence, saying "Small was never a target. I do not even know about him being in the target list". Mr Brammer was in charge of SCIA which was in charge of SCU at the time.

**The Hon. LYNDIA VOLTZ:** You have seen a couple of the warrants?

**Mr SMALL:** I have seen three warrants.

**The Hon. LYNDIA VOLTZ:** You have seen three warrants, and are you named in any of them?

**Mr SMALL:** Not those three—that is three out of a couple of hundred.

**The Hon. LYNDIA VOLTZ:** I know the amount of information, most of which is not before us but given that you were not named in those warrants, would not that be consistent with what Mr Brammer is saying?

**Mr SMALL:** No, because I am still named in at least two documents—the statement of debrief and the list of pseudonyms. Why was I given a pseudonym if I was not a target?

**Mr DAVID SHOEBRIDGE:** Mr Small, is the situation this: You assume that if you are in a schedule of debrief list and your name appears in it, that there is an allegation of substance against you in the schedule of debrief?

**Mr SMALL:** There is an allegation—whether it has substance or not.

**Mr DAVID SHOEBRIDGE:** There is an allegation against you which would reflect poorly upon you, that is why you are in a schedule of debrief. You are saying you would want, in fairness, to be given an opportunity to respond to that allegation.

**Mr SMALL:** Exactly, and if I can make a reference to dates on the documents but not the documents. What I think is significant is the statement of debrief is dated or refers to warrants on the 14 September 2000 and I am named in that. Twelve months later—twelve months later—I am named in a list of targets for "Mascot-Boat" with the pseudonym "Big" and that is 11 September 2001. Why is my name continually appearing over a 12-month period or more? And 12 months before that was when the surveillance was put on at the Woolwich Pier Hotel. So that makes 2½ years almost during which my name has come up in significant ways.

**Mr DAVID SHOEBRIDGE:** And by the time you appeared before the Ombudsman it was in the middle of last year?

**Mr SMALL:** It was about June or July last year—I think it was July of last year.

**Mr DAVID SHOEBRIDGE:** You would have assumed that the Ombudsman would have undertaken some substantive investigations in relation to these matters and would have been in a position to put things to you, or at least to ease your mind?

**Mr SMALL:** That is correct.

**The Hon. ADAM SEARLE:** Unless the Ombudsman formed the view that they were so lacking in substance that they did not need to be put to the witness.

**Mr DAVID SHOEBRIDGE:** But you had made a submission to the Ombudsman outlining your concerns.

**Mr SMALL:** Yes.

**Mr DAVID SHOEBRIDGE:** If those concerns were baseless, you surely would have expected to hear that?

**Mr SMALL:** Absolutely.

**The Hon. TREVOR KHAN:** Why?

**Mr DAVID SHOEBRIDGE:** Because it was an investigation.

**The Hon. TREVOR KHAN:** Don't you find out what material the Ombudsman, for instance, relies upon—as in any judicial forum, if we can describe it that way—when the decision or when the report is handed down?

**Mr SMALL:** No, the problem I had with Mr Barbour's explanation on this point is simply that he does not know what information you may have unless he asks you a question.

**The Hon. ADAM SEARLE:** Excepting that you had made a submission to him.

**Mr SMALL:** I do not know, and still do not know, whether my name is mentioned on any other warrants or bugging devices. How can I respond to that when I have not been told? And nor am I told what the basis was—if it was included on any of those devices then I have not been told that. How can I respond to or explain any claim made to justify me being on the warrant if I am not told that it exists or what it is about?

**The Hon. ADAM SEARLE:** Have you raised these concerns subsequently or recently with the Ombudsman?

CORRECTED

**Mr SMALL:** No, I have not.

**The Hon. NIALL BLAIR:** Did you say earlier that you expected from that interview that you would be called back?

**Mr SMALL:** As I said, words like "we will be doing the other part of this inquiry later", "you may be recalled", and "you are not excused from this inquiry" certainly led me to believe that I would be called. The next thing I heard was the reference I read out earlier simply saying, if you like, the investigation is almost finished.

**The Hon. NIALL BLAIR:** I do not know that we have heard that it is almost finished.

**Mr SMALL:** I am just quoting from the letter.

**The Hon. ADAM SEARLE:** I think that was a letter from last year, wasn't it?

**Mr SMALL:** That is correct.

**The Hon. ADAM SEARLE:** And are you aware that the position of the Ombudsman now is that he hopes to finish the evidence taking by about March this year?

**Mr SMALL:** Yes, and I still have not heard from him.

**CHAIR:** There being no further questions, I thank you for coming today, Mr Small.

**Mr SMALL:** I did have some comments to make on Mr Brammer's evidence.

**CHAIR:** Mr Small, you have appeared here to be examined not to make a running commentary. We have your evidence in relation to your statement, and that is on the website.

**Mr SMALL:** Mr Brammer has made some serious allegation against me. I have not been asked about them.

**Mr DAVID SHOEBRIDGE:** Mr Chair, Mr Brammer made certain statements in his evidence today. To the extent that they are material to this inquiry, do you have a response to them?

**CHAIR:** My concern is that I do not want this committee inquiry to be turned into a slanging match. Mr Brammer may have made some accusations. I do not want Mr Small to try to one up him and then have to get Mr Brammer back here again next week to answer Mr Small's accusations or response.

**Mr SMALL:** All right. I appreciate that. I will just say this: the seriousness of this inquiry to explaining matters I think is huge. I just point to one other matter which was raised and referred to by Mr Brammer: the surveillance of Peter Ryan, the then Commissioner of Police, and his wife by the Special Crime and Internal Affairs Unit. According to Mr Brammer that was at the direction of the Crime Commission. I think that is an extremely serious matter where the Crime Commission is using New South Wales police for it. I do not know whether Mr Bradley has been asked about it.

**CHAIR:** Mr Small, I thank you for appearing before the committee today. We appreciate it.

**Mr SMALL:** Thank you.

**(The witness withdrew)**

**KENNETH EDWARD MORONEY**, Former Commissioner of Police, NSW Police Force, sworn and examined:

**CHAIR:** Do you wish to make a short opening statement?

**Mr MORONEY:** Yes, thank you. By way of some introductory comments I will indicate a short service history. I joined the NSW Police Force on 16 August 1965 and I retired on 31 August 2007. At that time I was the Commissioner of Police. My 42 years of service covered rural and urban locations. I will list the more senior appointments that I held, particularly in the latter part of my service. I was Assistant Commissioner Education and Training between 1993 and 1997, Assistant Commissioner and Commander of the City East Region from 1997 to 1999, Deputy Commissioner Specialist Operations from 1999 to November 2001, Deputy Commissioner Field Operations between November and December 2001, Senior Deputy Commissioner from December 2001 to May 2002 and I was appointed as the Commissioner of Police in May 2002.

As I have mentioned, I retired almost eight years ago from the NSW Police Force. I have been served formally with a summons to attend this inquiry about 30 minutes ago. I was, however, contacted on Monday of this week and I am keen to assist the inquiry in any way that I can. In doing so I would ask the Committee to respect and acknowledge the fact that during my period of service in particular from 1999 to 2007 I was provided with a wide range of material and advice across a broad spectrum of operational and administrative matters at national and State levels. Many of these matters are and were covered by Federal and State statutes, in particular the secrecy provisions of those statutes. Therefore, I do not wish to say anything or do anything contrary to those statutes and my obligations thereunder. To the extent that I can I am prepared to assist the inquiry. I am aware of the advice provided to the Committee on the issue of secrecy but if there are issues arising which I feel place me in some position I will seek some appropriate advice from the Chair.

**The Hon. ADAM SEARLE:** We have received evidence that after Mr McFadden raised certain concerns with Mr Scipione they were passed on to you. They were concerns from persons located in the special crime unit. Do you remember that in 2001?

**Mr MORONEY:** Yes, I do not recall the specific date; however, I do recall that at the instigation of then Deputy Commissioner Scipione I met with then Detective Inspector McFadden. He was accompanied by one of the senior public servants from the Special Crime and Internal Affairs command who was there, on reflection, more as a companion than anything else rather than somebody who was able to provide evidence to the substance of what Mr McFadden discussed. I asked Mr McFadden once we had met—and, as I said, some 14 years on I do not have the specifics of everything we discussed in my head—to go back and commit his issues to writing. I would seem to reflect that he did that and that then became an official complaint.

**The Hon. ADAM SEARLE:** We have received evidence that you gave that complaint to Mr Reith to action. Do you remember that?

**Mr DAVID SHOEBRIDGE:** I do not know if we have had evidence that this witness gave it; we have had evidence that it went to Mr Reith.

**The Hon. ADAM SEARLE:** I said we have received evidence that he gave it and I am asking him if that is correct.

**Mr MORONEY:** No, I do not recall that.

**The Hon. ADAM SEARLE:** Do you remember what you did in relation to Mr McFadden's complaint?

**Mr MORONEY:** They would have constituted a complaint under part 8A of the Police Act as it existed at that time and there would have been no other course but for me to have that processed in the usual way by notification to the Office of the Ombudsman and the Police Integrity Commission.

**The Hon. ADAM SEARLE:** Do you recall that those complaints related to what we now know as Operation Mascot and Florida?

**Mr MORONEY:** I would believe so. I do not know that as a matter of fact given the passage of time, but I would believe that to be the case.

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**The Hon. ADAM SEARLE:** To be fair to you as you sit here now do you have an independent recollection of what action you in fact did take in relation to that complaint?

**Mr MORONEY:** Not some 14 years on but I know my style. That would be that I had a legal obligation to ensure that I had a complaint in writing from the complainant, in this case Mr McFadden, and that it was processed in accordance with the agreed protocols at that time.

**The Hon. ADAM SEARLE:** Do you remember what the outcome of any action that you might have instigated on that complaint was?

**Mr MORONEY:** No, not without the benefit of seeing documentation.

**The Hon. ADAM SEARLE:** In 2003 there was a Strike Force Emblems set up to look into these matters. Do you recall that?

**Mr MORONEY:** Yes.

**The Hon. ADAM SEARLE:** Were you the police commissioner at that time?

**Mr MORONEY:** Yes.

**The Hon. ADAM SEARLE:** Did you authorise the establishment of that strike force?

**Mr MORONEY:** Yes. Not by name because these names come out of a computer-generated system but yes.

**The Hon. ADAM SEARLE:** Did you cause that strike force to be created to look into these matters?

**Mr MORONEY:** Yes, that was done through then Deputy Commissioner Field Operations David Madden. He in turn tasked then Assistant Commissioner Garry Dobson together with a select group of officers to undertake Emblems—the investigation of what we now know to be Emblems.

**The Hon. ADAM SEARLE:** That was some two years after Mr McFadden's complaint had come to you. Can you tell us whether you have any recollection of what occurred in relation to these matters in those intervening two years?

**Mr MORONEY:** No, not with accuracy now, not without the benefit of seeing documentation. I recall that certainly the genesis of Emblems came as a result of a meeting with the Police Association, which included amongst others the now deputy commissioner, Mr Kaldas, and a number of senior association officials. That was the genesis of that issue.

**The Hon. ADAM SEARLE:** You understand that their complaint was that a number of officers and other persons were subject to surveillance by police, they allege, improperly and possibly illegally. That was their complaint.

**Mr MORONEY:** My recollection was that their concern was about the inclusion of a number of names on an affidavit and on a warrant.

**The Hon. ADAM SEARLE:** That is the limit of your recollection at this point in time?

**Mr MORONEY:** Yes, without the benefit of access to documentation.

**The Hon. ADAM SEARLE:** Do you remember receiving the Emblems report?

**Mr MORONEY:** Yes.

**The Hon. ADAM SEARLE:** We have evidence that when it was completed that report went up through the chain of command to the police executive. Do you remember that occurring?

**Mr MORONEY:** It would have arrived on my desk at some point.

**The Hon. ADAM SEARLE:** Do you recall reading the report roughly at that time?

**Mr MORONEY:** Yes.

**The Hon. ADAM SEARLE:** Did you accept that report and its findings, limited as they were?

**Mr MORONEY:** I sought internal and external legal advice. Internally I sought advice from the then manager of the police legal services branch. He responded, from memory, and we in turn referred it to the Office of the Director of Public Prosecutions for his advice. I also sought advice from Mr Ian Temby, QC, and Mr Greg Bartley of counsel in relation to not only the report but also the ongoing carriage of issues as they were emerging in Emblems.

**Mr DAVID SHOEBRIDGE:** Was that advice about whether or not you would certify that you agree with the findings and support the recommendations or was that advice about what to do given what was contained in the Emblems report?

**Mr MORONEY:** I would suspect it would have been the latter in the sense that there were a number of recommendations and I believe the report had come to a range of conclusions that possibly could not have been sustained on the lack of evidence within that report. That was my inquiry with Mr Holmes. That was our inquiry with the Office of the Director of Public Prosecutions. Official records would have to indicate their reply but I believe their reply was that there was no prospect of proceeding with the matter.

**The Hon. ADAM SEARLE:** You mean no prospect of criminal proceedings given the constraints of evidence?

**Mr MORONEY:** Yes, no prospect of a proceeding on a criminal basis.

**The Hon. TREVOR KHAN:** We have talked about having received the Emblems report. Had you become aware prior to the receipt of the report, during the process of the inquiry being undertaken, that the Crime Commission had been uncooperative at best with regard to the provision of materials sought by the task force?

**Mr MORONEY:** Yes, I had sought a level of intervention to see if we could access the documentation sought by Strike Force Emblems members. I would reflect that I made a similar approach to the Police Integrity Commission [PIC]. The documentation was not forthcoming and I then had a thought that we might be able to proceed with this matter by alternate dispute resolution. I was trying to find some way by which we could get to an end state that satisfied hopefully all or most of the complainants in the matter. But we could not get access, and that was, I suppose, the point that Emblems investigators came to: they could not get to the documentation they needed.

**The Hon. TREVOR KHAN:** And you were supportive of their inquiry, I take it? You did what you could to convince the Crime Commission to provide the documents?

**Mr MORONEY:** Yes. I understood the nature of their grievance, so much so that we established Emblems. I sought other alternative legal possibilities by which we could access the information. The Crime Commission and the Police Integrity Commission relied on their respective Acts of Parliament—in particular, the secrecy provisions—and we could not go any further.

**The Hon. TREVOR KHAN:** Did you seek your own legal advice with regards to the position being adopted by the Crime Commission and the PIC?

**Mr MORONEY:** That was my consultation with Mr Temby, QC, Mr Bartley of counsel and the Director of Public Prosecutions externally. Internally I sought advice from our own general manager of Legal Services and their unanimous view was you have taken this as far as you can, you cannot proceed any further.

**The Hon. TREVOR KHAN:** I may have misunderstood your earlier evidence but do I take it from what you are saying that you sought the intervention of people like Ian Temby and the like during the process of

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the Emblems investigation going on, not just after you had received the report? Is that how I take your evidence?

**Mr MORONEY:** I do not know that I sought his intervention but I certainly sought his advice as to how we might proceed, given his eminent position as a former commissioner of the ICAC and as a prominent counsel.

**The Hon. TREVOR KHAN:** I probably used the wrong word, sorry.

**Mr DAVID SHOEBRIDGE:** There are two stages in this, as far as I see it. In the first stage you have a role in the chain of command to sign-off and approve of the Task Force Emblems report or seek some rectification or changes to it. That is your first role within the chain of command, is it not: to stress-test, if you like, the report and see whether or not you agree with it?

**Mr MORONEY:** Yes. My directions to then Deputy Commissioner Madden would be to establish the task force and the terms of reference would have been relevant to the complaint that had been formally made at that time. I cannot tell you the wording of that complaint given the passage of time and my non-access to any documents whatsoever, but the usual chain of a complaint of that nature would have gone from Madden, it would have bypassed Special Crime and Internal Affairs because they were the subject of the complaint, hence AC Dobson was chosen then together with his colleagues to head up the task force, and as it went that way so it came back to me that way.

**Mr DAVID SHOEBRIDGE:** Do you know if you certified in your role that you agree with the findings and support the recommendations, or the member of the Executive Complaints Management Team who has done that, would that have been Mr Madden?

**Mr MORONEY:** If that was done—and I would need to reflect on a document; I do not recall that—it would not normally be the province of the Commissioner of Police of the day to certify every complaint that is so made.

**The Hon. TREVOR KHAN:** Once you got this report and it was plain from both, I take it, what had occurred in obtaining advice from Mr Temby and the like and then, in terms of the report, that you were stymied, did you approach, for instance, the police ministry to apprise them of where things had got to?

**Mr MORONEY:** It would have been part of my normal reporting relationship to the Minister of the day to advise the Minister that the report had been completed. I strongly believe I would have provided him with my views about the report and the status of the report.

**The Hon. TREVOR KHAN:** Whether you do it in writing or whether you do it in person, would I be right in saying that a person who is often there in terms of when you met, say, with the Minister was Les Tree from the police ministry?

**Mr MORONEY:** Almost always.

**The Hon. TREVOR KHAN:** Almost always—he was like a shadow: always there in the background?

**Mr MORONEY:** Yes.

**The Hon. TREVOR KHAN:** And you would know that Mr Tree had essentially been a fixture in the ministry for something like 30 years?

**Mr MORONEY:** He had a long service. I am not sure of the quantum of the years but he was there for a fair while.

**The Hon. TREVOR KHAN:** He was there for the whole time you were commissioner?

**Mr MORONEY:** Yes.



**The Hon. ADAM SEARLE:** Given that you had identified the secrecy provisions of the PIC and the Crime Commission legislation as the impediment to a thorough and full investigation of this matter, did you ever recommend legislative change to government as a way of resolving this thoroughly?

**Mr MORONEY:** Not that I recall. I cannot emphatically say no or yes. Not that I recall.

**The Hon. ADAM SEARLE:** To be fair to you, you have no independent recollection one way or another about what advice on that subject matter you might have given, if any?

**Mr MORONEY:** No.

**Mr DAVID SHOEBRIDGE:** But there was a live controversy within the police and involving some people outside the police about how their names had appeared on warrants and whether or not they were appropriately the subject of these secret investigations by Mascot, and the Strike Force Emblems report did not quell that controversy, did it?

**Mr MORONEY:** No. Very early in 2003 the then Senior Assistant Commissioner Peter Walsh published an article in the *Police Service Weekly* dated 13 January 2003 and it is headed—and I am happy to provide this to the Committee—"Listening Device Warrants". If I paraphrase Mr Walsh's advice to the organisation as a whole it was that it was a requirement of the Listening Devices Act 1984, as amended, that the names were included, but the inclusion of those names did not of itself imply impropriety, misconduct or criminal conduct on the part of any person that was named there. That went out organisationally. Whether that placated every single person I cannot answer. I suspect not, otherwise we would not be here today.

**Mr DAVID SHOEBRIDGE:** Mr Giorgiutti gave evidence earlier today that on his reading of materials that was a false position of comfort that was being issued and, indeed, from his review of materials almost everybody who was on at least the warrants that he had seen in fact was a target.

**Mr MORONEY:** No, I did not hear Mr Giorgiutti's evidence, but clearly my understanding is that prior to 1984 the Listening Devices Act simply required one name on the affidavit and one name on the warrant. The amendment in 1984 required reasonably the inclusion of all known names and that was why the names were on there. It did not, as Assistant Commissioner Walsh said to the organisation at time, imply that because your name was there that you were being accused of any impropriety or any illegality.

**The Hon. ADAM SEARLE:** We have seen extracts from statements of debrief against a range of persons alleging in those SODs allegations of wrongdoing, and on the warrants and on the affidavits many of those names appear, but there is no allegation of what the wrongdoing is, or any wrongdoing, in their affidavit. Their name is there, we know from the other materials that they were targets, but there is no allegation of wrongdoing in the affidavit. That seems to be a very serious defect in those affidavits in support of those warrants, would you agree?

**Mr MORONEY:** I believe you have got to go back to the genesis of this whole issue: Operation Mascot Florida. I think, to coin a phrase, it is an inconvenient truth to some, but I must remind them that arising out of the Mascot Florida brief a number of serving police officers and a number of civilians were arrested, charged and imprisoned for a variety of offences.

**The Hon. TREVOR KHAN:** Convicted before imprisonment—let us hope so.

**Mr MORONEY:** Convicted and then imprisoned. So the whole focus which sees its real genesis in the royal commission was to ensure that those sorts of activities were not allowed to occur in the organisation. So the SODs provided by M5—also known as Sea—were designed to identify those who were engaged in corrupt activity. My understanding then is that at a particular time and date and place where there was to be a gathering of police officers, that those names, reasonably known, were included. As to which names were included on the affidavit but not on the warrant, I cannot assist because I do not have the benefit of seeing that.

**The Hon. ADAM SEARLE:** We will just use one example: Mr Kaldas. There was an extract from a statement of debrief alleging wrongdoing on his part, there was a warrant for a listening device and there is an affidavit in support. His name is mentioned in the affidavit but there is no allegation of fact against him. That would seem to be very strange, would you not agree?

**Mr MORONEY:** Yes. I do not know the particular matter involving Mr Kaldas at that time but was that not one of the issues identified in the review undertaken by Mr Justice Finlay in 2002 where he identifies that specific issue? Whether that relates to Mr Kaldas or not I am not sure. I think Mr Finlay said at the time that there was that omission, but whether that is the Kaldas matter I cannot assist.

**The Hon. ADAM SEARLE:** Mr Kaldas was not the only person in relation to whom there was that omission; he is just a good example of that issue and there was a similar defect in a telephone intercept application we have seen. It seemed to be a continuing problem in relation to a number of persons who were the subject of surveillance that they appeared in the warrant, they were literally named in the affidavit but there was no allegation of wrongdoing made against them in the affidavit.

**Mr MORONEY:** I would think that that comes back to an issue of quality control in terms of not only the transmission of names from that point to that point and the checking, which is so important, whether that relates to police officers or civilians.

**The Hon. ADAM SEARLE:** But it is also suggestive of the fact, is it not, that there may well have been no reasonable basis for that person to have been included in the warrant?

**Mr MORONEY:** I cannot assist because I do not have the benefit of the documentation and the decisions that went behind that particular action.

**Mr DAVID SHOEBRIDGE:** The Strike Force Emblems, including its recommendations, went through the police hierarchy and got all appropriate certification, did it not?

**Mr MORONEY:** If you are telling me that happened—

**Mr DAVID SHOEBRIDGE:** You have no reason to suggest otherwise. It became a formal report issued by the NSW Police Force.

**Mr MORONEY:** It would have come from the investigators to AC Dobson, to Deputy Commissioner Madden, to me. What written observations that Mr Dobson and Mr Madden made in support of or a rejection of, I would want to see the document.

**Mr DAVID SHOEBRIDGE:** But if they had rejected it it would not have been finalised, it would have had to go back for revision, would it not?

**Mr MORONEY:** Rejection simply meaning that they had gone as far as they could and they could not go any further because of a lack of access to documentation in other places.

**The Hon. TREVOR KHAN:** Could I just ask a question in that regard? Is it possible when they sign off on a report such as this to, in a sense, sign off with a caveat like "I see it but I see some problems with some of the recommendations", or do they have to wholly adopt it and sort of wave a banner of support?

**Mr MORONEY:** No. Each officer has their own capacity to think. Each holds the office of constable, which is an independent office. I would often see documents where an officer had recommended, the next senior officer had agreed and perhaps someone else had disagreed and ultimately it was up to the final arbiter—whether that was the commissioner or a deputy commissioner or the region commander—to make a conclusion.

**The Hon. TREVOR KHAN:** So when we talk about signing off on the report it does not mean unequivocal adoption of the report?

**Mr MORONEY:** No. It is a form of transmission to the next level and the comments on the transmitting document would give you an indication of what each of those officers said: whether they concurred, whether they disagreed in whole or part.

**The Hon. ADAM SEARLE:** Sir, within the limitations with which Strike Force Emblems struggled, you have no reason to doubt the diligence or competence of the officers and the competence of the report, do you?

**Mr MORONEY:** I have no reason to doubt the competence of Mr Dobson or the detective inspectors who assisted him. I think they took the report as far as they could. There was probably a level of frustration on their part—

**The Hon. ADAM SEARLE:** I am sure.

**Mr MORONEY:** —as to how far they had got, but they could not progress it any further. Indeed, the advice I sought from external and internal legal sources concurred with that view.

**Mr DAVID SHOEBRIDGE:** The advice that you had was that, as a Commissioner of Police, you did not have any legal powers to direct the Crime Commission to provide the necessary material. Is that basically what that advice came to conclude?

**Mr MORONEY:** If we use that as a general descriptor, I think that would be right. I would like to see any documentation that exists of that period and what views I came to, but each of those agencies—the Crime Commission and the Police Integrity Commission—is a statutory authority in its own right. Other than me being a member of the management committee of the State Crime Commission, I had no other authority there at all.

**Mr DAVID SHOEBRIDGE:** What did you do, if anything, in that role as a member of the State Crime Commission to seek to get the necessary documents to come to complete the Strike Force Emblems investigation?

**Mr MORONEY:** I had discussions with the then commissioner, Mr Bradley, with a view to access, but that access was not forthcoming.

**The Hon. TREVOR KHAN:** Just so that we are clear, in terms of your membership of the management committee, did you raise it at the management committee meeting?

**Mr MORONEY:** I believe I would, and my belief would be sustained by reference to the minutes of those meetings.

**Mr DAVID SHOEBRIDGE:** Is it your belief, then, that the police Minister would have been chairing that management committee when you raised it?

**Mr MORONEY:** I cannot be certain as at this date, some 13-14 years on, but the Minister of the day was usually the chair, with the Commissioner of the New South Wales Police, the Commissioner of the Australian Federal Police, the director general of the police Ministry and support staff from the Crime Commission but they were more in the form of secretarial services. Who was present on that day, I would have to reflect on the minutes.

**Mr DAVID SHOEBRIDGE:** If you could, reflect on it, and if you have any further clarity, provide us that answer on notice—any further particulars on notice.

**The Hon. TREVOR KHAN:** He would not have any minutes.

**Mr MORONEY:** I am not sure that I have any authority to seek that advice from the commission.

**The Hon. ADAM SEARLE:** Sir, can I ask you these questions: You recall raising the issue with Mr Bradley and asking him for the material. Do you now have an independent recollection that you did that?

**Mr MORONEY:** I am certain I would have.

**The Hon. ADAM SEARLE:** Okay.

**Mr MORONEY:** I am certain I would have.

**The Hon. ADAM SEARLE:** But in terms of raising it at the management committee, at this point in time you have no independent recollection about whether in fact you did raise it at a meeting of the management committee.

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**Mr MORONEY:** No, but I have a reasonably strong belief I raised it with a view to trying to get to some end state of this whole issue.

**The Hon. ADAM SEARLE:** You understand that the controversy was a serious matter.

**Mr MORONEY:** Oh, absolutely.

**The Hon. ADAM SEARLE:** Do you understand that that controversy does not reflect well on the Police Force?

**Mr MORONEY:** Well, it is an issue that people rightfully and understandably made a complaint about. They deserve, like every complainant whether they are police officers or civilians, to have an outcome. We were not able to get the outcome that they were seeking. What they were seeking was a full explanation. We could not get that because of a lack of access to documents.

**Mr DAVID SHOEBRIDGE:** Mr Moroney, did you consider advising your police Minister—or did you advise your police Minister—that you had hit this dead-end and that the matter had not been resolved?

**Mr MORONEY:** Yes. I am certain I would have advised the Minister of the day. Again, those observations and those comments would be reflected in minutes within the Minister's office or the director general's office, but there would be no reason for him not to advise the Minister as to the outcome of Emblems.

**Mr DAVID SHOEBRIDGE:** Was it your belief then that if there had been an avenue available to get the documents and actually fully investigate and conclude the inquiry to the satisfaction of the complainants, that is something that should have been done then?

**Mr MORONEY:** Ideally, if we could have had access to them. It is probably speculative now, I think, as to had we got access to the documents, what would have been the outcome? Would it have been different to that which it is today? Possibly so. Would they have been satisfied? Possibly not. I think it would have taken it to another level. I think in terms of satisfying the complainants that we had made our best endeavours—we had investigated as much as we possibly could—I would have hoped that that brought some degree of satisfaction to them. That we were not able to reach that state was obviously a cause of frustration.

**The Hon. ADAM SEARLE:** Sir, do you have any independent recollection now as you sit here today about the level of detail that you briefed the Minister about on this issue?

**Mr MORONEY:** No. It would have been the nature of the Emblems report. It would have been part of an ongoing briefing arrangement, not every single week that we met but on a regular basis. I would reasonably believe that I would have advised him as to the state that the Emblems report had reached; that we had had external and internal legal advice; that it would appear that we could not go any further. What action that then Minister took, without the benefit of documentation I am not sure.

**The Hon. TREVOR KHAN:** Could I just put this to you? It was quite plain by the time that the Emblems report came out—in the time leading up to the Emblems task force looking at it and then by the end of it—that this had been a contentious issue.

**Mr MORONEY:** Oh yes. Yes.

**The Hon. TREVOR KHAN:** It was the sort of thing that you would have told the Minister—and I am not being critical—and the likes of Les Tree what was going on.

**Mr MORONEY:** Yes. The very nature of the complaint would see me advising the Minister; and the fact that the director general was there, he would also have been advised.

**The Hon. LYNDA VOLTZ:** At the time of the Emblems report, what they were really working on were the warrants. Is that right? They did not have the affidavits.

**Mr MORONEY:** No. I do not know what documentation they had.

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**The Hon. LYNDA VOLTZ:** The real concern at the time was that the names were on the warrant. It was not about—

**Mr MORONEY:** No. the genesis of this issue, as I said, begins with the royal commission. It moves to Operation Mascot-Florida and the arrest, charge, conviction and imprisonment of a number of people, including police officers. We move into 1999 and M5 continued to work in a covert way. My understanding is that affidavits were sworn, warrants were issued and, as I say, the rest is but history. My understanding was that what Emblems was seeking was to go behind all of that material and seek access to those documents to see if there was justification in the issue of the warrants.

**The Hon. LYNDA VOLTZ:** Yes.

**Mr MORONEY:** That is what they were denied access to.

**The Hon. LYNDA VOLTZ:** They had the names on the warrants but they did not have the back information for that.

**Mr MORONEY:** Yes. They certainly had the warrant or warrants but they did not have the background or supporting information. They were held within the respective commissions.

**The Hon. LYNDA VOLTZ:** Did Bradley express any view other than the secrecy Act about why he would not release the information?

**Mr MORONEY:** No. This many years on, I do not recall, but the documentation was not forthcoming.

**Mr DAVID SHOEBRIDGE:** Did he raise any concerns about the bona fides of the task force Emblems investigators with you?

**Mr MORONEY:** Not that I recall. There was no adverse observation or adverse comment directed at me or the Emblems personnel. No, not that I recall.

**Mr DAVID SHOEBRIDGE:** When you ceased to be the police commissioner and Mr Scipione took over, did you brief Mr Scipione in relation to this matter—Strike Force Emblems?

**Mr MORONEY:** I do not believe so. The Emblems report was 2003-04. I retired mid-2007. I think we had taken Emblems as far as we had taken it. We believed that we had done as much as we could. We could not satisfy the complainants. That is often the case in police complaints; the complainant or complainants are not always satisfied with the outcome. But you can only investigate to the limit of your intelligence—I do not mean of the cerebral kind—holdings and to the limit of the investigation. If there are restrictions and barriers along the way, it is sometimes difficult to overcome those.

**Mr DAVID SHOEBRIDGE:** Do you remember telling Mr Scipione at any point that you had got as far as you could go on Strike Force Emblems?

**Mr MORONEY:** I do not recall those specific words with the then deputy commissioner.

**Mr DAVID SHOEBRIDGE:** Words to that effect?

**Mr MORONEY:** If such a conversation would have occurred, it would have been more likely to have occurred with he and Deputy Commissioner Madden probably closer to 2003-04 than they were in '07. Mr Madden had left the organisation by then.

**Mr DAVID SHOEBRIDGE:** But you are under no illusions. You did not think that Strike Force Emblems had resolved matters. You just simply were of the view that you had done what you could as a police force. That was ultimately where it got to. Is that it?

**Mr MORONEY:** Well, that is where it had got to. There were a number of complainants who sought personal discussions or made personal representations, two of whom have appeared here this week. Former Superintendent Harding wrote to me on a number of occasions and quite understandably and agreeably expressed his point of view. We made additional inquiries based on his correspondence, but obviously we were

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not able to satisfy him. In the case of Mr Barrett, he was invited to meet with senior Assistant Commissioner Peter Walsh. The issues were discussed—the legality of the issues; I mean the listening devices warrant and the legislation at the time. He was provided that advice in writing. My memory is that within a few days of that, that letter from the NSW Police appeared on the front page one of the daily tabloid. We did as much as we can do. I do not recall any further representations, really, from that point on. I do not say they were not made, but I do not recall them, say, in '05, '06, or '07.

**Mr DAVID SHOEBRIDGE:** Do you remember when then Commissioner Ryan went on *60 Minutes* and gave an explanation about the warrant issue. Do you remember that?

**Mr MORONEY:** Yes, I do.

**Mr DAVID SHOEBRIDGE:** Do you remember anything about the lead-up to him giving that explanation on *60 Minutes*?

**Mr MORONEY:** No. Again you go back to Operation Mascot-Florida. This was an operation directed by Commissioner Ryan in concert with Assistant Commissioner Brammer, who was the head of Special Crime and Internal Affairs. Neither Deputy Commissioner Jarratt, who was in charge of field operations, nor myself was apprised of the whole issue of Mascot-Florida until about two days before the execution of the operation. It was kept very tight between those two individuals. I saw Mr Ryan. I have reflected on his comments. I think that was a statement he made in genuine belief that what he was saying was correct.

**Mr DAVID SHOEBRIDGE:** Sitting there now, do you think that that was an accurate statement that Mr Ryan gave?

**Mr MORONEY:** In the sense of the requirements of the 1984 listening devices Act amendment, yes I think he may have used other words; but I think that was the implication of what he was saying—that the advice he had was that the inclusion of the names of the warrant was a requirement of the legislation. Indeed, senior Assistant Commissioner Walsh on 13 January 2003 in the *Police Service* weekly reiterates the same advice a long time after Commissioner Ryan had made the same observations.

**Mr DAVID SHOEBRIDGE:** But the problem that arises from the documents that come to this Committee is that people were overwhelmingly on the warrant, except for, I think, three names, and those people all had adverse comments made against them in the schedule of debrief. That seems to be directly contrary to what is in the *Police Weekly*.

**Mr MORONEY:** I will accept that what you are saying is the case, but I want to read the documentation to be able to respond.

**Mr DAVID SHOEBRIDGE:** Do you know who gave Commissioner Ryan a briefing that enabled him to go on *60 Minutes*?

**The Hon. TREVOR KHAN:** You assume that he was given one.

**Mr DAVID SHOEBRIDGE:** If anyone, do you know?

**Mr MORONEY:** No, because Mr Ryan had kept the operation very tight. But it would have come, I would reasonably believe, through the Commander of Special Crime and Internal Affairs.

**CHAIR:** Thank you very much, Mr Moroney. That brings us to a close of proceedings for today. The Committee has decided to hold a fifth hearing next Tuesday 10 February. At that hearing the Committee will take further evidence from Ms Catherine Burn and Mr Nick Kaldas. Details regarding the appearance time for these witnesses will be posted on the Committee's website tomorrow morning.

**(The witness withdrew)**

**The Committee adjourned at 5.00 p.m.**