

**REPORT OF PROCEEDINGS BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE NO. 4**

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

---

**UNCORRECTED PROOF**

---

\_\_\_\_\_

**At Sydney on Friday 26 June 2015**

\_\_\_\_\_

**The Committee met at 9.30 a.m.**

\_\_\_\_\_

**PRESENT**

The Hon. R. Borsak (Chair)

The Hon. T. J. Khan  
The Hon. M. S. Mallard  
The Hon. G. S. Pearce  
The Hon. A. Searle  
Mr D. Shoebridge  
The Hon. L. J. Voltz

**CHAIR:** Welcome to the second hearing of the General Purpose Standing Committee No. 4 inquiry into the progress of the Ombudsman's investigation "Operation Prospect". As people would be aware, a select committee inquiry was held earlier this year to examine the conduct and progress of the Ombudsman's inquiry "Operation Prospect". The select committee's report was tabled on 25 February 2015. 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 Aboriginal people who may be present.

Today the Committee will hear from the Commissioner of Police, Mr Andrew Scipione, and the Director of Criminal Investigations in the NSW Crime Commission, Mr Timothy O'Connor. Before we commence I would like to make some brief comments about procedures for today's hearing. Today's hearing is open to the public and is being broadcast by the Parliament's website. A transcript of today's hearing will be placed on the Committee's website within the next day or so. 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 their evidence at the hearing. I therefore urge witnesses to be careful about any comments they may make to the media or to others after they complete their 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 on hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within three calendar days following the 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 the statutory secrecy provisions have no application to Parliament except by express enactment and that secrecy provisions do not affect the powers of the Committee to require answers to lawful questions. Advice from Mr Bret Walker, SC, dated 14 January 2015, obtained in connection with the recent select committee inquiry, supports the Legislative Council's position regarding this matter. This advice can be accessed on the Legislative Council's website.

Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. I ask everyone to turn their mobile phones to silent for the duration of the hearing. I now welcome our first witness, Commissioner of Police, Mr Andrew Scipione.

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

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

**Mr SCIPIONE:** No.

**The Hon. ADAM SEARLE:** The last time you attended a parliamentary inquiry in connection with Operation Prospect I think most people had the hope that by now the inquiry would be nearing its end. That now appears to not be the case. Can you tell the Committee what practical impact that will have or is having on your management of the NSW Police Force, particularly at senior levels?

**Mr SCIPIONE:** I, like I am sure everyone, certainly would have preferred to have seen this matter finalised. I have previously acknowledged that the matters that were the subject of Operation Prospect have created tensions within my executive and they are of significant concern for many other individuals both within and outside the Police Force. These are matters that—and I stated this on the last occasion—I want fully and properly investigated and, most importantly, resolved. Of course we would all like the Ombudsman's investigation to be finished earlier, and I accept the Ombudsman's advice regarding the volume of matters that are subject to the inquiry.

I would also say that nobody would want to finalise the inquiry hastily, though, if it was to be at the expense of affording affected individuals procedural fairness or at the cost of public confidence in the rigour of the findings. I would also say that the community have full confidence, notwithstanding, that the inquiry proceeding has clearly not hindered us, I think, from delivering a world-class service to the people of New South Wales.

**The Hon. ADAM SEARLE:** Nevertheless, this must be creating strains in your executive, the fact that it is not yet resolved.

**Mr SCIPIONE:** Without a doubt—not just within the executive; within all of those that are affected by Prospect.

**The Hon. ADAM SEARLE:** Do you have concerns about the fact that the Ombudsman who will be called to finalise the report or reports will not be the person who has heard and received the evidence in the first place?

**Mr SCIPIONE:** I am in no position to make any comments as to how this may play out at the end of the day. What happens happens. I am not sure that it will jeopardise proceedings in any way; I am simply just not in a position to give you any view in that regard. All I can say is that the sooner it is resolved the better for all of us.

**The Hon. ADAM SEARLE:** But the fact that it is a different Ombudsman finalising the matter may itself become the subject of controversy and difficulty for affected persons. Do you accept that is a likelihood?

**Mr SCIPIONE:** Potentially.

**The Hon. ADAM SEARLE:** The article that was the front page of the *Sydney Morning Herald* on 17 April referred to the Ombudsman considering referring charges against senior police. There is quoted in that article a reference to a senior New South Wales police official aware of a push inside the Ombudsman's office. At the time that article was published on 17 April this year were you aware that the Ombudsman was seeking advice on the laying of charges against Deputy Commissioner Kaldas?

**Mr SCIPIONE:** Yes, I was.

**The Hon. ADAM SEARLE:** Can you tell us when you became aware that was in the Ombudsman's mind?

**Mr SCIPIONE:** Sure. On 9 December last year I met the Ombudsman to discuss the need to put into place appropriate legal representation, support and welfare arrangements for officers that were going to appear before the then upcoming upper House select committee. In the context of discussing possible impacts with

officers' health and welfare, the Ombudsman indicated that he had referred a matter to the DPP and it was in relation to Deputy Commissioner Kaldas. I indicated then that if it was decided to take the matter further, any early advice that I could get would assist me in ensuring that appropriate welfare support was put in place. I have heard nothing further since from the Ombudsman or anyone else.

**The Hon. ADAM SEARLE:** Apart from yourself, are you aware of who else in your office or in the Police Force was aware that this was in the Ombudsman's mind?

**Mr SCIPIONE:** No-one that I am aware of. Let me assure you I have not disclosed details of my conversation with the Ombudsman to any other person, except in the last few days where I have been in preparation for my appearance today, and my legal team.

**The Hon. ADAM SEARLE:** Given that the article in the *Sydney Morning Herald* refers to a senior NSW Police official aware of a push inside the Ombudsman's office, were you that senior NSW Police official?

**Mr SCIPIONE:** No, not that I am aware of. I can assure you I have spoken to no-one. No-one in the Police Force knew that I had had those discussions.

**Mr DAVID SHOEBRIDGE:** I suppose the question, Mr Scipione, is: Given this appeared in a newspaper, have you spoken with any journalist?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Can you assure this Committee that you were not the source for that comment in the 17 April article?

**Mr SCIPIONE:** You can be assured. Certainly I have not spoken to any media officials about this at all, ever. I noted that Mr McKenzie's article did quote an anonymous police officer.

**Mr DAVID SHOEBRIDGE:** Yes, "A senior NSW Police official".

**Mr SCIPIONE:** I am sorry?

**Mr DAVID SHOEBRIDGE:** It is quite explicit. It says "A senior NSW police official".

**Mr SCIPIONE:** Yes. Let me assure you I have had no conversations with anyone at all.

**The Hon. ADAM SEARLE:** So you have had no conversations; you did not disclose to any other police officer?

**Mr SCIPIONE:** No.

**The Hon. ADAM SEARLE:** Or to any official in your office about this matter?

**Mr SCIPIONE:** No.

**The Hon. ADAM SEARLE:** Yet in this article it names "A senior NSW police official". Have you taken any steps to ascertain who that New South Wales senior police official is, who was the source in part for this story?

**Mr DAVID SHOEBRIDGE:** Assuming that the story is accurate.

**The Hon. ADAM SEARLE:** Yes, that is the assumption.

**Mr SCIPIONE:** We are in the hypothetical here. Certainly in my position, I have not made any inquiries on the basis that I had did not have a complaint. I had no-one coming forward suggesting that there was prima facie evidence. To use Mr Shoebridge's term, I guess that is assuming that this is accurate.

**The Hon. ADAM SEARLE:** Okay.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, you must have realised when you saw it that that comment about "A senior NSW police official", effectively corroborating the story about potential charges against one of your deputies, could be damaging within the NSW Police Force.

**Mr SCIPIONE:** As I said, I am not sure that what was reported was accurate.

**Mr DAVID SHOEBRIDGE:** Would not the first step have been to determine whether or not it was accurate, to make some inquiries to see whether it was accurate?

**Mr SCIPIONE:** Well, I think in terms of who that may have been or what it was that was leaked, this Committee probably could go to the author of that article and clarify that really quickly.

**The Hon. ADAM SEARLE:** We have tried.

**CHAIR:** We have been there.

**Mr DAVID SHOEBRIDGE:** But you see, Mr Scipione, you have immediate access to senior New South Wales police officials, being the commissioner.

**Mr SCIPIONE:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you not think that due diligence would have required you to have at least made the inquiry of your executive team and ask if any of them had spoken to a journalist about this matter?

**Mr SCIPIONE:** I am not sure. I do not have the article before me. I would be happy to read it.

**Mr DAVID SHOEBRIDGE:** Okay. I think it is okay—what is highlighted on those two pages.

**The Hon. TREVOR KHAN:** Have you got your notes for your questions there too?

**CHAIR:** On the back.

**Mr DAVID SHOEBRIDGE:** That is not the first time you have read that story, is it, Mr Scipione?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Do you not think, having read it and refreshed your memory now, that due diligence would have required you to have made an inquiry to ascertain if any of your senior police officials had been leaking that kind of information to journalists?

**Mr SCIPIONE:** Okay, a couple of things: Let me start by saying that what I read here notes "A senior NSW police official". Let me assure you I have had senior constables that have been quoted in the media as senior police officers. Bearing in mind there are 16,500 police officers, I am not sure where you might have wanted me to go to; but having said that, if I look at what is in here, this article, for what it is worth, does not necessarily say that the anonymous police officer did any more than express an opinion, not leaked the material.

**Mr DAVID SHOEBRIDGE:** But the opinion is founded upon knowledge that one of your deputy police commissioners is facing the prospect of charges.

**Mr SCIPIONE:** Again, you will need to speak to the author. It may well be that the alleged senior New South Wales police officer was made aware of this by the author.

**Mr DAVID SHOEBRIDGE:** Mr Scipione, just to be clear, did you speak to any of your deputy commissioners about that?

**Mr SCIPIONE:** No, none.

**Mr DAVID SHOEBRIDGE:** Did you speak to any of your assistant commissioners about that?

**Mr SCIPIONE:** No, none. I had no complaint. In fact, as I have said, many officers are termed senior police officers every day by the media. Let me assure you some of them are senior constables.

**Mr DAVID SHOEBRIDGE:** But as a senior manager of what one of the most important organisations in the State, you do not just sit passively and wait for a complaint to happen before you take proactive action, do you?

**Mr SCIPIONE:** Well, Mr Shoebridge, I am not sure if you are aware how many matters like this are raised in the media every day—

**Mr DAVID SHOEBRIDGE:** Regarding one of your deputy commissioners?

**Mr SCIPIONE:** —with many of them being wrong.

**Mr DAVID SHOEBRIDGE:** It is clear from the article that this anonymous police officer was not the source of the leak. It was instead he was providing, or she was providing—whoever it was, if there was somebody—an opinion about the difficulties and the complexities of dealing with these types of matters.

**The Hon. LYNDA VOLTZ:** Could I just ask one question. The use of the term "senior official"—"official" is an interesting term to use in an article, is it not, for a New South Wales police officer?

**Mr SCIPIONE:** It is unusual to me. It says "A senior NSW police official".

**The Hon. ADAM SEARLE:** Commissioner, in your interactions with the Ombudsman about this matter, were you aware whether the Department of Justice was aware of these matters that were in the Ombudsman's role?

**Mr SCIPIONE:** No. I did not go into any detail. I simply was advised. My only response was, "Please, if you can let me know if this proceeds, so I can make sure that the appropriate welfare is arranged."

**The Hon. ADAM SEARLE:** You do not know who else—

**Mr SCIPIONE:** No.

**The Hon. ADAM SEARLE:** —in the government agencies may have been aware of this matter.

**Mr SCIPIONE:** No, other than that matters had been referred to the office of the Director of Public Prosecutions [DPP]. I had no idea. I do not know.

**The Hon. ADAM SEARLE:** But you accept that this story was a highly damaging one for the NSW Police Force and the person concerned?

**Mr SCIPIONE:** Certainly, I am not sure that it was appropriate that it was reported the way it was.

**The Hon. ADAM SEARLE:** And it came very close to the announcement of your continuation as police commissioner for the next two years. That is the case, is it not?

**Mr SCIPIONE:** It was published on 17 April, so it was within a couple of weeks, yes.

**The Hon. ADAM SEARLE:** Does it concern you that this leaking of this information may be part of an ongoing campaign that is damaging to the NSW Police Force? Would that not have prompted some concerns on your part?

**Mr SCIPIONE:** I am sorry, the question again?

**The Hon. ADAM SEARLE:** The publication of this article—did it not prompt concerns in your mind that this might be part of some ongoing campaign that is causing difficulties for your management of the force?

**Mr SCIPIONE:** There has been an ongoing campaign that has been difficult to manage now for many, many years. This was just the latest instalment.

**Mr DAVID SHOEBRIDGE:** Commissioner, it was, I think, within a week of the 17 April article being published that your contract was extended for two years. Is that right?

**Mr SCIPIONE:** Seventeenth of April. I am not sure what date, but it would have been within a fortnight, if not a week.

**Mr DAVID SHOEBRIDGE:** They were contemporaneous in large part—the leak—and it was followed soon after by the extension in your contractual term.

**Mr SCIPIONE:** I think it may have been the reverse order.

**Mr DAVID SHOEBRIDGE:** So you think—

**Mr SCIPIONE:** Let me clarify that.

**Mr DAVID SHOEBRIDGE:** Yes. I think it is best we do that.

**Mr SCIPIONE:** Let me see if I can find the release from the Premier. No, no; you are right, sorry. It was 24 April.

**The Hon. ADAM SEARLE:** One week later.

**Mr DAVID SHOEBRIDGE:** Of course, you would have had discussions with both the Premier and the police Minister about the extension of your contract?

**Mr SCIPIONE:** Certainly the Premier on a number of occasions and the police Minister, yes.

**Mr DAVID SHOEBRIDGE:** Including in the period between the publication of that article and 24 April when the announcement was made?

**Mr SCIPIONE:** Perhaps I can put it into some sort of order for you chronologically.

**Mr DAVID SHOEBRIDGE:** Yes.

**Mr SCIPIONE:** I previously stated—in fact, when it was announced that I was going to accept an extension—I was first approached by the Premier to consider extending my term as commissioner late last year, 2014. I met with the Premier again after the election on 8 April. During that meeting the Premier asked if I would extend my term, bearing in mind he had asked me to consider it. I agreed to stay on for a further two years and then I know that he announced it. That was on Friday 24 April.

**Mr DAVID SHOEBRIDGE:** Did you have any discussions with the Premier about the extension of your term between 17 April when that article was published and 24 April when the announcement was made?

**Mr SCIPIONE:** No, I had already given him my word and made that decision.

**Mr DAVID SHOEBRIDGE:** Did you have any discussions with the police Minister about the extension of your term, between 17 April and 24 April?

**Mr SCIPIONE:** My only discussions with the police Minister were to the effect that I had given my undertaking to the Premier that I would extend and, to that extent, it was just a matter of working out when it would be announced.

**Mr DAVID SHOEBRIDGE:** Did the issue of this leak, and the matters the subject of this leak, arise in your conversation with the police Minister about the extension of your term?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Were the issues concerning Operation Prospect a part of the conversation you had with the Premier, either on 8 April or at the end of 2014, regarding the uncertainty caused by the ongoing investigation into Operation Prospect?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Have you spoken with the police Minister about the difficulties faced by the New South Wales Police because of the continued delay in the reporting on Operation Prospect?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Did you speak with the police Minister about the leak that appeared in the 17 April article?

**Mr SCIPIONE:** Sorry, just clarify that again for me?

**Mr DAVID SHOEBRIDGE:** Have you spoken with the police Minister about the leak that appeared in that 17 April article that you have there?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Do you not think that would have been an important issue to discuss with your police Minister, in terms of the accountability to you as the Commissioner of Police?

**Mr SCIPIONE:** Well, the article, if it is to be believed, did not suggest that any leak came from my department. Unless you can show me otherwise, I cannot see that.

**Mr DAVID SHOEBRIDGE:** The conversation you had with the Ombudsman on 9 December 2014, was it clear from that conversation that the Ombudsman had already formed a certain view about prosecuting one of your deputy commissioners?

**Mr SCIPIONE:** I told you the conversation was very, very short. There was no formal advice, no document, no written advice, no detail. There was an indication from the Ombudsman that matters, or a matter, had been referred to the DPP for consideration. That is it.

**Mr DAVID SHOEBRIDGE:** Well, it went beyond that, did it not? He named the person.

**Mr SCIPIONE:** A deputy commissioner? Well, as I have said, Deputy Commissioner Kaldas, yes.

**Mr DAVID SHOEBRIDGE:** Did you raise that issue at all with Mr Kaldas?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** Did the Ombudsman tell you whether or not he had raised that issue with Mr Kaldas?

**Mr SCIPIONE:** No.

**Mr DAVID SHOEBRIDGE:** What arrangements have you put in place then, in the NSW Police Force, to deal with the prospect of one or more of your officers being charged as a result of the Ombudsman's inquiry?

**Mr SCIPIONE:** Well, there are many arrangements that are in place, if you like. There is any range of documents which certainly advised a whole range of people. In fact, we went outside of those we knew were caught up as part of Prospect, to the entire force, because we do not know everyone that was called up as part of that investigation. We have given them a very clear understanding. We have circulated this via email. We have put this out across the organisation on many occasions, in terms of the support that they can get, be it welfare, be it in terms of legal representation they can apply to and get support from the Legal Representation Office. There was a standing arrangement in place with regards to those giving evidence before the Ombudsman, in terms of



how they could get counselling, legal assistance, employee assistance, welfare support. All those things are well published. I am quite happy to take that on notice, if you like, and give you access to all those documents.

**Mr DAVID SHOEBRIDGE:** I think that might be useful and I would ask you to take that on notice. Have you had any further conversations? Or, how often do you meet with the Ombudsman, to have discussions?

**Mr SCIPIONE:** As and when needed.

**Mr DAVID SHOEBRIDGE:** So this year, how many times would you have met with the Ombudsman?

**Mr SCIPIONE:** I do not think I have.

**Mr DAVID SHOEBRIDGE:** Last year, at the end of last year, you met with him on 9 December. Were you meeting with him regularly or was that just a one-off?

**Mr SCIPIONE:** No, I would have semi-regular meetings with him to resolve issues. The purpose of the meeting was not exclusively around dealing with this one issue.

**The Hon. ADAM SEARLE:** To be very clear, when you met with the Ombudsman last year and you were advised about that consideration of the possible laying of charges, you had no discussions with anyone else in your personal office or in the police force about that?

**Mr SCIPIONE:** No-one.

**The Hon. ADAM SEARLE:** You are not aware of any other agency of government or person having that knowledge, other than the Ombudsman?

**Mr SCIPIONE:** Apart from the Ombudsman and his indication that he would refer matters to the DPP—no-one.

**Mr DAVID SHOEBRIDGE:** You say "matters".

**Mr SCIPIONE:** Well—"matter". I do not even know what the extent of it was. I still do not know what the extent of it was.

**Mr DAVID SHOEBRIDGE:** But what did he tell you? Did he tell you "matters" or "matter"? Was he just telling you about this one officer who had been referred or was it "matters"?

**Mr SCIPIONE:** In terms of this particular conversation that you are interested in, it was one officer.

**Mr DAVID SHOEBRIDGE:** Well, in any other conversations with the Ombudsman—

**Mr SCIPIONE:** I have not had any other conversations.

**Mr DAVID SHOEBRIDGE:** —has he referred to other matters?

**Mr SCIPIONE:** I have not had any other conversations about this or, in fact, referring of any further matters to the DPP at all.

**The Hon. GREG PEARCE:** Thank you, Commissioner, I think we are all very pleased that you are handling this difficult issue and giving us confidence in the way you are doing that.

**Mr SCIPIONE:** Thank you, Mr Pearce. Can I say that I understand everyone's concern in this. I have got everyone's best interest at heart in this and I actually want to get this result—like I am sure we will do. But what I need to probably do is get on record and it is important I take the opportunity—I indicated at the time that the organisation is performing very well. When you look at what matters to communities and you look at the crime that we are dealing with and you look at the results of recent years, but particularly of recent times, where we are seeing 16 out of 17 crime categories stable or falling, they are results you get, not just by chance. It is not

a happenstance that you get those sorts of results, particularly when you look at the things that we are having to deal with. It is important that we stay focused on the business.

In the last 12 days we have had 12 people die on the roads in New South Wales. In this State, in the first six months of this year, we are seeing one person become a homicide victim, where domestic violence was an element—every fortnight. As we sit here now, we will be talking about a \$50 million seizure of ice that the New South Wales police have made in recent days. There is much to be done. We have to continue to fight and combat terrorism and we work with agencies nationally and internationally. This is a busy part of the history of the NSW Police Force. I am really pleased that, rising above these difficulties, the organisation has served this community well and will continue to do it. The men and women of this police force will continue to do that, because they are professional and they will just get on with the job. We are fortunate to have them.

**Mr DAVID SHOEBRIDGE:** With that aim in mind, since the last time you were here, have you sat down with your deputy commissioners—all of you together—you and your deputy commissioners, and said, "How can we resolve this? How can we work together as a team and come up with a team approach?" Have you done that?

**Mr SCIPIONE:** Certainly, I have talked to them all individually. We are right in the midst of putting together a very big engagement and we have engaged external support services to bring us together to do exactly that. I thought and I hoped that this matter—

**Mr DAVID SHOEBRIDGE:** Is not that your job, to bring them together?

**The Hon. TREVOR KHAN:** Just let him answer the question.

**Mr SCIPIONE:** I have brought it together. This did not happen, someone did not knock on my door and say, "Hey, would you like us to come and have a talk to your people?" I engaged people to come and do that and—let me assure you—I assumed and thought that we would have this matter resolved by June. That is not going to be the case, therefore I have had to make my own arrangements and, in doing that, we will be progressing towards working through those issues and doing that as quickly as we can. That is in train.

**Mr DAVID SHOEBRIDGE:** So, Mr Scipione, you have got some consultants engaged to bring your team together but you yourself have not brought all your deputy commissioners and yourself around the table since the last time you came here to say, "Let's nut it out and work together as a team"?

**Mr SCIPIONE:** Well look, there are some difficulties around some of this too. You know this, Mr Shoebridge. The reality is, I am bound by some secrecy provisions. Section 19 of the Ombudsman Act precludes me—in fact, it restricts me—from talking about any of these matters with any person that is involved. As we all know, and you know, I have been called down there and given evidence before the Ombudsman. You know that because this Committee required us to disclose that, otherwise it would not have been disclosed. In any other forum, if I had disclosed that I would have committed potentially an offence. So, the difficulty is, when we leave the room here, I am not covered by, and nor am I exempt from, any of those exclusions that are placed on me with regards to secrecy. We are working through that. This is difficult. We will continue to do that. I will be bringing together those people and again, notwithstanding the issues you have raised, the one thing I will keep bringing you back to is, the performance of the organisation has not in any way fallen or deteriorated. In fact, it has improved.

**Mr DAVID SHOEBRIDGE:** So the effect of the secrecy obligations that this Parliament gave to the Ombudsman is partly preventing you taking action as a manager and bringing your deputy commissioners together?

**Mr SCIPIONE:** In terms of taking action as a manager, other things are in play as well. We know that there are protected disclosures in place, which means that I am not in a position to take any action because it will be seen potentially as being retaliatory, and there are a number of people who are affected by those. So I have to be mindful of that as well. This is a complex thing that we are talking through here. I will not put a foot wrong. I will not breach any requirement that might be on me in terms of the protected disclosure and whistleblower legislation. I will certainly not step outside of what I think and what I am advised is my requirement under the Ombudsman's legislation, let alone the extra powers that have been afforded to me.

The other complexity in this is that at some stage, based on evidence that I heard only last week in this Committee room, any number of people will be the subject of adverse findings. I may well, under my Act, be required to make some judgement in terms of any management action right through and including up until dismissal—section 183D through to section 173, reviewable, non-reviewable. I may well be required to make a judgement call. But if I made a judgement call early, not giving people the opportunity to give me their right of reply, that in fact could thwart or finish any proceedings should those matters progress to the IRC. I will not do that. I will give people procedural fairness, and I will do it the right way.

**Mr DAVID SHOEBRIDGE:** The long and the short of it is that the sooner this report is handed down, the sooner you can get on with the management of the NSW Police Force.

**Mr SCIPIONE:** The sooner we can get this resolved, the better for all concerned.

**Mr DAVID SHOEBRIDGE:** I think we are all of one mind in that regard.

**CHAIR:** Thank you for coming today. I add my personal thanks to you for the hard work and effort you put into your role. I look forward to you knocking off as many crooks as you can, especially those dealing with ice.

**Mr SCIPIONE:** We will announce a very good outcome today. Of course, those people have to appear before a court, but it is nice to have \$50 million worth of ice off the streets, which is a bonus, if nothing else.

**The Hon. ADAM SEARLE:** All disruption is good.

**CHAIR:** That is right. The Committee has resolved that answers to questions on notice—I think you took one question on notice—be returned within three calendar days following the receipt of the transcript. The secretariat will contact you in relation to questions you have taken on notice.

**(The witness withdrew)**

**(Short adjournment)**

**TIMOTHY JAMES O'CONNOR**, Director, Criminal Investigations, NSW Crime Commission, affirmed and examined:

**CHAIR:** Do you want to make an opening statement?

**Mr O'CONNOR:** No sir.

**CHAIR:** I think the commission made a request for your evidence to be heard in camera. The Committee has decided that it will proceed in public until such time as either you or the Committee decides that in-camera is appropriate.

**Mr O'CONNOR:** I understand.

**Mr DAVID SHOEBRIDGE:** You can make a request and the Committee will decide.

**CHAIR:** That is right.

**Mr DAVID SHOEBRIDGE:** In that regard there is really a threshold question I would like to put to you. You have provided the Committee with a letter that you signed.

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** Now that you are here on oath, do you affirm the contents of that statement are true and correct?

**Mr O'CONNOR:** I do.

**Mr DAVID SHOEBRIDGE:** You detail in that statement, primarily from paragraphs 9, 10 and the following paragraphs, amongst other things, a conversation that you had with Mr McKenzie, a journalist.

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** Was your conversation with Mr McKenzie a conversation in the course of your employment with the Crime Commission with a source of the Crime Commission or was it a private conversation you were having with Mr McKenzie?

**Mr O'CONNOR:** I can neither confirm nor deny whether a person is a source.

**Mr DAVID SHOEBRIDGE:** I will put it to you without gloss: Was it a conversation that you were having in your capacity as an officer of the Crime Commission doing Crime Commission work or was it a private conversation you were having with Mr McKenzie?

**Mr O'CONNOR:** I would have to say it is probably a private conversation.

**Mr DAVID SHOEBRIDGE:** How often do you have this kind of private conversation with journalists?

**The Hon. TREVOR KHAN:** Point of order: There are matters that clearly arise in this witness's statement that are relevant to the terms of our inquiry but that question does not fall even close to being within the terms of reference of this inquiry.

**Mr DAVID SHOEBRIDGE:** The relevance is that if it were unusual for this witness to have a conversation with a journalist then he would be more likely to have a clearer recollection but if he is constantly talking to journalists it would be difficult, so it is clearly relevant.

**The Hon. TREVOR KHAN:** You can ask him whether he has a clear recollection.

**Mr DAVID SHOEBRIDGE:** You cannot tell me how to ask a question.

**CHAIR:** I rule that the question proceed.

**Mr O'CONNOR:** Would you repeat the question?

**Mr DAVID SHOEBRIDGE:** How often do you have private conversations with journalists?

**Mr O'CONNOR:** It is a difficult question to answer. I would say there have been other occasions but my relationship with journalists generally is one that I need to have to conduct my duties with the commission. How many journalists I speak to and how often I speak to them is sort of moving into an area of an operational side and I would rather not comment, with respect.

**Mr DAVID SHOEBRIDGE:** I am asking you about the private conversations you have with journalists not the ones that relate to your work with the Crime Commission.

**Mr O'CONNOR:** I think that question is too difficult to answer. How often do I have private conversations? I could have two in a week. I may not have one in six months.

**Mr DAVID SHOEBRIDGE:** The Crime Commission would have to be one of the most secretive and powerful crime organisations in the country.

**CHAIR:** Crime fighting organisations.

**Mr DAVID SHOEBRIDGE:** Crime fighting organisations in the country.

**Mr O'CONNOR:** Do you want me to comment on that?

**Mr DAVID SHOEBRIDGE:** Do you agree that the NSW Crime Commission would have to be one of the most secretive and powerful and crime fighting organisations in the country?

**Mr O'CONNOR:** I do not necessarily agree with the title "the most secretive". We try to be fairly open in our dealings with people we have dealings with. We are covered by a piece of statute that prevents us from commenting on operational matters that we are dealing with unless it is within the compass of the Act. So we do not regularly hold press conferences and things of that nature.

**Mr DAVID SHOEBRIDGE:** Clearly the secrecy provisions that cover the Crime Commission would prevent you from talking with journalists about Crime Commission work.

**Mr O'CONNOR:** Correct.

**Mr DAVID SHOEBRIDGE:** Do you talk with journalists about Crime Commission work?

**Mr O'CONNOR:** No.

**Mr DAVID SHOEBRIDGE:** How did your conversations with Mr McKenzie that you detail in paragraphs 9, 10 and 11 start? Why did you start having that conversation with Mr McKenzie?

**Mr O'CONNOR:** Mr McKenzie rang me and my impression was he wanted to vent. I think he took offence to what had been said to him and he wanted to discuss it with someone.

**Mr DAVID SHOEBRIDGE:** How did it start? Did he phone and say, "Look I've had this bloody awful exchange" with somebody?

**Mr O'CONNOR:** He phoned me and my recollection of the conversation is as detailed, in as much detail as I could put it, in the letter. My recollection of the conversation is no better now than what it was when I drafted the letter and it occurred in that way.

**Mr DAVID SHOEBRIDGE:** So far as you could tell as the recipient of the phone call, the purpose of the phone call was to download the information to you about Mr McKenzie's conversations with people and the Ombudsman?

**The Hon. TREVOR KHAN:** He said it was to vent.

**Mr O'CONNOR:** That is correct, to vent.

**Mr DAVID SHOEBRIDGE:** To vent about the conversations that Mr McKenzie had had with people and the Ombudsman?

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** You have had regular contact with Mr McKenzie?

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** For how long have you had contact with Mr McKenzie?

**Mr O'CONNOR:** I was first introduced to him about five or six years ago.

**Mr DAVID SHOEBRIDGE:** How often would you have had contact with him? How often would you have had communications with him over the past five or six years?

**Mr O'CONNOR:** Infrequently. I mean, I do not hear from him for months. More recently he has been travelling to Sydney and when he is in Sydney he tries to catch up for a meeting. I cannot always make it. In the last 12 months I probably would have met him face-to-face two or three times; probably half a dozen phone calls and SMSs

**The Hon. ADAM SEARLE:** In what circumstances were you introduced to him?

**Mr O'CONNOR:** I was introduced to him by another journalist. That other journalist was Chris Masters. He knew my former commissioner, Phillip Bradley. I was introduced to him in the commissioner's office.

**The Hon. ADAM SEARLE:** Would you describe this as a personal contact, or a semi-professional or professional contact?

**Mr O'CONNOR:** It was semi-professional in nature. My understanding is that Mr McKenzie is a person who has an interest in organised crime and corruption matters in general. He is involved in writing larger articles sometimes, and in more recent times television programs. He does a lot of research. At that time he was conducting an inquiry, or researching matters, into the Italian Mafia, in particular 'Ndrangheta, and he had obtained a lot of material from Italy. He was seeking some background advice as to their involvement in Australia.

**Mr DAVID SHOEBRIDGE:** Mr O'Connor, is the purpose of those conversations to gather information from the Crime Commission or to assist Mr McKenzie in determining the veracity of his information?

**The Hon. TREVOR KHAN:** I will take the point of order again. This is not relevant to the terms of the inquiry. This witness has assisted the inquiry by providing voluntarily a statement. It seems this line of questioning is not going to anything contained in the substance of his statement. We are now going on some peculiar fishing exercise for other matters which will not form part of our report. I ask that you rule it out of order, Chair.

**Mr DAVID SHOEBRIDGE:** To the point of order: It is clearly necessary to understand the nature of the relationship between this witness and Mr McKenzie so that we can determine whether or not we can rely upon the truthfulness or otherwise of what Mr McKenzie has said to Mr O'Connor. It is necessary to understand the relationship to see if they have a relationship of trust and confidence, and that is why it is clearly relevant.

**The Hon. TREVOR KHAN:** How does that in any way go to the truthfulness or otherwise of what McKenzie has apparently said?

**Mr DAVID SHOEBRIDGE:** I am not going to engage in a further debate with Mr Khan about it.

**The Hon. TREVOR KHAN:** How does it?

**CHAIR:** Mr Shoebridge has withdrawn the question.

**Mr DAVID SHOEBRIDGE:** In all your dealings with Mr McKenzie, have you found Mr McKenzie to be a person of truth?

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** To the best of your knowledge, has Mr McKenzie ever told you something that he had known to be untrue or that you later found out Mr McKenzie believed to be untrue?

**Mr O'CONNOR:** No, I regard him as a journalist of very high integrity.

**The Hon. ADAM SEARLE:** On that, leaving aside the issue of truth, have you found the information he has provided to you over time to be accurate?

**Mr O'CONNOR:** Are you referring to this specific information or are you referring—

**The Hon. ADAM SEARLE:** No, just generally about your interactions with Mr McKenzie when he has said things, leaving aside whether you believe them to be true, have you generally found what he has said to you to be accurate and reliable?

**Mr O'CONNOR:** I would say yes.

**Mr DAVID SHOEBRIDGE:** But the material in paragraph 10 is something that Mr McKenzie had personal knowledge of because he says that he had been talking to a person or persons within the Ombudsman's inquiry.

**Mr O'CONNOR:** I would agree with your proposition that he had been talking to these people, yes.

**Mr DAVID SHOEBRIDGE:** Based upon your relationship with and knowledge of Mr McKenzie, you believe that what he says is true.

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

**Mr DAVID SHOEBRIDGE:** Is that right?

**Mr O'CONNOR:** That is correct.

**Mr DAVID SHOEBRIDGE:** You say in paragraph 10 (i) that he, being Mr McKenzie, had been talking to a person or persons within the Ombudsman's inquiry. Sitting here now, can you recollect whether or not he said he had been talking to one person or to multiple persons?

**Mr O'CONNOR:** No. I deliberated over that when I was writing the letter.

**Mr DAVID SHOEBRIDGE:** I can imagine.

**Mr O'CONNOR:** That is why I phrased it in the way I did.

**Mr DAVID SHOEBRIDGE:** Is that because it is your recollection that Mr McKenzie did not actually say someone's name, or you cannot remember one way or another?

**Mr O'CONNOR:** No, I am absolutely positive he did not name anyone.

**Mr DAVID SHOEBRIDGE:** In paragraph 2 you say "those persons were investigators who had previously worked in Melbourne". As I read that—and correct me if I am wrong—it seems that probably on balance you think it was more than one person that Mr McKenzie was talking about?

**Mr O'CONNOR:** It could have been. I do not know.

**Mr DAVID SHOEBRIDGE:** Your memory is that it was at least one and may have been more than one. Would that be fair?

**Mr O'CONNOR:** Correct.

**Mr DAVID SHOEBRIDGE:** You understand, do you, that Mr McKenzie has denied that anybody from within the Ombudsman's office was the source of the leak of his 17 April article?

**Mr O'CONNOR:** Yes, I have seen his response to this Committee and I accept unreservedly his statement that it is not a person from the Ombudsman's office.

**The Hon. ADAM SEARLE:** But that does not rule out the possibility that a person or persons within the Ombudsman's office may have confirmed the story. It just means, assuming what he says is correct, that they were not the original source.

**Mr O'CONNOR:** I think anything is possible, but I do not know.

**Mr DAVID SHOEBRIDGE:** Having heard what Mr McKenzie has said—

**The Hon. TREVOR KHAN:** He has not heard it; he has read it.

**Mr DAVID SHOEBRIDGE:** Having read what Mr McKenzie has said about persons in the Ombudsman's office not being the source of his article, do you have any reason to believe that what Mr McKenzie told you, as recounted in your statement, is untrue?

**Mr O'CONNOR:** No, they are not incompatible statements.

**Mr DAVID SHOEBRIDGE:** Could you please explain to the Committee your reasoning as to why they are not incompatible?

**Mr O'CONNOR:** He could, in fact, be talking to persons from the Ombudsman's office about any manner of things and the leak to him relating to the referral to the DPP could have come from some other person, other than them.

**Mr DAVID SHOEBRIDGE:** What you recall him saying is that the person or persons he had spoken to were within the Ombudsman's inquiry and that those persons regarded the charging of Kaldas as a victory for the inquiry. So they must have at least been confirming the leaked story if nothing more.

**Mr O'CONNOR:** That is entirely possible. Having regard to the timing, this conversation occurred a week or 10 days after the article appeared.

**Mr DAVID SHOEBRIDGE:** Now you have the additional information about what Mr McKenzie has said, do you want to make any comment upon what you have said in paragraph 11 of your statement, being the conclusions that you draw from the conversation?

**Mr O'CONNOR:** I clearly am wrong, but I would like to say that that was a theory on my part and I deliberated long and hard before providing this. It was just a theory that could be advanced, either confirmed or discounted. But the letter that I received from Mr Borsak—with due respect—set a low threshold. It was just any information that may assist, so I felt this was information that could potentially assist and I felt compelled to provide it.

**Mr DAVID SHOEBRIDGE:** I do not think anyone could critique you because you have set out your reasoning and the basis upon which you have set out your reasoning.

**The Hon. TREVOR KHAN:** Critique or criticise?

**Mr DAVID SHOEBRIDGE:** That is what you sought to do in your letter. Is that right?



**Mr O'CONNOR:** Correct.

**Mr DAVID SHOEBRIDGE:** Now you have the further information, do you have any view as to whether or not Mr McKenzie's conversation with you disclosed a leak from the Ombudsman to Mr McKenzie?

**Mr O'CONNOR:** I unreservedly accept Mr McKenzie's statement that the leak relating to this matter did not come from the Ombudsman's office.

**Mr DAVID SHOEBRIDGE:** But what do you say to the fact that clearly, from the conversation you set out there, someone in the Ombudsman's office was confirming to Mr McKenzie that a deputy police commissioner was to be charged? That is clearly a leak.

**Mr O'CONNOR:** Can you repeat that question? I am confused.

**Mr DAVID SHOEBRIDGE:** Someone in the Ombudsman's office was confirming to a journalist that a deputy police commissioner was the subject of charges.

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** That must be a leak.

**Mr O'CONNOR:** It is possible. I do not know the circumstances of Mr McKenzie speaking. I do not know what was said apart from that.

**Mr DAVID SHOEBRIDGE:** Mr McKenzie says it goes beyond that. Indeed, someone from the Ombudsman's office regarded the charging of a deputy police commissioner as a victory. You know that.

**Mr O'CONNOR:** Yes, I do know that. But it is possible—I am not saying it is likely—that he could have put the information to them and asked them to comment. I do not know; he did not say that.

**Mr DAVID SHOEBRIDGE:** But that clearly was the basis of this.

**Mr O'CONNOR:** Yes. From what I have been told, yes.

**The Hon. ADAM SEARLE:** I refer to paragraph 10. Do you have a sense from that conversation of the time frame in which Mr McKenzie obtained this information from a person or persons in the Ombudsman's office?

**Mr O'CONNOR:** I had a sense, based upon my conversation, that it was recent to the telephone call to me.

**The Hon. ADAM SEARLE:** Approximately when was that?

**Mr O'CONNOR:** About seven to 10 days after the publication of the article.

**The Hon. TREVOR KHAN:** I refer to paragraph 10.4. You make reference to those persons—again, we can forget about the number—regarding the charging of Kaldas as a victory for the inquiry.

**Mr O'CONNOR:** Yes.

**The Hon. TREVOR KHAN:** Going back to the conversation, if Kaldas is not being charged with any offence at this stage, was what he was telling you essentially that that person was or persons were talking about the victory of Kaldas having been charged, or that it would be a victory for the inquiry if he were charged at some time in the future?

**The Hon. ADAM SEARLE:** Or was there simply an assumption that he would be charged?

**The Hon. TREVOR KHAN:** Yes, that is right.

**Mr O'CONNOR:** I think the former proposition—it would have been a victory if he were charged.

**Mr DAVID SHOEBRIDGE:** The future imperfect.

**Mr O'CONNOR:** Yes. And that offended Mr McKenzie.

**Mr DAVID SHOEBRIDGE:** You have a long and distinguished career as an investigator. What is your opinion of an investigator stating that charging someone is a victory for an inquiry? What do you make of that?

**The Hon. TREVOR KHAN:** There has been many a party held in a pub on a Friday night.

**The Hon. GREG PEARCE:** I think the Committee took the view that if questions went to operational matters then the witness would be invited to give his evidence in camera if he so wished. I think this is getting a little bit past that.

**CHAIR:** I agree. I advise Mr Shoebridge to be careful.

**Mr DAVID SHOEBRIDGE:** I am not asking whether there is a secret Crime Commission party after someone is charged. I am asking whether you have a professional view about an investigator stating that the charging of someone arising out of an investigation is a victory.

**Mr O'CONNOR:** I do not see how my personal views on that matter are relevant. If you press it, it is a matter for you. I do not see how it is relevant.

**Mr DAVID SHOEBRIDGE:** You say that Mr McKenzie was offended.

**Mr O'CONNOR:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you take similar offence when you see that?

**Mr O'CONNOR:** I think Mr McKenzie was offended in the context of this inquiry, not generally. I think his reading was that Kaldas was perceived to be a victim, and that if the victim is charged that is perverse. That is the way he was portraying it to me.

**Mr DAVID SHOEBRIDGE:** Did you basically agree with Mr McKenzie or affirm his position in that conversation?

**Mr O'CONNOR:** I agreed that I think they may have lost perspective.

**The Hon. ADAM SEARLE:** Do you think Mr McKenzie's view was formed because he thought that any charging of Mr Kaldas would be improper or not sound?

**Mr O'CONNOR:** I do not think he was commenting on that. I think he just saw the perverse nature or the irony of a victim being charged. That is where he was coming from.

**The Hon. ADAM SEARLE:** Was the victim situation because Mr Kaldas was a whistleblower?

**Mr O'CONNOR:** I do not know what Mr McKenzie thought, but that was the impression I got.

**The Hon. ADAM SEARLE:** Because he had been the subject of the original police bugging?

**Mr O'CONNOR:** I think it was probably that.

**Mr DAVID SHOEBRIDGE:** In short, it is a perverse outcome when the person who presses the complaint and who eventually gets an inquiry is the one who ends up being charged.

**Mr O'CONNOR:** That is one view.

**Mr DAVID SHOEBRIDGE:** That was Mr McKenzie's view, which you affirmed.

**Mr O'CONNOR:** It was.

**The Hon. GREG PEARCE:** Thank you for your information and for appearing today. We realise that you are in a slightly difficult position. However, it was important that the Committee be able to expand on the information.

**Mr O'CONNOR:** I would like to make a short comment to the Committee and to provide some advice. During the course of my employment I am required to have relationships with many people—police, lawyers and journalists. The publication of the confidential letter that I provided has damaged my relationship with Mr McKenzie and potentially other journalists and it could compromise my ability to do my job. In addition, I think it has resulted in some unfortunate consequences that were completely unnecessary in relation to Mr Barbour and his office, and in particular some of his investigators. I also think the Committee is doing itself a disservice because there is a likelihood that someone in the community will have some information that would be of assistance. However, any observer who has seen how my confidential information was dealt with would probably be deterred from assisting the Committee. That is something for members to have in mind in future.

**The Hon. ADAM SEARLE:** The difficulty we had was that we were seeing Mr Barbour very shortly thereafter and because of the terms of the inquiry we needed to be able to drill down into the issue of where the leak may have come from. Your information was very useful, but we could not pursue that with Mr Barbour without taking the step we felt we needed to take.

**Mr O'CONNOR:** I understand.

**The Hon. ADAM SEARLE:** It was not an easy decision, and it was not unanimous. However, the majority felt it was necessary for the Committee to be able to fulfil its task. We understand that it was not easy and there were competing considerations.

**Mr DAVID SHOEBRIDGE:** To be frank, it was about you having a conversation with a journalist. As a general rule, conversations with journalists are not seen to be secret.

**The Hon. TREVOR KHAN:** You are getting grubby now.

**CHAIR:** The nature of these hearings is that they should always be presumed to be public if they are to be effective from an examination point of view. The request was that your evidence be given in camera. The vote was split.

**Mr DAVID SHOEBRIDGE:** No, not about in camera evidence.

**CHAIR:** I was about to say that for the Committee to be able to examine you in public on your statement we had to make your statement public. That is why I said earlier that if you wanted or needed to vent issues in camera you could ask for the hearing to be in camera. I take on board what you say, but the Committee's view is that the very nature of our inquiries overrides your specific requirements unless you request us to do otherwise.

**Mr DAVID SHOEBRIDGE:** We did ask you the threshold question as to whether your conversation with Mr McKenzie related to your work with the commission or whether it was a private conversation. At the very outset you affirmed that it was a private conversation.

**Mr O'CONNOR:** Correct.

**CHAIR:** There is no point in having an inquiry into what has been a long, drawn-out process of exceptional secrecy on the part of all sorts of agencies from the select committee to this committee if it is secret. There is no point to it.

**The Hon. ADAM SEARLE:** Anyway, thank you for appearing.

**CHAIR:** Thank you for appearing.

**(The witness withdrew)**

**(The Committee adjourned at 11.00 a.m.)**