

CORRECTED

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"**

At Sydney on Tuesday 3 February 2015

The Committee met at 1.00 p.m.

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 third hearing of the Select Committee of Inquiry into the Conduct and Progress of the Ombudsman's Inquiry into Operation Prospect. Before I commence, I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respects to the elders past and present of the Eora nation and extend that respect to any other Aboriginals present. Today we will be hearing from Mr Bruce Barbour, NSW Ombudsman, and Ms Linda Waugh, Deputy Ombudsman. We will also hear from Mr Peter McErlain, Detective Superintendent with the NSW Police Force and Mr Brett McFadden, Superintendent with the NSW Police Force.

Before I 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 two. In accordance with broadcasting guidelines, while members of the media may film or record Committee members, the witnesses and people in the public gallery should not be the primary focus of any filming or photography. I would also like to 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, so I urge witnesses to be careful about any comments you make to the media or to others after you complete your evidence because such comments will not be protected by parliamentary privilege if another person decides to take an action for defamation. The guidelines for broadcast of proceedings are available from the secretariat. Media representatives who are not accredited to the Parliament press gallery should approach the secretariat to sign a copy of the broadcasting guidelines.

There may be some questions that a witness would 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 the receipt of the transcript. Given the subject matter of this inquiry, it is possible that some of the information that witnesses may be asked to provide will be covered by statutory secrecy provisions. The position of the Legislative Council is the same as the Australian Senate and other Houses, that statutory secrecy provisions have no application to Parliament, except by express enactment and that the secrecy provisions do not affect the powers of the Select Committee to require answers to lawful questions.

The Legislative Council has stated this position in establishing the inquiry and received advice from Mr Brett 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 Brett Walker, SC, the Select Committee has adopted the unusual step of resolving to summons all witnesses to appear before 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 questions or provide information.

In the submissions received to date, inquiry participants have made a number of serious allegations against certain persons. I remind all witnesses who may reflect adversely on other people not to use parliamentary privilege and ensure your comments are relevant to the inquiry terms of reference. Witnesses are advised that any messages should be delivered to the Committee members through the Committee staff. Finally, could everyone please turn off their mobile phones or turn them to silent for the duration of the hearing. Please note also that we will break for 30 minutes after about one and a quarter hours of questions at 2.15 p.m. and then recommence at 2.45 p.m. and finishing, hopefully, at 4.00 p.m.

I welcome Mr Barbour, thank you very much for coming and, Ms Waugh, thank you very much for coming.

BRUCE ALEXANDER BARBOUR, Ombudsman, NSW Ombudsman, and

LINDA MICHELLE WAUGH, Deputy Ombudsman, NSW Ombudsman, affirmed and examined:

CHAIR: Mr Barbour, would you like to make a short opening statement?

Mr BARBOUR: Thank you for the opportunity to make an opening address Mr Chair and Committee members. Operation Prospect is investigating all of the allegations that have been made in connection with the Mascot references, together with subsequent investigations of those references by the NSW Police Force that have not previously been dealt with or have been inadequately dealt with. As the Committee knows, the matters which are the subject of Operation Prospect have an extraordinarily long and complex history, involving a multiplicity of individuals, agencies and institutions, and investigations, task forces and strike forces over many years. They have been the subject of a significant number of complaints, involving serious allegations about conduct in the course of the Mascot references and other subsequent strike forces, both at the level of individual actions and at a more systemic level as to the course of particular investigations.

Commensurate with their seriousness, the investigation of these allegations in the context of Operation Prospect has been rigorous. Over the past 18 months, I and staff from my office working on Operation Prospect have reviewed an enormous amount of information and considered a great many different lines of inquiry. We have held over 100 hearings and interviews stretching over more than 70 days of hearings. The time the inquiry has taken is necessarily a consequence of the scope of matters for investigation as part of Operation Prospect, the volume of material and the importance of ensuring that any findings which are ultimately included in my report are made with the benefit of a detailed analysis of that material. The time this inquiry has taken is also a consequence of conducting a fair investigation.

The events, which are the subject of Operation Prospect, have been the source of much conjecture over many years to the understandable distress of those individuals who have made complaints, but also it must be acknowledged on the part of those who are involved in the references and strike forces which are under investigation and against whom allegations may have been made directly or otherwise. It is the obligation of any independent inquiry such as Operation Prospect to ensure that the best evidence is obtained, tested, evaluated in context and to ensure that natural justice is afforded before any views are formed as to the merits of the matters which are its subject. I and those working on Operation Prospect have sought to conduct the investigation fairly and impartially. I have endeavoured to ensure that for all persons involved, I provide a safe, fair and reasonable process, one that does not play favourites or takes sides, and one that is directed to finding the truth in relation to these matters based on all of the available evidence and not just part of it.

Contrary to what has been reported, I have not undertaken Operation Prospect with any preconceived views about the substance of the matters which are the subject of investigation. Despite extensive reporting and politicisation of the matters that are the subject of inquiry in Operation Prospect, I have endeavoured to maintain both my objectivity and neutrality on all issues, which I believe is essential given the very important task I have to hear and determine the matters before me. I do not engage in private meetings with individuals who are involved in this matter to discuss any issues the subject of my inquiry, nor have I provided any media interviews or background briefings.

Most importantly, though, I have not made any findings and I will only do so after I have completed gathering all relevant evidence, analysing and reflecting upon that evidence and, significantly, after any persons who may be adversely affected by any findings have had an opportunity to respond to them. Indeed, one of the concerns I have raised in correspondence with this Committee is the risk to the public interest that attends the asking of questions by Parliament about issues on which I may have taken evidence voluntarily or under compulsion on which I am required to deliberate and make findings and, before finalising my conclusions, accord natural justice to persons whose interests may be adversely affected.

In response to concerns which have been expressed about Operation Prospect hearings, for example, witnesses not being asked about particular matters the subject of complaints they have made or witnesses being subjected to vigorous questioning, I make the following comments. First, there can be no question that the interests of those who are personally involved and the public interest are best served by the finalisation of Operation Prospect in as timely a manner as our resources permit. I wish to acknowledge in this context the commitment of the staff involved in Operation Prospect, many of whom have worked into the night and

regularly on weekends in order to progress this investigation. I and my staff have always recognised the interest in resolving this matter expeditiously and it has always been our goal.

One of the ways we have sought to achieve that aim is to use the hearings we have conducted for the purpose of acquiring direct evidence about the matters which are the subject of inquiry. Many people who have made complaints in the past or to Operation Prospect itself about the conduct associated with the Mascot references were not themselves directly involved in the investigations. By way of example, they may have been named in listening device warrants or subjected to listening device or telephone intercepts, but they were not involved in the decisions which led to them being so named or subjected.

Accordingly, such persons cannot assist Operation Prospect with the substance of their complaints. I can assure this Committee and complainants that all submissions have been considered very closely, as have any interviews that have been conducted with complainants. However, the hearings have focused on eliciting direct and additional evidence from those who have direct knowledge of matters which are the subject of the inquiry. Hearsay evidence in the form of things that police or journalists have been told by others is not a substitute for direct evidence, nor does it assist in the expeditious conclusion of the inquiry to ask complainants to repeat things that they have already set out in writing, and in some cases have expanded upon in interviews with my officers. I have endeavoured to go to the source because that is where direct evidence can be obtained.

The degree of vigour of the testing to which evidence has been subjected has been appropriate to the issues that have been raised. To illustrate this in numerical terms by reference to the two deputy commissioners who have given evidence, Deputy Commissioner Kaldas was examined for one day, while Deputy Commissioner Burn was examined for four days. These raw figures are sufficient to indicate the primary focus of the inquiry. I do not expect that Deputy Commissioner Kaldas nor the journalists who have given evidence would be aware of the duration of the examination of other witnesses nor of the focus of those other examinations. But the conclusions that they have drawn from the duration and subject matter of their own investigations are baseless. I would note that Mr Barratt appeared before me for one hour and 13 minutes, Mr Harding for 47 minutes, and Mr Mercer for two hours and 39 minutes.

I note that at the outset of hearings where this was clearly a relevant issue, witnesses were told directly about this. In the case of Deputy Commissioner Kaldas, for example, he was assured at the outset of his hearing that the detailed letters of complaint that he prepared for the Police Integrity Commission Inspector and for the benefit of the Ombudsman had been delivered and were being dealt with. I will go into a little bit more detail about that in a moment.

Secondly, where I or a member of my staff has reason to believe that a witness has direct evidence about a matter or matters that are relevant to any areas of inquiry which form part of Operation Prospect, I will ask that witness about that matter or matters irrespective of whether the witness has also made a complaint about one of the other aspects of the inquiry. I make no apology for taking this course. I consider it to be essential and consistent with my role to ensure that the matters the subject of Operation Prospect are resolved with the benefit of the most comprehensive and reliable material and evidence available.

Thirdly, that I have taken that course cannot rationally support an assertion that I have permitted the investigation to become sidetracked about what are said to be ancillary issues, in particular, the unlawful and/or improper dissemination of material from hardcopy files and/or the computer systems of the NSW Police Force, the NSW Crime Commission and the Police Integrity Commission. Such an assertion is without foundation and is unsupported by any evidence. It is apparent from the material that I have provided to the Committee not only that this issue is not properly characterised as a side issue but also that there are other issues, including those raised by the complaints of Deputy Commissioner Kaldas, for example, which have occupied the vast majority of Operation Prospect's time and resources. I certainly do not have the additional time or resources to investigate or inquire into matters which are not important and which do not require investigation.

Fourthly, the testing of evidence is an inherent part of any inquiry. Subject to well-settled boundaries, the resolution of matters which are in dispute is assisted by assessing how a witness's account holds up when subjected to questioning. Particularly in a matter as complex as this, I would not be doing my job if I did not seek to test evidence that has been given before me in hearings. The questioning is directed at what the direct evidence shows and the matters that need to be raised in light of that direct evidence. It is appropriate in light of some of the evidence that has been given to this Committee that I briefly provide a little more detail about some of these matters to which I have referred.

I recognise and I understand the concern that complainants have about their names being placed on warrants. But if they are unable to assist by providing information about what information holdings or material might have been available to Operation Mascot, clearly those questions are best directed to those people who were involved in Operation Mascot and a detailed analysis of the information holdings of Operation Mascot. We endeavoured to assure those complainants that simply because we were not asking them further questions about those matters did not mean that they were not being looked at and were not being looked at thoroughly and were the subject of considerable investigation by us. For example, when he gave evidence on 5 September 2014, counsel assisting said the following to Deputy Commissioner Kaldas:

First of all, I would like to reassure you that the detailed letters of complaint that you have prepared for the Police Integrity Commission Inspector and for the benefit of the Ombudsman have been considered in detail. There has been a great deal of action behind the scenes for obvious reasons investigating the matters that you have raised as well as many, many interviews of people who had light to shed on the subject matter. So I want to reassure you at the beginning, please don't think because I'm not going through chapter and verse of the complaint material that you have sent in and the detailed information that you have sent in that it has not been considered and has not been dealt with. Rest assured that it has.

Mr Kaldas's response was, "Thank you." That is one example of how these issues have been dealt with. The possible removal by staff of the Crime Commission, the NSW Police Force or the Police Integrity Commission of confidential records from their computer systems and/or files and the dissemination of that material to people who are not by law entitled to receive it is clearly a matter that must be investigated. There have been multiple complaints by people about unlawful access to and release of information. It not only breaches secrecy provisions but it potentially breaches privacy provisions and it is clearly a serious issue that must be addressed by careful investigation.

A claim by a person who releases information that they are a whistleblower requires careful consideration against the relevant legislation. Internecine struggles within police forces are not new and selective release of information to selected journalists is a technique sometimes deployed in such struggles. Persons who are genuine whistleblowers have nothing to fear from inquiries into such matters because they have the protections provided by this Parliament. However, this Parliament has required that some kinds of information not be disclosed and has provided penalties for those who breach that requirement. My task is to apply the law as it has been set down by Parliament, not value judgements. To suggest that my inquiry has focused on targeting whistleblowers is quite simply false.

Witnesses to Operation Prospect have in the vast majority of cases been legally represented. Any experienced lawyer would know that confidentiality directions can be varied upon request. Of those who have given evidence to this Committee or who will give evidence to this Committee, Mr Barratt was represented; Mr Harding was represented; Mr Kaldas was represented by solicitors and also by eminent senior counsel from the Sydney Bar; Mr Mercer and Mr Morri were also similarly represented; Deputy Commissioner Burn was represented by a solicitor; and Commissioner Scipione appeared without representation. During the course of giving evidence, each of the legal representatives was provided with an opportunity to ask any questions of their client about their evidence which would assist Operation Prospect.

Legal representatives were invited to seek clarification on any procedural matters, they were advised that they should object to any questions if they believed the questions were irrelevant or inappropriate, to identify any privilege at any stage that might relate to their client, to seek to confer with their client at any stage should that be necessary, and to put anything in re-examination to their client they believed relevant or helpful at the end of questioning. Where relevant, each of the witnesses was assured that the submissions they had made and documents and other information they had provided to Operation Prospect were the subject of careful consideration. Each was advised of the truth, which was that this was a very detailed and protracted investigation. Witnesses were not asked questions about matters on which they were not in a position to provide evidence, nor to provide evidence which went over the material that they had previously provided to Operation Prospect. The following is an excerpt from the evidence of Mr Harding to Operation Prospect. In the course of the evidence given by Mr Harding on 14 August 2014, I stated to him:

I want to just offer you a few further assurances. Firstly, your submission to us of May 2013 I have not only read but I have read several times. With the exception of your views about this particular operation, I would say to you that I think your analysis is very reasonable and I think well balanced, and for somebody affected by the matters, quite objective. So my commendation to you for that.

And after explaining to him why the hearing was being held in private, I went on to say:

I can also give you my assurance that to the extent of my powers and my commitment to this I will be doing the best job that is humanly possible to ensure that we are able to put a close to the matters that are the subject of this investigation once and for all, and we will certainly be reporting ultimately publicly in relation to this matter.

Mr Harding's response was, "Thank you." It is essential to me as the New South Wales Ombudsman that I and my office conduct ourselves with the utmost integrity and that when we conduct investigations we do so thoroughly, efficiently and fairly. I am sure you will agree that the individuals who have made allegations in relation to the Mascot references, the persons whose conduct is the subject of allegations or who were otherwise involved in the references and the public, more generally, deserve a thorough, impartial and fair examination of the allegations which are the subject of the inquiry, with the benefit of all of the direct evidence that can be obtained. Anything less than this will only continue to perpetuate distrust, feed ongoing grievances and fail to provide many decent people with the closure about these issues that they quite rightly require and deserve.

I have endeavoured to provide this Committee with as much information as I can, within the limits of what is appropriate and reasonable without jeopardising the inquiry I am undertaking. I have provided a very detailed submission which I believe answers all of the concerns I understand the Committee to have. One of the difficulties with providing any further information is the nature of the inquiry as one being undertaken in private. I am required by section 17 of the Ombudsman Act to conduct investigations under the Act in the absence of the public. In doing so, I am not making a choice to hold a secret inquiry, as some commentary has suggested, but instead I am complying with my governing legislation.

I have made a claim to public interest immunity in respect of certain matters which are detailed in my statement at paragraph 13. I have made the claim in my capacity as the head of a State agency, on the basis that disclosure of the information the subject of the claim would be injurious to the public interest. As such, I am obliged to make this claim. It is not within my remit to waive such claims as a matter of discretion. I have not and do not make this as a claim that Parliament can be prevented by a court from receiving material in response to a summons. Rather, I seek to invoke the Parliament's own procedures for deciding claims of privilege which are dealt with in the Legislative Council Handbook, in the first full paragraph of chapter 18, on page 504 and the second paragraph of chapter 18, on page 511.

Given the importance of the issues that I raise, I ask the Committee to utilise the procedure which is available in relation to documents of referral of the question to a legal arbiter so that the public and in particular those who have come forward to give evidence before me can have complete confidence that the judgement that has been made has been made independently, fairly and also in the public interest.

I have referred to the volume of material, the number of days of hearing conducted and the resources that I have applied to undertaking Operation Prospect. The inconclusive and unsatisfactory nature of previous inquiries into the issues necessitates a thorough and careful examination in order to reach a resolution that will command public acceptance and respect. For this Committee to pass judgement on any of the substantive issues based on incomplete evidence will make the task of finally resolving these questions all the more difficult and possibly impossible. I ask the Committee to exercise restraint. Short-sighted judgements in this matter may produce short-term advantage for some individuals but will ultimately be to the detriment of public confidence in many important public institutions and offices.

I expect to finish this inquiry within five months and to table a detailed report in Parliament which will be made public. At that point, the Parliament and the public will be able to judge both the thoroughness and fairness of my inquiry and the substance of the matters that I have been investigating. I thank the Committee for its indulgence in permitting me to make that opening statement and, to the extent I am capable, I am very happy to assist the Committee in answering what questions I am able to. Thank you.

The Hon. ADAM SEARLE: At page 5 of your submission to us, attached to your letter, you set out a timeline and logistics arising from the time Parliament gave you the task that you are fulfilling in Operation Prospect. When you went about obtaining information from other State agencies, did you encounter any resistance?

Mr BARBOUR: On the whole, agencies have been very forthcoming. Because of the sheer volume of what we requested, there has been quite clearly an element of negotiation that has been involved and there has been a staggered production of documents and regrettably, in the nature of an investigation of this kind, sometimes multiple requests for documents must be made. That is why I have set out, in as much detail as I can for the Committee, what has happened. We have not met any resistance from any of the agencies in terms of the provision of information.

The Hon. ADAM SEARLE: Is it correct to say that you did not start speaking to witnesses, or potential witnesses, until May of 2014? Is that when you first started talking to people?

Mr BARBOUR: No, that is not correct.

The Hon. ADAM SEARLE: When did you first start interviewing witnesses?

Mr BARBOUR: Witnesses have been interviewed, in one way or another, from the very commencement. Deputy Commissioner Kaldas, for example, was first interviewed in November of 2012.

The Hon. ADAM SEARLE: Almost immediately the Parliament's legislation was brought into effect?

Mr BARBOUR: As soon as we were able to.

The Hon. ADAM SEARLE: Notwithstanding the great volume of material, can you explain to us in a bit more detail than you have so far provided, why it has taken more than two years for you to reach the present stage in your investigation?

Mr BARBOUR: I think the assertion that this inquiry has taken more than two years needs to be broken down. What I have tried to demonstrate in the material provided to the Committee is that, whilst some initial activities took place within that time span, the recruitment of staff, the securing of premises—all of the attendant obligations that we needed to meet prior to the commencement of effective investigative procedures—took some time. We were not effectively up and running until well into 2013 and we have indicated in paragraph 22 that it was not until 22 April 2013 that we were fully staffed and operational.

The Hon. ADAM SEARLE: So that is when your work began in earnest you say?

Mr BARBOUR: Certainly when we were able to do much more work than we had been able to do up until that time. Not surprisingly, much of our energy was expended on recruitment of staff and the setting up of all of these necessary requirements to be able to conduct a proper investigation. We were also receiving an enormous amount of material at that stage and we needed to have systems in place to deal with that.

The Hon. ADAM SEARLE: In relation to paragraph 30, you are talking there about requests to vary confidentiality directions. And what you say there is what you have done in relation to those requests, that you have made those variations. Did you make available to people who were giving evidence to the inquiry that this was a process that was available to them, to seek variations to confidentiality directions?

Mr BARBOUR: It has not been a statement that has been made in a blanket way to everybody, no. But certainly, if we believed that it was appropriate to highlight that to a witness, we did. Similarly, if a witness requested a variation, we were happy to consider that. We have made multiple variations for different reasons. One of the concerns, of course, in making a blanket variation order, as has been suggested, is that it is impossible to know what each witness needs in terms of a variation. And so what we have done is, on a case-by-case basis, considered those matters.

The Hon. ADAM SEARLE: But why not a blanket providing of information to witnesses that this is available to them?

Mr BARBOUR: Well, the provisions of the section are clear and, as I have indicated, the vast majority of witnesses have been legally represented. I do not believe that there is any difficulty in ascertaining that that is available. Indeed, that is demonstrated by the number of requests that we have had, including from people who are unrepresented.

The Hon. ADAM SEARLE: Have you refused any requests?

Mr BARBOUR: No.

The Hon. ADAM SEARLE: Can you tell the Committee whether or not you have been able to speak with Mr Dolan, who is one of the people who was important and involved in the task force in Mascot and Florida?

Mr BARBOUR: We have spoken to all the people that we believe are important. For the reasons that I have set out in the public interest immunity claim, I am very concerned that it is not in the public interest to identify by name all of the people that we have sought evidence from and who have provided evidence to us. If the Committee is keen to ask specific questions about those issues, it may be preferable to consider whether or not we go into camera for those types of questions. I think that would help to preserve the public interest and maintain the integrity of the inquiry.

The Hon. ADAM SEARLE: I understand your public interest immunity claim but the fact that Mr Dolan was involved in this matter in a senior role is a matter of public record. You have said you have spoken to the people who were directly involved, or the most important. Surely there can be no breach of any of those considerations by simply informing the Committee whether you have been able to locate and speak with Mr Dolan.

The Hon. TREVOR KHAN: Point of order: The witness has indicated that he would be prepared to deal with certain matters in camera. I would invite the Committee—if Mr Searle wishes to pursue this line of questioning—to go into camera.

CHAIR: Order! I rule that we have not got to that point just yet, Mr Khan. I would like to hear Mr Barbour's answer.

Mr BARBOUR: If I can assist in further answering this way: I am endeavouring to walk a very fine line here. I want to be, in every way possible, cooperative and provide assistance to this Committee. At the same time, I have an obligation to the inquiry that I am conducting to ensure that I do not do anything which unnecessarily jeopardises it and, very particularly, the safety, welfare and health of many of the people who are involved in this matter. Many people have spoken to us in hearings and given evidence under the very clear understanding that these matters were going to be conducted in private and that there would be no public discussion of their involvement in these matters. That is one of the factors that I am trying to weigh and balance in my answers to your questions. I am not wanting to be in any way difficult but I genuinely believe that there are some matters here where the public interest requires that we answer questions in camera, particularly where it involves individuals and particularly where I am being asked to comment about whether individuals have or have not provided evidence to my inquiry.

The Hon. ADAM SEARLE: Where do you say that people would have understood that their assistance to your inquiry would be confidential? Presumably they were giving evidence to you by way of subpoena.

Mr BARBOUR: All witnesses gave evidence under summons but all witnesses—and most—have complied with the confidentiality directions and understood that everybody would be doing so.

Mr DAVID SHOEBRIDGE: That is your direction, not the witness's request.

Mr BARBOUR: The same effect.

Mr DAVID SHOEBRIDGE: You are saying that the witnesses gave it under the comfort or in the knowledge that their evidence would be confidential but you simply give that direction.

Mr BARBOUR: But that enhanced the witnesses' comfort in being able to come forward and provide evidence and speak openly and candidly about issues. That is in the interest of the inquiry.

The Hon. ADAM SEARLE: Do I take it that, in relation to my question about Mr Dolan, at this present time you are not willing to answer the question?

Mr BARBOUR: I have indicated that I am very happy to answer the question in camera if it is pressed. But I think, more importantly, what I have indicated is that every person that we believe is important to speak to in relation to this matter, we have spoken to.

The Hon. ADAM SEARLE: I ask you to turn to paragraphs 91 and 92 of your submissions. You talk there about obtaining, through your summonses, the production of 99 affidavits in relation to a number of listening device warrants and I think 111 affidavits in relation to 246 telephone intercept warrants.

Mr BARBOUR: Yes.

The Hon. ADAM SEARLE: Those were all in relation to Mascot and Florida?

Mr BARBOUR: Correct.

The Hon. ADAM SEARLE: Over what period of time were those affidavits and devices obtained?

Mr BARBOUR: They would have been over the life of Operation Mascot and Mascot II, which stretched over a period of approximately two to 2 ½ years.

The Hon. ADAM SEARLE: We have received evidence to this Committee to the effect that at least in relation to one listening device warrant in September 2000 the warrants were sought and obtained against a number of persons but that the supporting affidavit did not indicate any evidence of wrongdoing against a large number of those persons even though the evidence is quite clear that they were targets in their own right and not merely persons who happened to be incidentally recorded. What observation do you have about that practice of obtaining a warrant from a court without providing to the court evidence against those persons that would justify the granting of the warrant?

Mr BARBOUR: Those are the very issues that we are inquiring into. They clearly are at the heart of the allegations and complaints that have been made by many people and, clearly, those are issues that are important to get to the bottom of. I think it is important to stress that we are not simply looking at two warrants that have made their way into the public domain. The purpose of providing that detailed information to the Committee was to indicate the extent of the affidavits and warrants that are in play and the importance to review all of those. As I have noted, we are talking in the affidavits alone of literally thousands of pages of information that allegedly supports the authorisation of warrants being sought.

It is also important for me to indicate that I want to thoroughly examine these issues in the interests of all of the complainants that have made their complaints. For example, we just discussed the two warrants that are before the Committee and have been released to the public. I am concerned to ensure that all affidavits and all warrants that have been taken out or issued in relation to complainants are thoroughly examined to see whether or not there is any basis at all for their naming and to be able to report publicly on that.

What that means is for Mr Harding, for example, we will be examining 14 affidavits and 42 warrants that have him named. In relation to Mr Barrett, we are fully investigating not two warrants where he is named but 52. In relation to Deputy Commissioner Kaldas we are not limiting our inquiries to two warrants and one or two affidavits: We are reviewing in detail 35 affidavits and 80 warrants where he has been named. To do anything other than to review these thoroughly and in detail would create a gross injustice to the complainants and would clearly minimise the effectiveness and appropriateness of my inquiry. This is why I urged in my opening statement to be cautious about accepting what only witnesses know from their own experience in relation to what they have been examined on.

The Hon. ADAM SEARLE: You would accept a general proposition that if a warrant was obtained without any evidence against a person that would be both illegal and improper—if the evidence established that fact?

Mr BARBOUR: I cannot accept that, I am afraid, completely. The legislation that was in operation at the time clearly required the names of people who might incidentally be recorded, and where that was known to be potentially the case to also be included in a warrant. A judge was supposed to have regard to that and consider that. Names wherever possible were supposed to be included on the warrant. The legislation is very clear and the obligations are very clear. Certainly, in my view that ought be made clear on all of the documentation but it would not be a proposition that I could agree to that all the names in a warrant are necessarily targets or people who are actively being pursued in terms of the recording of their conversations.

The Hon. ADAM SEARLE: But where they were targets and the evidence does not set out any allegations of wrongdoing against that person that would be an illegally obtained warrant, would it not?

Mr BARBOUR: I do not know what your definition of illegally obtained warrant is and I am not sure what offence you are referring to. If you want to quote the particular provisions I am happy to give you the best advice I can.

Mr DAVID SHOEBRIDGE: Mr Barbour, it would be grossly improper to obtain a listening device warrant against somebody without setting out the basis upon which you seek that listening device warrant against them in the evidence you present to the judge.

Mr BARBOUR: One of the things that we are examining very closely is whether or not there was appropriate information contained in affidavits to support the application for warrants and also whether or not there was appropriate regard given to distinguishing between people who were in fact being targeted and those who might not in fact be targeted but who were potentially going to have their private conversations recorded. The Act that was in place at the time clearly contemplated a regime that would look at both. Whether or not we conclude that has been done appropriately in these circumstances or correctly is one of the issues that I must make findings on.

Mr DAVID SHOEBRIDGE: This is not an academic discussion. There was a warrant issued with 114 names on it in September 2000 where the affidavit material in support of it made out no case whatsoever, whether as a target or as a person who may incidentally come into contact with a person with a listening device—no basis upon which to include them on the warrant yet nevertheless it was rubberstamped by the Supreme Court and the warrant was issued naming all 114 persons. It is not an academic discussion. That is improper, is it not?

Mr BARBOUR: I think that is a matter that ultimately you are clearly going to determine it seems in this Committee. What I have just indicated is the best answer I can give and that is that there were various obligations in play and we are examining whether or not those obligations were appropriately exercised. We are also gathering evidence to try to understand if they were not appropriately exercised what the basis of that was.

Mr DAVID SHOEBRIDGE: Do I understand that your investigations show that Mr Kaldas has been named on some 80 warrants and Mr Barrett has been named on some 52 warrants? That is what your initial investigations show, is that right?

Mr BARBOUR: That is correct.

Mr DAVID SHOEBRIDGE: Did you ask Mr Kaldas any substantive questions about the rationale for his inclusion on those warrants when he was giving evidence before you in a compulsory examination?

Mr BARBOUR: Deputy Commissioner Kaldas was asked questions about things which he was able to provide evidence on. Mr Kaldas had clearly indicated he knew no reason why he should be included on any listening devices or any warrants. I am very happy to ask anybody questions if I believe they can assist my inquiries, but where they have no capacity to assist then there is no benefit to me or to the inquiry to ask them those questions. Deputy Commissioner Kaldas has made detailed complaints which detail all of his concerns and his reasons for being concerned. They are genuinely held concerns and they are being thoroughly and properly investigated.

Mr DAVID SHOEBRIDGE: There were reasons asserted for including Mr Kaldas on the affidavits for at least some of the warrants at different points. Is that right?

Mr BARBOUR: I do not know. It seems to be something you are asserting to me.

Mr DAVID SHOEBRIDGE: I am asking you were there reasons given by those who have come before your inquiry asserting there was a reasonable basis or a reasonable suspicion to include Mr Kaldas on the warrants?

Mr BARBOUR: I think, unfortunately, you are asking questions about matters that I actually have to make formal findings on on the basis of the evidence before me.

Mr DAVID SHOEBRIDGE: I am not asking you to make conclusions on the evidence. I am asking if people put assertions to you that there was a reasonable basis to include Mr Kaldas on the warrants. It is a simple question.

Mr BARBOUR: As I just indicated to you, you are asking me to comment on matters where clearly there is evidence before me and I need to make findings about that. I have indicated to the Committee the fact that that is unsafe to do in relation to this inquiry. If you wish to ask questions about those matters I would respectfully ask that we do so in camera to ensure that we mitigate against any unnecessary damage to my inquiry.

Mr DAVID SHOEBRIDGE: I will put a fairly simple proposition to you. Where persons have made assertions against a witness such as Mr Kaldas asserting that there is a basis to include them on a warrant and you do not ask Mr Kaldas in his evidence how he would refute that then that would be a real concern, would it not, for Mr Kaldas or any such witness?

Mr BARBOUR: Any witness who has information to provide about any of those issues has been thoroughly examined in relation to them.

Mr DAVID SHOEBRIDGE: If allegations are being made against people, those who are having the allegations made against them have a right to give their evidence directly to you so as to contradict them. We have had witness after witness come here and say that you did not ask them those questions. Can you not understand the very real concern that raises?

Mr BARBOUR: I do not believe that those witnesses are able to provide assistance in relation to the reasons why they may or may not have been targeted. They are unaware of the reasons. The very purpose, in part, of my inquiry is to get to the bottom of what there may have been in the minds of Mascot investigators at the time and whether in any way that was reasonable or otherwise. It may well be that you, sir, if you are conducting this inquiry would do things differently. I can only give you to the best of my ability the explanation that I have, which I believe is an appropriate one. I cannot answer the question in any other way.

You can put it in as many ways as you like but it is not going to change the facts of the matter. I have made it very clear that I am criticised on the one hand for this investigation taking too long yet on the other I am expected to ask questions of witnesses that they cannot give me any direct evidence on. Deputy Commissioner Kaldas made detailed complaints to my office. He set out all of the information that he had available to him. He set out in an interview to my staff all of his concerns and his beliefs in relation to that. Every single concern that he has put forward has been very carefully analysed and has been the subject of appropriate questioning and examination of people who can provide direct evidence in relation to it.

Mr DAVID SHOEBRIDGE: Mr Kaldas, for example, can provide direct evidence of what he says the history of antipathy is between himself and Mr Dolan. Indeed, he would be one of two key witnesses to provide that evidence and yet he says you did not ask him questions. How could there not be a more central or relevant witness for you to ask questions of regarding what I assume is a matter of substance in your inquiry?

Mr BARBOUR: I can only repeat what I have just repeated.

Mr DAVID SHOEBRIDGE: But you did not ask them the questions.

Mr BARBOUR: That is not what I said. What I said to you was that all of his concerns were documented in detail and they have been considered. He has also been the subject of interview with my officers where he went through all of that information. I am well aware of the concerns and the basis of his allegations and his stated antipathy between officers, which he believes is partly the cause of why he was targeted in relation to these matters. There is nothing that Deputy Commissioner Kaldas has not told me in relation to those issues. I see little benefit in going through them again if we are not going to get any additional information.

Mr DAVID SHOEBRIDGE: You see little benefit in hearing directly from one of the central witnesses in a hearing that you called on a key issue, which is whether or not Mr Dolan had antipathy towards Mr Kaldas and Mr Kaldas's version and history of that. Surely you must test that. You said earlier that it is important to test evidence. Why are you not testing that evidence?

Mr BARBOUR: I have that evidence before me and I will test it with the appropriate witnesses.

Mr DAVID SHOEBRIDGE: I am grateful for the submission that you made that sets out the history behind the establishment of Operation Prospect. Do you have it there in front of you?

Mr BARBOUR: Yes.

Mr DAVID SHOEBRIDGE: On page 5 at paragraph 23 (b) you have set out how the referral commenced around about October 2012. That has happened in February, and then you say in the second half of 2013 you engaged senior counsel and you looked at the issues that arose, that you had a look at complex conduct issues and internal policies and procedures, and you then say: "It was evident to me, following this review, that the issues raised could not be answered by a document review and that it would be necessary to speak with the majority of people involved in these matters to ascertain what occurred, particularly within the Mascot and Mascot II investigations".

Mr BARBOUR: I do not mean to interrupt, and I would ask the Chair if I could do so, but if you wish to quote my document please read it in its entirety; you are not quoting it in context and you have left out half of the paragraph.

Mr DAVID SHOEBRIDGE: I will read this paragraph entirely:

In the second half of 2013, engaging external Senior Counsel Assisting who, in conjunction with me, reviewed the information provided by investigators on the outcomes of the above document review and analysis, for the purposes of determining what further investigative activities were required. It was evident to me, following this review, that complex conduct issues, including the implementation of internal policies and procedures, approval and decision making processes, and the management of telecommunications intercept and listening device recordings and transcripts, could not be answered by a document review alone, and that it would be necessary to speak with the majority of people involved in these matters to ascertain what occurred, particularly within the Mascot and Mascot II investigations.

Mr Barbour, up until the second half of 2013 were you intending this to be just a document review alone and were you intending not to be speaking with the majority of people involved in the matters, because that is how it reads?

Mr BARBOUR: I am sorry if you have interpreted it that way; that was certainly not the intention. I thought the paragraph was very clear in terms of its intent. The intent is to indicate that following the review, complex conduct issues, including the implementation of internal policies and procedures, approval and decision-making processes and the management of telecommunications intercept and listening device recordings and transcripts, could not be answered by a document review alone. That statement is clearly relevant to those particular issues, not the investigation as a whole and, as I have already given in my evidence, quite clearly I have indicated Deputy Commissioner Kaldas was one of the first people that we spoke to in November 2012.

Mr DAVID SHOEBRIDGE: Where was the first referral? Who gave you the first referral for Operation Prospect?

Mr BARBOUR: I have had no formal referral other than the referral from the Police Integrity Commission inspector, which is documented and set out in detail in this document.

Mr DAVID SHOEBRIDGE: Did Premier O'Farrell refer any matter to you?

Mr BARBOUR: No.

Mr DAVID SHOEBRIDGE: When you had a press conference with Premier O'Farrell prior to that—

Mr BARBOUR: I have never had a press conference with Premier O'Farrell. Could you give me the date of when I have had a press conference with Premier O'Farrell?

Mr DAVID SHOEBRIDGE: When Mr O'Farrell had a press conference and indicated that he was establishing the matter, had you had any conversations with Mr O'Farrell at or about that time?

Mr BARBOUR: I am sorry, what is the question? I have been a little bit put off by the fact that I am currently having a press conference with the Premier that I never had.

Mr DAVID SHOEBRIDGE: When Mr O'Farrell held a press conference in 2012—

Mr BARBOUR: I do not even know whether Premier O'Farrell held a press conference at that time. Could you show me a document which confirms that?

Mr DAVID SHOEBRIDGE: No, I will not do that, Mr Barbour. Did you speak with Mr O'Farrell or have any direct communication with Mr O'Farrell about the establishment of this inquiry?

Mr BARBOUR: I have had a very brief conversation with the former Premier prior to him publicly announcing that the Inspector of the Police Integrity Commission was going to be referring matters to me and then I engaged in a significant series of correspondence with him following that to ensure that we were given appropriate funding and the necessary legislative amendments that would permit us to be able to do these investigations.

Mr DAVID SHOEBRIDGE: Will you table that correspondence to this Committee?

Mr BARBOUR: I believe much of the correspondence has already been made public, but I will put forward that material to you, yes.

Mr DAVID SHOEBRIDGE: Did Mr O'Farrell at any point ask you to investigate the issues of leaks or disclosure of information?

Mr BARBOUR: Mr O'Farrell as Premier, or indeed any other Minister, has no capacity to tell me what to do and what not to do. Certainly the former Premier never made any such suggestion and, if he had, it would not only have been grossly improper but I would have indicated that to him.

Mr DAVID SHOEBRIDGE: When were you first aware of Strike Force Jooriland being established?

Mr BARBOUR: Strike Force Jooriland was a name that was given to a range of complaints that were coming into the NSW Police Force around August, September, I think, of 2012. The Police Force commonly refers to the collection of activities as a task force or a strike force; it is a name that they use. It sounds very impressive but I do not think it is really all that impressive; it is just a colloquial term that they use. The name was given to it, as I understand, by the Professional Standards Command to pull together all of the complaints that were being made at that time either directly to NSW Police or by copies of complaints being provided to them for the purpose of investigating those matters.

Mr DAVID SHOEBRIDGE: Do you know who signed off on the terms of Strike Force Jooriland? Was it the Commissioner of Police or, if not, which other senior police officer signed off on the terms of reference for Strike Force Jooriland?

Mr BARBOUR: I would imagine that it would have come under the auspices of the then commander of the Professional Standards Command. There was nothing extraordinary about it in the sense that it was, as I said, a gathering of complaints that had been made to them at the time and they were put forward in some sort of a collective manner.

The Hon. TREVOR KHAN: Could I ask you with a bit more precision as to where your inquiry is up to and, in that respect, have you finished the collection of evidence as such?

Mr BARBOUR: We have almost completed the hearing phase, I am very pleased to say. What few remaining minor matters need to be covered in hearings are literally follow-up issues and questions with particular witnesses. They are scheduled, at this stage in our planning, to happen in the next two weeks and that will bring to an end any formal hearing stage. The gathering of information and evidence has been continuing although, of course, this inquiry has been somewhat of a distraction to that process. I remain of the view that I hope to have a final report prepared and tabled to Parliament before June or during June of this year.

The Hon. TREVOR KHAN: Between the completion of your accumulation of evidence phase and the tabling of the report are you able to explain what the steps are in that? Is it simply an exercise where you sit on a mountain and think about what you have received or are there a number of procedural steps that you go through?

Mr BARBOUR: There are significant steps that need to be gone through at this stage. Firstly, we have to pull together all of the information and I need to form views on it in its entirety. Secondly, we need to draft appropriate reports and those reports, given the scale, complexity, length and duration of this matter, are going to be significant. We also have procedural fairness obligations that are in play. This is an administrative

investigation into alleged misconduct; it is essential, as part of that process and, indeed, it is part of my legislative mandate, that we ensure that we offer procedural fairness to anybody whom we might make adverse comment or adverse findings about.

So in relation to this matter, once a draft report is prepared and I have formed provisional views I am required to provide that information and those views to anybody about whom I have made adverse findings or propose to make adverse comment so that they have an opportunity, quite rightly, to put to me anything in response to that so that I can consider that prior to making any final view. That process will be the final step before the compilation of a detailed final report and tabling in Parliament.

The Hon. TREVOR KHAN: I do not wish to pin you down but are you able to indicate as to when you anticipate advising people who may be adversely named?

Mr BARBOUR: I am always loath to try and provide an exact date or exact timing, particularly in relation to this matter, because my best anticipation of things has sometimes not proved accurate, given the breadth of these matters and given the issues that we have needed to deal with. I have stated publicly, and I am happy to affirm what I have stated, that we will endeavour to work to a final report by June of this year. Working backwards from that, I am hopeful that we would be able to get documents to those adversely named or about whom adverse findings might be made within the March/April time period.

CHAIR: Mr Barbour, do you think it might have been useful, in the light of the way things have gone on and the way your inquiry has dragged on for a lot longer than I was led to believe anyway—certainly by the people who spoke to me when I voted for its setting up and the changing of your legislation to allow you to do things—that perhaps some sort of interim report might have been issued to let people know, in the broad, what was going on? You are an excellent wordsmith, you have clearly got the ability to go around and explain yourself very, very properly. If there was a bit of pressure building up in, let us call it, the witness community and perhaps in the media and other places, do you think it might have been better at some stage to issue some sort of interim progress report of what you were doing?

Mr BARBOUR: I can certainly understand your point, Mr Chair, and it is certainly a matter that I considered and I considered very carefully. I do not believe it is possible to unpick all of the issues. The reality of this matter is that, despite its complexity and the enormous amount of information, all of the issues are interwoven. Whilst we have endeavoured to be as discreet as we can in terms of the particular components of our investigation, they none the less flow over a number of issues and a number of people involved in these matters are central to many of the issues that we are investigating. I do not think it would be in the interests of the investigation or those individuals for us to be reporting in an ad hoc or preliminary way about matters that clearly go to the heart of their conduct.

CHAIR: I am not suggesting for one moment you would do that; I am talking in terms of an interim report being a progress or speed check, or whatever, that is what I am trying to say. I note you mentioned earlier, and I know it is part of the legislation, that all your hearings have to be conducted in secret. Would it have been any use to you—again, given the foregoing—that perhaps some of the hearings may have been able to be held in public for a bit more apparent transparency?

Mr BARBOUR: I thought about that issue as well, Mr Chair, and I have to say that I do not believe that would have been of assistance and I do not think that would have been appropriate. I think that is evidenced by some of the issues that have happened already in relation to this matter publicly and the range of issues and consequences as a result of that. For example—and I mean no criticism at all in saying this—in these very proceedings on the first day the name of a person was divulged in public session that should have been maintained with the highest degree of confidentiality. Unfortunately, your good measures and steps to deal with that after the event did not prevent that name being broadcast over a webcast and being made available to members of the general public.

These matters are extremely serious matters; there are sides, there are issues at stake for everybody and whilst in theory I would always agree with you that matters held in public are usually best and that a public process offers greater transparency in most occasions, there is good reason at times where investigations are difficult, where they contemplate and have access to very sensitive and confidential information, where people's health and welfare are at stake, where people's reputations are at stake, for things to be balanced very, very carefully.

It is for that reason, for example, that the Police Integrity Commission and also the Independent Commission Against Corruption both have the capacity and do hold inquiries by way of private hearings. They, similarly, are not compelled to have public hearings; they often choose to do so to offer, for the purpose of corruption prevention and public awareness and as a deterrent, the benefit of public hearings. But the vast majority of their investigations are concluded and are well underway prior to any public hearing and, indeed, many of their activities do not arise in a public hearing. I would imagine you would agree with me that those organisations must similarly make difficult decisions around that process, but there is a very good reason for those inquiries often to be held in private.

The fact that hearings and evidence in this investigation are being conducted in the absence of the public does not make it a secret investigation. The Premier announced that the Police Integrity Commission Inspector was referring these matters to me. I issued a public statement to say that I would be investigating it. I have repeatedly answered any questions asked of me by my parliamentary oversight Committee about this investigation, and those statements and answers have gone on the public record. In addition to that, we have put information about this on our website. We have created an information sheet. We have a hotline dedicated telephone number. I have issued a public request for submissions about this.

This is not a secret inquiry. Everybody knows that we are conducting this inquiry. What is in the absence of the public is the conduct of the specific investigation. I think that is highly desirable and absolutely necessary, if we are serious about reaching a proper and effective resolution to this matter.

CHAIR: Okay. Thank you very much for that answer. We will have a break now for 15 minutes and return at 2.30 p.m.

(Short adjournment)

The Hon. NIALL BLAIR: Mr Barbour, in your opening submission you mentioned that there is a large number of documents that your office is going through as part of the investigation. I think you referred to how many hours of interview have been conducted. In your submission you go through and start to set that out. For example, just on some simple maths, there are over 708 warrants and that is a combination of listening device and telephone intercepts, and over 200 affidavits between the two of them. I think we have got two warrants and one affidavit before the Committee. Can you expand on that and maybe give us a total figure? Your submission breaks it down into a number of areas, but do you have something on which we could get total figures on the number of documents so that we can gain an appreciation of the size, scope and enormity of the task at hand?

Mr BARBOUR: Thank you. Obviously, without sitting down and counting every single document, the figures that I would give would be an estimate. But on the basis of our analysis thus far, we estimate that we have approximately 140,000 documents and those documents comprise well in excess of one million pages of information. Part of that is obviously the information that you refer to—the affidavits and the warrants. There is a very detailed schedule of debrief. There is an enormous amount of records contained within that come from Mascot directly. Of course, what is not added to that is the substantial amount of information that comes as a result of our own hearings and the transcript of those hearings, which now is into the many thousands of pages.

The Hon. NIALL BLAIR: Could you inform the Committee of the resources you have—and the number of staff, premises, et cetera—and if you have an estimate of how much the full investigation is actually costing?

Mr BARBOUR: Yes. I can give a relatively precise figure in terms of funding. In terms of staffing, we have been provided with enough resources to, I believe, have an adequate staffing level. In investigations of this kind there is clearly a tension between wanting to have more resources—because, on appearances, that would seem to be able to assist in terms of being able to do things more quickly—but the reality is the more people you have, the more potential there is to miss things because you must ensure that there are proper systems in place to coordinate the information that is being analysed and you have the opportunity to consider that carefully. The maximum number of staff at any one time working on Operation Prospect was 15. The median for an extended period of time has been 13. Currently there are 10 staff that are working on Operation Prospect. In terms of the funding, the Government has provided the funding that I have requested of it. That funding has been largely provided by way of grant. To date, as I indicate in my documents to the Committee, the estimate of expense thus far is \$4.9 million.

The Hon. NIALL BLAIR: Has there been any push back on those requests, or have they been forthcoming when they have been made?

Mr BARBOUR: Absolutely no push back whatsoever, and if there had been any pushback I would have gone public.

The Hon. NIALL BLAIR: Prior to being referred in this report for inquiry, was your office in receipt of any complaints or public interest disclosures alleging misconduct by officers during the operations investigated in the Emblems report from any other parties?

Mr BARBOUR: There have been complaints made by various people in relation to this matter over many, many years. In the lead-up to the commencement of Operation Prospect there was a concentrated period of activity. That period of activity appears to have arisen as a result of the referral to the Police Integrity Commission Inspector in May by the then police minister. Following on from that referral there was not only an increase in activity in terms of complaints being made, not only to the Inspector but also to the Commissioner of Police and me, but in the large majority of complaints that were being made, they were being copied to all the agencies. In addition to that there was a significant amount of media happening at that time. There was a very, very significant concentration of activity and public discussion and concern being identified during that period.

The Hon. NATASHA MACLAREN-JONES: Mr Barbour, you might recall in October 2012 there were amendments to the Ombudsman Act 1974 that gave you the power to authorise investigation of complaints regarding the conduct of executive officers of the Crime Commission as well as members of the Committee. The Parliament supported these amendments and I understand that they followed a request by you. Could you explain why those requests were put before the amendments?

Mr BARBOUR: Those requests for amendments were made because those amendments were essential to provide us with the capacity to investigate these matters. I made clear to the Government and all who asked me questions about these matters during that concentrated period I referred to earlier that we would not be in a position to investigate these matters unless we had significant amendments made to our Act. Prior to those amendments we had jurisdiction over the New South Wales Police Force. We had very limited jurisdiction in relation to the Police Integrity Commission [PIC]. We could receive referrals from the Police Integrity Commission Inspector but we could not compel or require production of documents or evidence from officers of PIC or the Commissioner of PIC, which meant that we would not have been able to necessarily gather the information that we needed for this investigation. We had no jurisdiction in relation to reviewing the Crime Commission.

In addition to that, we had no formal provisions to require confidentiality. Given by that stage it was very clear that there was already substantial dissemination of information in relation to these matters, it was clear that any investigation of this kind required the capacity to make those sorts of directions. We did not also have the capacity to engage formally under our legislation Counsel Assisting, and that was clearly an important element of any investigation that we were going to be conducting. All of those requests were met. Importantly, all of those amendments were put to Parliament, all of those amendments were debated within Parliament, and all of those amendments were passed by Parliament.

The Hon. NATASHA MACLAREN-JONES: You mentioned previously confidentiality and non-disclosure. Did any of the witnesses or their legal representatives refuse a non-disclosure request?

Mr BARBOUR: It is not possible to refuse the request, but what is apparent is that not everybody has observed it.

The Hon. NATASHA MACLAREN-JONES: Did any of them object at the time?

Mr BARBOUR: No, there have not been any formal objections. In fact, not only was the direction given to witnesses but it was also given to their lawyers, including Senior Counsel at the bar. We received no objection from any of them to the direction being placed on them.

The Hon. TREVOR KHAN: Could I go to the issue of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission. Have you given evidence in regards to Operation Prospect before that Committee?

Mr BARBOUR: Yes, I have; I believe on two occasions at two general meetings of the Committee.

The Hon. TREVOR KHAN: Do I take it that one of those who questioned you was Mr Searle?

Mr BARBOUR: Well, Mr Searle is a member of my Committee. I have to say that I do not recollect whether he asked any specific questions of me in relation to this issue, but my recollection is that when I was asked those questions he was certainly present at the meeting. But I would certainly defer to Mr Searle if my recollection is not correct.

The Hon. TREVOR KHAN: We might get the chance of questioning him later, but unfortunately it is you at the moment. That is on two occasions. Have you offered, in the context of what has been going on with this inquiry, to go back before that Committee?

Mr BARBOUR: I certainly made that clear in my correspondence to the Chair of my Committee, which I provided a copy of to the Chair of this Committee. I have no difficulty at all in recognising the very important role that Parliament has here. I consider myself to be an officer accountable to Parliament, and that is the very purpose of my oversight Committee. Of course, if my Committee asked me at any stage any of these questions, I would endeavour to answer them to the best of my ability, once again acknowledging to them the risk of traversing areas that it would not be in the public interest to traverse or which might jeopardise the integrity of, or prejudice, my investigation.

The Hon. TREVOR KHAN: When you appeared before that Committee, has anyone on those Committees, including the Labor members, questioned you on the use of any of the additional powers you have received relating to the Prospect inquiry?

Mr BARBOUR: No, I have not received any questions in relation to those issues.

The Hon. TREVOR KHAN: Did you receive any questions with regards to the non-disclosure directions from any members of that Committee?

Mr BARBOUR: Not that I recall.

Mr DAVID SHOEBRIDGE: They are constrained by section 31A of the Act under which that Committee is established.

The Hon. TREVOR KHAN: Is that a question, David?

CHAIR: Order!

Mr DAVID SHOEBRIDGE: Are they not, Mr Barbour?

Mr BARBOUR: I am sorry?

Mr DAVID SHOEBRIDGE: That Committee is constrained by the statutory provisions of section 31A, as you set out in, I think, paragraph 12 of your submission to us.

Mr BARBOUR: Perhaps you could clarify what it is that you are actually asking me. The question that was put to me was whether there were questions asked about particular powers that I had and the capacity to exercise those. Clearly that is not an issue that is constrained in any way in regard to questioning by the Committee. If you are asking whether the Committee has the capacity to involve itself, or interfere, or ask questions about the conduct of my investigations, then yes, you are correct; there is that limitation. That limitation is quite appropriate.

The Hon. TREVOR KHAN: I think you were just hit out of the park, David.

Mr DAVID SHOEBRIDGE: No. I think Mr Barbour agreed that the Committee cannot ask about particular matters regarding any particular investigation, as section 31A sets out clearly.

Mr BARBOUR: Let me be—

The Hon. NIALL BLAIR: He was asked about powers, not the investigation.

Mr BARBOUR: Let me be more specific, Committee members, so there can be no misunderstanding. Clearly, my parliamentary oversight Committee can ask me any questions about powers that I have and amendments to legislation, and the use of those in a general sense. If they were to traverse particular issues in relation to an inquiry, then, no, I would not be permitted to provide it. My understanding was that the question asked of me by the Committee members was in relation to the former, not the latter.

CHAIR: Mr Barbour, in your earlier evidence you said that Mr Kaldas had been interviewed in November 2012.

Mr BARBOUR: Yes.

CHAIR: Who actually interviewed him? Was it you, or one of your officers?

Mr BARBOUR: No. it was a number of my staff.

CHAIR: Okay. How many times have you personally interviewed him?

Mr BARBOUR: In relation to these particular matters?

CHAIR: Yes.

Mr BARBOUR: I have been approached by Mr Kaldas by way of emails. I have had contact with him in that way. In terms of specific evidence being provided by Mr Kaldas, there was one occasion. We have sought to re-examine Mr Kaldas but he has not been able, due to ill health, to return to be further examined.

CHAIR: When you say you examined him, when was that?

Mr BARBOUR: Fifth of September 2014.

CHAIR: You did the examination?

Mr BARBOUR: I presided at the examination. The examination and questioning was assisted by Senior Counsel Assisting the Operation Prospect inquiry.

CHAIR: You are saying that you would like to have him recalled, provided of course that he is medically fit.

Mr BARBOUR: Well, I am not saying I would like to. I was indicating to you that he has been asked to give further evidence, but he has been unable to attend because of ill health.

CHAIR: I take it from that that you want to recall him.

Mr BARBOUR: I think it would be helpful, yes.

The Hon. ADAM SEARLE: A number of witnesses have given evidence to this inquiry that they felt that your investigation of Operation Prospect had focused on duly on the use you of unauthorised disclosure of the Emblems report and related material rather than on the substantive issues to the point where they felt that they were being targeted by your organisation. What you say to those concerns that have been expressed to this Committee?

Mr BARBOUR: Certainly. I think if I could I would like to address that by breaking it down into a number of components. The first is this. Much has been said that my inquiry has gone off track and is now investigating whistleblowers and solely focussed on the unlawful receipt of information and dissemination of

confidential information. That is simply not the case and I tried to indicate that to the Committee not only in my submission but also in my opening statement. Similarly, the suggestion has been put and a commentary run that this is a recent occurrence. Nothing could be further from the truth. Correspondence that I provided to the Commissioner of Police on 10 October 2012 indicated clearly that these matters would be investigated. That letter was tabled in the estimates committee for police one or two days later. I can provide the date if the Committee is interested.

The Hon. TREVOR KHAN: Yes, please.

Mr BARBOUR: The letter was in circulation and two members of this Committee were present at that committee and had my letter. That letter, as early as 10 October, two days after I announced publicly that I would be inquiring into this matter, clearly indicated that we would be investigating those issues. My letter to the Premier on 11 October also indicated that we would be investigating those issues. This is not a new issue at all. Secondly, this is an important issue. I have endeavoured, within the restrictions placed on me, to provide as much information to the Committee as I can about these matters. We have documented in the submission over 60 reports or documents or pieces of information, both historical and contemporary, that have been stripped from systems of record storage and computer systems within three of the most important integrity agencies in this State: the NSW Police Force, the Crime Commission and the Police Integrity Commission.

We estimate in circulation currently there is something in the order of 20,000 pages of information which should not be in public circulation. I am not pursuing in any way people in regard to their motivation for circulating information, but I would be astonished if anybody, particularly members of Parliament, were to suggest to me that these are not important issues and should not be investigated. They have been the subject of complaints by multiple people. They deserve to be investigated and that is what I am doing. Having said that, it forms only a small part of this investigation. I have repeatedly said—and I hope that I am accepted in relation to this—that we are spending the vast majority of our resources and time on investigating the very serious allegations made by complainants about the conduct of the Mascot and Mascot 2 references. I have read out to the Committee members exactly how we have explained that and tried to comfort witnesses to ensure that they were aware of that as well when they gave their evidence.

The Hon. ADAM SEARLE: So you would say those concerns that have been expressed to this Committee about the way in which your organisation has gone about that aspect of the inquiry are misplaced?

Mr BARBOUR: I think more than misplaced. They are baseless.

The Hon. ADAM SEARLE: Nevertheless you are aware that a number of complaints and concerns have been expressed about the conduct of your organisation and about that aspect of the inquiry?

Mr BARBOUR: Yes. In relation specifically, for example, to the evidence of Detective Commissioner Kaldas, I must say that I reject it completely in terms of the tenor of the investigation and how he was dealt with, if that is what you are referring to.

The Hon. ADAM SEARLE: Yes.

Mr BARBOUR: I am happy to go into more detail about that if you would like, but certainly Deputy Commissioner Kaldas, in his own evidence to this Committee, expressed his significant experience in appearing in court matters. The regularity and his experience of having been questioned and cross-examined by QCs. He had available to him in the hearing before me legal representation of both a solicitor and a leading Senior Counsel of the State bar. They had every opportunity to raise any concerns that they had throughout the course of him giving evidence. I have redacted, for the reason of preserving the integrity of matters, a particular paragraph in relation to my material that I have provided to the Committee. If the Committee wishes me to go into more detail about those issues, I am happy in camera to go into more details about that confidential material.

The Hon. ADAM SEARLE: Last year the Parliament, on your request, enacted new laws to extend the protections to yourself and the staff of your agency when they leave your agency from being compelled to answer for things that occurred during your inquiries or in the roles they had, in particular protection from being compelled in legal proceedings to have to disclose information and documents. The rationale for that was to make the Ombudsman's Act consistent with other like enactments. Can you tell the Committee why you requested those additional protections to be afforded for yourself and the staff of your agency? Why was the request made at this particular time?

Mr BARBOUR: I read with interest the article about this in this morning's *Sydney Morning Herald* and I must say it surprised me because it was patently inaccurate and was obviously intended to convey an impression that was not in fact consistent with the truth or the facts in the matter. I wrote to Premier Baird on 11 July 2014 seeking those amendments and setting out why they were necessary, long before anything to do with this inquiry was even contemplated, let alone set up.

The Hon. ADAM SEARLE: July of which year?

Mr BARBOUR: Last year, July 2014. It is not within my capacity to control the provision of these matters to Parliament by way of the putting forward of amendments. That is a matter for government and for Parliament, but I alerted the Premier to the need for amendment to my Act in July of last year. To suggest that I would seek to try to put forward an amendment of this kind while this Committee was considering matters is grossly inappropriate, clearly inaccurate and yet another way designed to try to derail my inquiry.

The Hon. ADAM SEARLE: I do not think this Committee was in existence at the time the legislation was debated in Parliament. Can you provide to the Committee the correspondence between yourself and the Premier about these amendments?

Mr BARBOUR: Happy to do so.

The Hon. LYNDA VOLTZ: I have one question that you may not be able to answer because of your investigations. It occurs to me that at some stage somewhere along there has been a structural problem within the Police Force about how you deal with these kinds of issues, particularly if you have a divided police force and people covered by certain Acts. Is your inquiry going to look at not only the warrants and all those associated issues you have mentioned but also that structural problem, or is that not within your purview?

Mr BARBOUR: It is not something that we are looking at at the moment. I certainly understand the basis of your question, and I recognise not only through this inquiry but through a range of other issues that there are often tensions that arise when complaints are made about senior officers within the NSW Police Force. They require investigation. Given that it is an organisation that has a hierarchical structure and a line of reporting, it is difficult to ensure that there are systems in place to deal with those issues appropriately. They are certainly not new issues; they are issues for which there are systems already in place and they are matters that we and the Police Integrity Commission actively work on with the Police Force to ensure the integrity of those investigations.

The Hon. LYNDA VOLTZ: You say you work on those issues. If it came out of your inquiry that that structure was not appropriate or adequate would you make recommendations?

Mr BARBOUR: Absolutely. I have no concern at all about making wide-ranging recommendations if I believe they are supported by our investigation and the matters that we have reviewed. If I could use a hypothetical in line with what you are asking, if it became clear that there were systemic issues or problems within the NSW Police Force for handling matters of this kind, and I believed that it was necessary to make recommendations about how they should be dealt with in the future, I would have no hesitation in doing that.

The Hon. ADAM SEARLE: To return to the earlier line of questioning, do you say that the request to the Premier to change that part of the Act to provide those extra protections was completely unrelated to your conduct of Operation Prospect?

Mr BARBOUR: No, not at all.

The Hon. ADAM SEARLE: So it was related to Operation Prospect?

Mr BARBOUR: It was related to Operation Prospect and quite properly so. I think members of the Committee would understand this just as well as I. It does not matter for how long you work with a particular piece of legislation and it does not matter how much experience you have with the application of it; there will from time to time be issues that surface that require you to think about things differently and in doing so you recognise that the legislation might be problematic or not as comprehensive as is what is necessary. There are very significant public policy reasons which underpin the fact that staff working within the Ombudsman's office, or indeed any integrity agency, should not be competent or compellable to give evidence in proceedings about

their work or about information that they have obtained during the course of their work. Those provisions are in place with the ICAC, the Crime Commission and the Police Integrity Commission.

What we identified in our legislation was that our provisions were limited. Despite the very good public policy reasons which underpin them, they were limited to only currently serving officers. The result of that was that you could literally have somebody moving into a different job, being promoted to a different position in the public sector, going off and working in a different place; the moment they walked out the door they were no longer covered by those very important provisions. That clearly was not in the interests of the office, its work or in the public interest. Those public policy issues that attend to that do not end when somebody leaves the office. They may well have been working on an investigation that is continuing. They may well have worked on an investigation about which there is contemplated legal proceedings. The fact that they cannot give evidence about it whilst they work at the office, but the moment they leave they can, is clearly a problem.

That problem was covered by the legislation in respect of the other agencies but we realised it was not covered in relation to our office. The reason it had application to Operation Prospect was that we had specifically engaged investigators and experienced staff from around the country who in some cases could only work for specific periods of time or came to perform specific functions or alternatively needed to leave for personal reasons and other reasons. It was clearly important that when a staff member left they had those protections applied to them; otherwise there was a real risk to the ongoing integrity of the organisation and particularly that investigation. But as I note in my correspondence about this to the Premier, while it was triggered by this investigation it has a general application to all matters before my office.

The Hon. ADAM SEARLE: Sure but just to be clear, the reason for your request to the Premier for those changes and the timing of that request was to protect yourself and your existing staff from being compelled in any potential future court action in relation to Operation Prospect?

Mr BARBOUR: No, that is not being clear or accurate. The effect of what I was seeking is certainly that but that was not the motivation. My immediate motivation was the fact that staff who had actively been engaged in Operation Prospect and in the middle of our inquiry continuing were going off and leaving the office for a range of reasons and they would in fact not be covered by any protections; and should they be asked to give evidence about these matters they would not have had that protection available.

The Hon. ADAM SEARLE: Your organisation has operated effectively for 40 years without those extra changes. Why did you think they were necessary at this time?

Mr BARBOUR: My office has operated effectively without an inquiry of this kind as well for 40 years, but this is attendant to Operation Prospect. There is absolutely no doubt that Operation Prospect has changed the landscape in relation to matters that my office is involved with, regrettably, in some cases for the negative and in many other cases for the positive. But certainly you are correct, as a result of conducting this matter there has been a need for all sorts of legislative amendment. We have talked about a range of amendments and that was just one of them.

Mr DAVID SHOEBRIDGE: Carrying on that line of inquiry, you have had a number of members of your staff or seconded persons who were working on Operation Prospect resign and leave the organisation, is that right?

Mr BARBOUR: Yes.

Mr DAVID SHOEBRIDGE: How many?

Mr BARBOUR: I think around nine or 10.

Mr DAVID SHOEBRIDGE: Did a number of them do that by way of a letter of resignation?

Mr BARBOUR: I think in most cases there was a letter of resignation. Where people are promoted within the public sector and they are permanent public sector employees, there is no requirement for them to resign, they just go into a new position. That was certainly the case with a number of people.

Mr DAVID SHOEBRIDGE: When they resigned, a number of their letters of resignation were no doubt critical of the organisation, including elements of critique, which explained why they were resigning.

Mr BARBOUR: I am not sure, is that a question or a statement?

Mr DAVID SHOEBRIDGE: It is a question. Is that right? Were there a number of letters of resignation that contained a critique?

Mr BARBOUR: There were two staff members who left and indicated some concerns in their letter of resignation and the majority of staff that left did not do so.

Mr DAVID SHOEBRIDGE: Did those officers leave before or after you sought those statutory amendments to prevent them from being compellable?

Mr BARBOUR: I cannot recall the dates of all 10 staff leaving, but I am more than happy to take that question on notice.

Mr DAVID SHOEBRIDGE: Could you explain to us what the substantive concerns of those two officers were, and why they resigned from your team in Operation Prospect?

Mr BARBOUR: I am happy to talk about particular staffing issues, if you believe it is necessary. I think it would be preferable to do that in camera, given that it relates to personal issues involving people and the names of staff members are known to a large number of people involved in this particular operation. I would not like to discuss, if the Committee agrees to this, in public the personal reasons that people have put forward in documents that they have signed in the knowledge and expectation that those documents would be confidential.

Mr DAVID SHOEBRIDGE: I am not asking about family or any matter relating to their personal circumstances. I am asking about substantive criticisms they have of your organisation which would inform their reasons for resignation. What were those substantive criticisms of your organisation that they had?

Mr BARBOUR: I think the concerns of one person largely related to the fact that they were not promoted into a position that they thought that they should be when a vacancy became available and raised some concerns about disagreements they had in relation to methodologies and investigation practices that were underway. That person was a relatively junior investigator. In relation to another officer, there were a range of concerns which predominantly related to the fact that there was a personality conflict between two senior staff. That particular officer was from outside of New South Wales, as a number of staff have been in relation to Operation Prospect, and those concerns were also attended by the fact that it was extremely draining for that person, after 12 months working with the office, to be travelling frequently between their home State and Sydney for the purpose of this role.

Mr DAVID SHOEBRIDGE: Mr Barbour, will you give us, if necessary—redacting the personal information—copies of that correspondence?

Mr BARBOUR: The Committee has made a formal request for those letters and I have replied to the Committee in relation to that.

Mr DAVID SHOEBRIDGE: Yes. You said you would not provide it because of the provisions in the Privacy Act about personal information. I am asking you to provide copies redacting that personal information.

Mr BARBOUR: If there is a formal substantive request made pursuant to a summons or a formal request for that information, I am happy to provide it.

Mr DAVID SHOEBRIDGE: Mr Barbour, you understand that the complainants'—and there are many complainants in relation to what happened with Mascot and the failure to have publicly released Strike Force Emblems and the like—substantive complaints have been not been addressed to date and, in large part, that is what you say you are doing in your inquiry. Is that right?

Mr BARBOUR: Correct.

Mr DAVID SHOEBRIDGE: That is a very legitimate grievance, is it not, that their substantive complaints have taken a decade and a half to be addressed?

Mr BARBOUR: No-one has suggested otherwise.

Mr DAVID SHOEBRIDGE: They were first sought to be addressed in the police Strike Force Emblems, but that failed to do the job, did it not?

Mr BARBOUR: Certainly the Emblems investigation was an incomplete investigation and was not able to conclude effectively any of these matters to a point of resolution.

Mr DAVID SHOEBRIDGE: There have been at least two separate referrals to different inspectors of the Police Integrity Commission [PIC], which have failed to quell those concerns and deal in substance with the matters, would you agree with that?

Mr BARBOUR: I think the two referrals to the inspectors, as you would appreciate, were very specific and not designed with the purpose of quelling a lot of those concerns. My understanding is the reference to the former inspector, Mr Finlay, was for him to provide advice as to whether he thought the warrant in question, 266, was lawful, and he did so. My understanding of the reference from the former Police Minister to the inspector of the Police Integrity Commission was in relation to whether or not he believed the Emblems report should be released publicly, and I understand he provided that advice to the minister. I think both of those references would, you would agree with me, not in any way be able to quell the very genuine concerns of the complainants in this matter.

Mr DAVID SHOEBRIDGE: There have been a series of complaints over time relating to these matters made to your office, which, up until this inquiry, you have not been able to resolve satisfactorily either.

Mr BARBOUR: That is correct.

Mr DAVID SHOEBRIDGE: Indeed, I offered to refer papers to you on 21 September 2012 before this inquiry was established, and you determined you did not want to see those papers. Do you remember that exchange?

Mr BARBOUR: Yes.

The Hon. TREVOR KHAN: Is this another of your accurate dissertations?

CHAIR: Order!

The Hon. NIALL BLAIR: Was there a press conference?

CHAIR: Order!

Mr BARBOUR: Yes, that conversation took place, Mr Shoebridge, on 21 September 2012, and I certainly recollect your telephone call.

Mr DAVID SHOEBRIDGE: Now there finally has been your inquiry established where you say you will be looking at the substantive matters. Is that correct?

Mr BARBOUR: Just before we leave the last question you asked me, I think it is very important to note in response that I explained to you as carefully and constructively as I could when you called me the limitations on my powers and why I could not do what you were asking me to do, and I recommended to you that you refer all of the material that you described to me had been provided to you to the Inspector of the Police Integrity Commission because, at that stage, he had the reference from the former police Minister.

Mr DAVID SHOEBRIDGE: Of course, that is a part-time officer with two administrative staff and no substantive resources. That would have been woefully inadequate, would it not, Mr Barbour?

Mr BARBOUR: I am not commenting on that, sir. I am merely responding to your question of me about our telephone conversation, and I wanted to make sure that there was a full account of that, and that I acted appropriately in providing you the best information that I could. I did not want there to be in any way a suggestion left that I had wilfully, in some way, failed to comply with my obligations. That is certainly not the

case. I dealt with your query in the best way I could at the time and I referred you to the Police Integrity Commission inspector.

The Hon. TREVOR KHAN: You certainly did not blow him off.

Mr DAVID SHOEBRIDGE: A part-time officer with two administrative resources, you would acknowledge, would be woefully unable, with those resources, to get to the bottom of these matters? You would acknowledge that, surely?

Mr BARBOUR: Indeed, that is why the decision of him to refer these matters to my office and the decisions of Parliament to give me the powers that they have has been so beneficial because it has allowed, for the first time, for a full, thorough investigation with an entity that has the capacity to gather all of the information so that all of the information can be reviewed and not just part of it. You referred earlier to the Emblems report, and that was one of the problems that the officers investigating this matter for Emblems had. They were not able to complete this because they were not able to garner the cooperation of the Crime Commission. That problem, that dilemma has now been obviated by the amendments to my Act and this investigation.

The Hon. TREVOR KHAN: Keep asking the questions, David.

Mr DAVID SHOEBRIDGE: Mr Barbour, time after time after time complainants have sought to have this matter resolved and, due to their frustrations, they eventually resorted to becoming whistleblowers and putting information into the public domain, and that includes the 61 documents that you are inquiring into the disclosure of. You acknowledge, surely, had they not been whistleblowers, had those documents not been disclosed, they would not have got to first base; your inquiry would never have been established?

The Hon. TREVOR KHAN: He is not inquiring into 61 documents. He has never given evidence—

CHAIR: Order!

Mr DAVID SHOEBRIDGE: Had those documents not been released by whistleblowers demanding some substantive action, your inquiry would never have been established and now you are turning around and investigating the whistleblowers.

The Hon. TREVOR KHAN: What is the question?

Mr DAVID SHOEBRIDGE: Do you not see the inherent problem with that?

Mr BARBOUR: Well you are making a number of statements there that I have already indicated in my evidence and also in my submission to the Committee that are very, very inconsistent with the legislation that governs protections available to whistleblowers.

Mr DAVID SHOEBRIDGE: Had those documents not been disclosed—

The Hon. NIALL BLAIR: Point of order.

Mr DAVID SHOEBRIDGE: —your inquiry would never have started?

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

The Hon. NIALL BLAIR: Point of order.

Mr BARBOUR: If you wish to put to me any specific legal parameters, which you believe I have not observed, I am more than happy to answer your question. But the notion of simply describing people who disseminate information as whistleblowers is not accurate, and you know it is not accurate.

Mr DAVID SHOEBRIDGE: Mr Barbour, the great difficulty complainants have when they come to your inquiry asking for you to address their substantive concerns is that they do not know if you are going to be asking them questions about their substantive concerns or you are going to be interrogating them about whether

or not they disclosed material as whistleblowers, or who disclosed material to them. Do you not see that inherent conflict? You are dealing with them as whistleblowers and as targets in your investigation.

Mr BARBOUR: That is not an accurate statement and I refuse to accept it as being an accurate statement, nor for the record do I interrogate people. The pejorative nature of that question is clearly unwarranted.

Mr DAVID SHOEBRIDGE: Mr Barbour, when a witness is summoned to give compulsory evidence before you—

The Hon. TREVOR KHAN: Like people are called before this inquiry?

CHAIR: Order!

Mr DAVID SHOEBRIDGE: When a witness is summoned to give compulsory evidence before you and they have got substantive complaints that have not been addressed and they may have received information, including one of the 61 documents that you are investigating the disclosure of, they will not know whether or not you are going to be interrogating them or questioning them about the substantive complaint or questioning them about whether or not they were involved in some unlawful activity regarding the release of the information? Do you not realise that problem?

Mr BARBOUR: Each of the people that you are talking about and that I have referred to earlier that have given evidence to this Committee have been legally represented. There have been discussions with them and their legal representatives prior to giving evidence. Their legal representatives were present during the entire time they gave evidence. In one case the evidence lasted for 47 minutes and I have quoted an exchange that made very clear the proposition which is at odds with what you are putting to me, and that is I tried on each and every occasion to reassure complainants that their very important allegations were being thoroughly investigated, and I explained the reasons why they were not being asked those questions.

If you are suggesting to me that the leaking and stripping of confidential information, which contains the personal information of a multitude of people, and which people are not lawfully entitled to take from secure systems is not something that should be investigated, or the subject of questions that ought be asked of people who have that information as to where they may have got it or where they have onsent it, then I disagree with you. Those are clearly exceptionally important issues. They are important enough for the heads of agencies to have raised those issues in complaints. They are clearly matters that require investigation. I have already said to you that the motivation of why people have circulated information does not worry me. I am not focusing on that issue. What I want to make sure is that we understand how these breakdowns in security could happen so that we can address those. That is a proper, responsible thing to do. It is in the public interest for that to take place.

Mr DAVID SHOEBRIDGE: Mr Barbour, the motivation for people to become whistleblowers, their frustration and their failure to get justice is surely relevant as to whether or not millions of dollars of State resources should be devoted to tracking down those whistleblowers to seek to prove criminal conduct? Surely the motivation is relevant?

Mr BARBOUR: I am investigating all of the allegations made by these complainants. I am devoting the vast majority of time and resources to that investigation. I cannot make myself any clearer.

Mr DAVID SHOEBRIDGE: When a witness comes before you they do not know whether or not they are going there to assist you as a complainant to have their substantive issues resolved or if you are going to questioning them about whether or not they have breached secrecy provisions in being a whistleblower. Do you not understand that conflict and the difficult situation it puts witnesses in?

The Hon. TREVOR KHAN: Point of order: This is about the sixth time the same question has been put to this witness and he continues to answer it in the same way. I suspect that if it is asked another six times he will answer it in precisely the same way as he has. The member is turning this into a Russian show trial. It must to come to an end.

CHAIR: Thank you for that enlightenment, Mr Khan.

Mr DAVID SHOEBRIDGE: Mr Barbour.

Mr BARBOUR: Yes.

Mr DAVID SHOEBRIDGE: Did you understand the question?

Mr BARBOUR: I do my best.

Mr DAVID SHOEBRIDGE: This is not a joke, Mr Barbour.

Mr BARBOUR: Of course it is not a joke, and I regret that you are turning it into a situation where you are failing to listen to what I am saying. I am doing my best to answer your questions, sir. But the more you try to reframe exactly the same question the more I am steadfast in providing you with a truthful response. That is the response that I provided to you. I am very concerned about the fact that any witness would go away from my proceedings thinking in any way that they were unfair. I reject the suggestion that they were. Serious matters must be the subject of questioning. That questioning of witnesses is fair, it is proportionate and it is reasonable.

I have made no findings yet, but you are trying to suggest to me and to put words in my mouth that suggest that I am doing something wrong. I reject that completely. I am not doing anything wrong. I have put people on notice that I am looking at these issues since the very commencement of Operation Prospect. You were aware of this when you were on the estimates committee and you had the letter from the commissioner. You, sir, have been fully informed that this was a subject of inquiry.

Mr DAVID SHOEBRIDGE: The fact that I have been troubled by this for years does not answer the question, Mr Barbour.

Mr BARBOUR: That is not what I am saying. The matters were clearly set out from the very beginning. This is not something that has just come up. Deputy Commissioner Kaldas said in his evidence that he did not know that we were looking at these matters, that we were off track and that I was mispending public funds. However, the deputy commissioner was fully apprised that we were investigating these issues in a notice served on him so that he could provide documents to us lawfully rather than potentially unlawfully. That was on 9 November. Despite that, he has said exactly the opposite. I can do no more than put people on notice that we are investigating this and to question them fairly, responsibly and proportionately.

I do not interrogate people; I ask people questions and I do so civilly and properly. I have more than two decades of experience in conducting hearings and asking people questions, and I put that experience to good use. I make no apologies for probing people during questioning if they are not providing appropriate evidence, if they are being evasive or if they are not providing evidence that is frank and candid. If you wish me to go into details about that and the redacted paragraph, I am more than happy to do so in camera.

CHAIR: I refer to something you said in your earlier evidence, or it may have been in your statement. You said that when you finalise your investigations and complete a report you will make it public. Is that at the whim of the Government or will you make it public directly?

Mr BARBOUR: No. When I table a special report to Parliament I make recommendations that it be tabled forthwith. There is no discretion in relation to the tabling. Therefore, if I table a report in Parliament it must be tabled and it will be tabled publicly.

CHAIR: Would you table the first and final version of the report?

Mr BARBOUR: It would clearly be the final report.

CHAIR: Would the Government get a chance to redact it, to change it, or to engage in discussion about what should and should not be included?

Mr BARBOUR: Certainly not.

The Hon. NIALL BLAIR: I am interested in how the deliberations, hearings and evidence of this Committee will impact or fit in with your deliberations and investigations. Do you expect to hear anything said to this Committee that is different from or additional to what your investigations may uncover? These are uncharted waters. Do you have a view on how the intersection of these two inquiries will play out?

Mr BARBOUR: I wish I knew the answer to that question. I have done my best to contemplate the risks to Operation Prospect as a result of this Committee's formation, its terms of reference and its deliberations. I have endeavoured to the best of my ability to put the Committee on fair notice of that. I have documented in detail what I see as the potential risks and pitfalls and the potential very damaging consequences to the inquiry. Regrettably, I cannot answer your question fully because until this Committee concludes its deliberations and its report I cannot know exactly what, if any, consequences it will have on my inquiry. I have certainly been troubled by some of the evidence that has been provided to date.

You will note from my submission that that was one of the areas that I highlighted for the Committee. I indicated to the Committee that there was a very real risk that evidence provided to Operation Prospect may be inconsistent with evidence provided by witnesses to this Committee and that I would need then to try to determine what that meant and how best to deal with it. That is a very challenging issue and, as you say, unprecedented. In addition to that, I am not sure what conclusions the Committee will draw on the very limited information it has before it. I am aware that it has very limited information, and I am not sure of the source of that information or of its authenticity. I am assuming that it is all correct information, but I do not know.

The Hon. ADAM SEARLE: We can do a swap with you. We will show you our evidence if you show us yours.

Mr BARBOUR: If only it were that easy. It would not be an exaggeration to suggest that the evidence would almost fill half of this room in stacked boxes. That is the best way I can answer the question, Mr Blair. I honestly do not know. I am certainly fearful of the consequences. I hope that if there is any damage it is as minimal as possible and that it is recoverable. However, I will not know until the Committee finishes its important work.

The Hon. LYNDA VOLTZ: I refer to the nature of the evidence and the fact that is in the public domain and some is not. Obviously the information in the public domain causes major grief and concern to the complainants who are worried about how it has affected their career. At the end of the day, some evidence given to your inquiry will never be released to the public. Evidence that may support a certain case or refute it will still not be public. How do you resolve that issue to the satisfaction of people who have felt aggrieved by the whole process?

Mr BARBOUR: First, it is very important for me to state with absolute clarity that I understand the nature of the complaints that have been made and the impact that these matters have had on individuals. I am very mindful of that in everything I do and I have gone to great lengths in my examination of witnesses to explain that so that they understand. The reason this inquiry has taken as long as it has is that I want to ensure that at the conclusion we deal with all of the issues and in a finite and complete way. That is a challenge, and there is no denying that because of the volume of material, how many people are involved and how many people are affected.

My responsibility in preparing my report is to put forward enough information and enough evidence so there is clarity around these issues and that that material supports whatever conclusions, findings and recommendations are ultimately made. I envisage that my report to Parliament will be enormous because I recognise the importance of trying to put as much information as possible into the public domain, with due regard to the safety of individuals and to appropriate confidentiality and privacy restrictions.

The Hon. ADAM SEARLE: I move that this Committee now move to an in camera hearing to take further evidence from Mr Barbour.

CHAIR: Are we all agreed?

The Hon. TREVOR KHAN: We certainly do not oppose that.

CHAIR: The Committee will now conduct the hearing in camera. I ask that the room be cleared.

(Evidence continued in camera)

(At the conclusion of the evidence in camera the public hearing resumed)

PETER GERARD McERLAIN, Detective Superintendent, NSW Police Force, sworn and examined:

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

Mr McERLAIN: Yes. I am a detective superintendent performing the role of squad commander attached to the State Crime Command. I have been an operational police officer for over 34 years, the majority of which has been in criminal investigation. In 2003, as a detective inspector, I was seconded to a highly confidential investigation codenamed Emblems. I performed investigative duties into allegations of impropriety by the Special Crime and Internal Affairs Unit, known as SCIA, and then in the Special Crime Unit, known as SCU, which were both attached to the NSW Crime Commission. Those allegations related to a number of investigations conducted by SCIA during the Mascot, Florida reference.

The majority of the Emblems investigation related to the alleged impropriety or otherwise of two SCIA listening device warrants which contained 114 names of former and serving police and civilians. Whilst this matter took up most of the Emblems investigation, I was given a separate complaint matter which had been referred to Emblems by the police commissioner's executive Complaint Management Team. This complaint was made by a former police officer and it alleged serious misconduct by a number of SCIA officers when deploying a human source codenamed "Paddle" during a SCIA operation which was also known as Operation Boat. I am happy to expand on that investigation should the Committee wish.

Can I add that Emblems was a strike force set up to investigate suggested corruption by our integrity gatekeepers. It was led by a highly experienced detective inspector who on a daily basis emphasised the need for rigorous inquiries together with equally rigorous objectivity. Emblems was faced with many challenges. We were threatened with sanctions if we proceeded down varying investigative paths. We were accused of leaking information, we were denied access to documents and people and our investigation has been suggested to be deficient. Some of the Emblems investigators have been medically discharged from the Police Force; this included the lead detective inspector, his career being cut short due to serious medical issues, possibly attributable to the Emblems investigation.

In my view, Emblems should have been provided with the ability to make inquiries sufficient to properly report its findings to the New South Wales police executive. The practices by SCIA and SCU appear to have been conducted unfairly, unethically and probably, in some cases, unlawfully. An unfettered investigation would have properly revealed such conduct and possibly those responsible. I look forward to assisting this inquiry. Thank you.

Mr DAVID SHOEBRIDGE: Thank you for coming to assist the inquiry today. What do you say to those concerns that were raised at the time and have been repeated in one form or another that seek to say that people from Strike Force Emblems leaked information to third parties? What do you say to that?

Mr McERLAIN: It is really absurd. If you wanted to leak information I am sure it would have been leaked back in 2002, 2003 and 2004. It is just absurd.

Mr DAVID SHOEBRIDGE: In terms of access to the information that was gathered during Strike Force Emblems, do you know who has had access since Strike Force Emblems ceased operations, how access has been provided to those documents?

Mr McERLAIN: Sorry, who had access to it or—

Mr DAVID SHOEBRIDGE: How those documents have been secured since the conclusion of Emblems.

Mr McERLAIN: Emblems was run under an investigation management software called e@gle.i. All the documents, all the inquiries that we made had been uploaded electronically to e@gle.i. Access to that was given to the team during that time. Our access to e@gle.i was discontinued in 2012, I think it was.

Mr DAVID SHOEBRIDGE: In terms of the work that you were doing on Strike Force Emblems, what difficulties did you find arising from the statutory secrecy provisions relating to the Crime Commission?

Mr McERLAIN: It was difficult to obtain. It was difficult to obtain documents such as affidavits; it was difficult to access people. A lot of the people that we wanted to interview, which could possibly rebut some of the allegations, we could not get access to because of those secrecy provisions—predominately documents and access to people, that was the frustrating part of it.

Mr DAVID SHOEBRIDGE: It has been suggested by some that being a member of Strike Force Emblems was very career limiting and potentially very damaging to your career thereafter. Do you have any observations to make—observations of your personal career and the careers of colleagues?

Mr McERLAIN: Not personally but I can state that it has ruined the career of the lead investigator on medical grounds.

Mr DAVID SHOEBRIDGE: Looking back now it has been the better part of 11½ to 12 years since Emblems concluded. Did you seek to have any issues that arose in Emblems addressed in the intervening 11 or 12 years? Have you made any efforts to have those matters addressed?

Mr McERLAIN: No.

Mr DAVID SHOEBRIDGE: Do you know of any other officers that have sought to have those matters addressed?

Mr McERLAIN: No, I do not know of any other officers.

Mr DAVID SHOEBRIDGE: Do you think the failure to have those matters addressed for well over a decade has created further difficulties for the NSW Police Force or for members of it?

Mr McERLAIN: I think, as I said in my opening address, if we could have overcome those secrecy provisions we would not be here today definitely. I think possibly a lot of the alleged misconduct could have been aired back then rather than perhaps today.

Mr DAVID SHOEBRIDGE: There have been aspersions cast upon the credibility of Strike Force Emblems by a number of people, including the current Inspector of the Police Integrity Commission who undertook a review of Strike Force Emblems. Are you aware of those?

Mr McERLAIN: Yes.

Mr DAVID SHOEBRIDGE: When you completed Strike Force Emblems what steps were taken in terms of it going up the command chain for review before it was finalised and signed off?

Mr McERLAIN: Just like any internal investigation, the reporting and all the annexures to that report would and did follow the chain of command through our commander, the assistant commissioner, right through to the deputies, through the police executive Complaints Management Team to the commissioner.

Mr DAVID SHOEBRIDGE: As it went through that chain of command did those officers sign off and endorse the conclusions and the recommendations or did they have some quality control role to play?

Mr McERLAIN: Yes. The quality control certainly starts with the commander of Emblems and that goes right through to the end result, which is the commissioner. In between that, it is also reviewed by the staff officer, I think it was at the time, to Professional Standards or internal affairs.

Mr DAVID SHOEBRIDGE: Can you remember the individuals whose hands it passed through on the way up that chain of command? Who was your commander, who was the executive officer, et cetera?

Mr McERLAIN: The commander was Assistant Commissioner Dobson, commander of Emblems, straight from the lead investigator on. It then went to Detective Inspector Brad Howell through quality control through him. I cannot recall who the deputies were then; I am not too sure.

The Hon. TREVOR KHAN: Deputy Commissioner Madden?

Mr McERLAIN: Possibly Mr Madden—he was certainly around that time.

The Hon. TREVOR KHAN: He was part of the executive Complaints Management Team.

Mr McERLAIN: Possibly. I did not go to many of those meetings but certainly the ones I went to he was there.

Mr DAVID SHOEBRIDGE: Then all the way to the commissioner, is that right?

Mr McERLAIN: To the commissioner, Mr Moroney.

Mr DAVID SHOEBRIDGE: Did each of those layers of command endorse the report? What was their role in quality control?

Mr McERLAIN: The role in any internal investigation like that would be to comment on the report itself or the recommendations and, generally, if there is any negative feedback it would come back through the chain to either rectify it or reinvestigate.

Mr DAVID SHOEBRIDGE: As it went up that chain of command was there any negative feedback?

Mr McERLAIN: Not that I am aware of.

Mr DAVID SHOEBRIDGE: Did they attach their signatures to it as it went up the chain of command?

Mr McERLAIN: I believe they did, yes.

Mr DAVID SHOEBRIDGE: What do you make then of the strident critique that is applied to the conclusions and the logical consistency of Strike Force Emblems now given it went through such a rigorous process in 2003?

Mr McERLAIN: When we closed the doors on Emblems we were confident and convinced that we had done the best we could and nothing ever came back in the negative direction or the opposite direction to say the contrary.

CHAIR: You said in your opening statement that someone or people had threatened sanctions against the report, yourself perhaps and other officers who were working on the Emblems report. Can you elucidate on that a little bit?

Mr McERLAIN: I am not trying to be vague but it was in correspondence back from the NSW Crime Commission; I am sure it was in reply to some of the investigative strategies that we wanted to do back then. For example, I think it was mooted that we wanted to do search warrants on either the Crime Commission holdings or the Supreme Court. In any event, it came back in writing that if we continued to go down these paths—words to this effect—that we may face breaching some of the legislation under the New South Wales Crime Commission and possible prosecution, I think the wording might have been.

CHAIR: You were of the view, or you were, to use your words I suppose, threatened that you may be prosecuted for doing your job.

Mr McERLAIN: Yes, sir.

CHAIR: Is that what you are saying—if you continued down that track of investigation?

Mr McERLAIN: I can recall if they used "prosecution", but certainly "breaching the legislation" was mentioned—certainly in correspondence.

CHAIR: Was it the Crime Commission itself, or was it individuals in the Crime Commission?

Mr McERLAIN: I think it was from Mr Bradley—signed from Mr Bradley, the crime commissioner.

The Hon. ADAM SEARLE: Was there any other source from which you say there were threats of reprisals for being involved in Emblems, or was that it?

Mr McERLAIN: We were certainly accused of leaking information. I think at one stage—either the early stages or during Emblems—there was a media report about Emblems. I do not know if it was in writing—I cannot recall—but whilst it was not a threat, it was an allegation. But as far as threats are concerned, I can probably narrow that down to one dot point, which was correspondence from the commission.

The Hon. ADAM SEARLE: Those queries or inquiries about leaks, by whom was that directed and to whom was it directed? Was it directed to yourself or to others?

Mr McERLAIN: To the squad, to the strike force in general—not directed, from my recollection, to any one person, but to the task force.

The Hon. ADAM SEARLE: Who raised those queries?

Mr McERLAIN: The lead investigator raised that with us.

The Hon. ADAM SEARLE: What, that he had been asked about these matters, or was he interrogating his own squad about potential leaks?

Mr McERLAIN: No, it definitely was not interrogation. It was something that was raised about a leak and we were accused of leaking.

The Hon. ADAM SEARLE: It had been raised with him by his superiors. Is that your understanding?

Mr McERLAIN: I think so, yes.

The Hon. LYNDA VOLTZ: When you say you were going to execute a warrant or a search warrant on the Crime Commission, was that the implication that you are making before—that you wanted to execute a warrant? Yes?

Mr McERLAIN: That was one of the proposed strategies that we wanted to put in place but we had to run anything—like, any strategies like that, we had to run it through the police executive.

The Hon. LYNDA VOLTZ: You ran that strategy through the police executive and you were told by them or by someone else that you would be in breach of the Act.

Mr McERLAIN: By correspondence from the New South Wales Crime Commission, as I recall.

The Hon. LYNDA VOLTZ: Did Strike Force Emblems then seek its own legal clarification on whether it breached the Act if it executed a search warrant?

Mr McERLAIN: No, I do not think so. I think after that that we knew that that was not going to be a strategy we could adopt it, so we just moved on to other things.

The Hon. ADAM SEARLE: So you were warned off?

Mr McERLAIN: It certainly shook us.

The Hon. LYNDA VOLTZ: Would it have been in breach of the Act?

Mr McERLAIN: Possibly. We were not covered by the secrecy provisions, Strike Force Emblems, so I guess—I am not a lawyer—if we tried to influence someone under the secrecy provisions to give evidence or be interviewed, that probably might be a breach.

The Hon. LYNDA VOLTZ: With the Strike Force Emblems report, you send that higher up the chain of command once it was completed.

Mr McERLAIN: Yes.

The Hon. LYNDA VOLTZ: Did you ever receive an explanation why the senior ranks did not act on Strike Force Emblems?

Mr McERLAIN: No, I did not. I did not receive anything, from memory, no.

The Hon. LYNDA VOLTZ: And the commissioner at that time would have been?

Mr McERLAIN: Mr Moroney.

The Hon. TREVOR KHAN: Firstly, there was a preliminary Emblems report prepared, was there?

Mr McERLAIN: Yes. I think we prepared one midway and then there was a final report.

The Hon. TREVOR KHAN: I do not want to talk about the contents of the document. I just really want to try to identify that document. If you go to the final page or two of it, can you see that it is unsigned?

Mr McERLAIN: Yes.

The Hon. TREVOR KHAN: If you turn over to the front, are you able to indicate to me whether that is in some way an unsigned copy of the final Emblems report, or whether you think it might be the preliminary report, or is it a draft of the final report?

Mr McERLAIN: Can I flick through it?

The Hon. TREVOR KHAN: Of course, yes. I just want to be a bit careful about what we refer to in it; that is all.

The Hon. ADAM SEARLE: Yes, absolutely.

Mr DAVID SHOEBRIDGE: I think we have gone through this exercise before.

The Hon. ADAM SEARLE: Yes.

Mr McERLAIN: Just from that third-last page—I was going to say—I thought it said "overall expenditure", but it just says "operational expenditure". I would have concluded that would be the final report, but that is not quite correct. Difficult to say, sir, but I think it might be the final report.

The Hon. TREVOR KHAN: All right. Let us assume we are sort of comfortable with that—that it is at least an unsigned copy of the final report. If you go to the final pages, is there not at the top of the page that first off the document is signed off by what I think was then the Detective Superintendent Galletta. Is that the case?

Mr McERLAIN: Detective Inspector, the leading investigator, yes.

The Hon. TREVOR KHAN: Sorry. I do not have it in front of me and my memory is poor. Then there is a chain of command that goes from there. Is that right?

Mr McERLAIN: Yes, sir.

The Hon. TREVOR KHAN: You are able to identify who those people are?

Mr McERLAIN: Yes.

The Hon. TREVOR KHAN: Who are they?

Mr McERLAIN: From Mr Galletta it goes to Assistant Commissioner Garry Dobson; from there, to Inspector Brad Howell.

The Hon. LYNDA VOLTZ: Point of order.

CHAIR: Order! This is a confidential document.

The Hon. LYNDA VOLTZ: It has not been released publicly.

CHAIR: We have taken in camera evidence. We have not published it.

The Hon. ADAM SEARLE: To the point of order: We have not published the document, but I think other witnesses have been asked questions about aspects of it that did not reveal confidential material.

CHAIR: I think we are getting to the stage of revealing confidential material. We are quoting people's names and the chain of command.

The Hon. TREVOR KHAN: The chain of command is in terms of the certification.

The Hon. LYNDA VOLTZ: I do not think we have quoted from it before and it is a confidential document.

Mr DAVID SHOEBRIDGE: To the extent that we can overcome that—and I think the question is proper; I do not think it is disclosing any operational concern—I would urge the Committee to resolve to allow this questioning to continue in relation to the sign off—

The Hon. TREVOR KHAN: I am not intending to go into the guts of it.

Mr DAVID SHOEBRIDGE: —notwithstanding any earlier resolution. I move that.

CHAIR: Okay. Proceed.

The Hon. TREVOR KHAN: With that little contretemps that we had internally, I think we got to?

Mr McERLAIN: I will just go back to Inspector Brad Howell and back to Assistant Commissioner Dobson.

The Hon. TREVOR KHAN: And his role in terms of the sign-off was? Was that professional standards?

Mr McERLAIN: No. Mr Dobson was the Commander of Strike Force Emblems.

The Hon. TREVOR KHAN: I apologise.

Mr McERLAIN: It has gone back to him for another certification or quality review, and then on to Deputy Commissioner Madden.

The Hon. TREVOR KHAN: Before we get all excited again, could you just close it up. I think you have indicated that it would eventually find its way to the commissioner.

Mr McERLAIN: Via the executive police complaints management team, who the commissioner is chair of, yes.

The Hon. TREVOR KHAN: The commissioner at that time was Commissioner Moroney?

Mr McERLAIN: Yes.

The Hon. TREVOR KHAN: Commissioner Moroney remained the commissioner until March 2007 or thereabouts? Would that be about right?

Mr McERLAIN: Yes, possibly. I just cannot recall the date.

The Hon. TREVOR KHAN: I do not want to verbal you too much.

Mr McERLAIN: No, no. I just cannot remember the date.

The Hon. TREVOR KHAN: Can I have that document back before some of my friends get excited that we are doing something wrong again? If I tell you that the final report was signed, in fact it would seem, on 22 March 2004, would that be about right in terms of your recollection of events?

Mr McERLAIN: It was around the early stages of March that I think we were closed down.

The Hon. TREVOR KHAN: You gave evidence as to being in a sense taken off the system in terms of access to documents. Is that right?

Mr McERLAIN: Yes.

The Hon. TREVOR KHAN: When was that again?

Mr McERLAIN: That was in 2012. It was just prior to Prospect starting up, I think it was.

The Hon. TREVOR KHAN: Was that in the context that various people became aware that documents were, in a sense, leaking out all over the place?

Mr McERLAIN: I know I went across to assist professional standards in actually getting e@gle.i out for them and giving them access say they could remove all previous accesses, but I am not too sure if they had asked me to do that because of anything leaking. I am just not too sure of that. It might have been because the inquiry was about to commence.

The Hon. TREVOR KHAN: They were just putting their ducks in a line, in a sense, in that regard.

Mr McERLAIN: Yes.

The Hon. TREVOR KHAN: Have you been spoken to by the Ombudsman?

Mr McERLAIN: Yes.

The Hon. ADAM SEARLE: Did you give evidence to the Ombudsman under summons?

Mr McERLAIN: Yes.

The Hon. ADAM SEARLE: I am not asking you to reveal the details of any evidence you gave to the Ombudsman, but was the nature of the questions directed to you about the substantive issues in the Emblems matter?

Mr McERLAIN: Some were, yes.

The Hon. ADAM SEARLE: What other subject matters were canvassed with you before the Ombudsman?

Mr McERLAIN: Associations, leaking of documents, handling of documents.

The Hon. ADAM SEARLE: What was the majority area covered in questioning of you by the Ombudsman?

Mr McERLAIN: It was predominantly focused on leaks, associations, receiving documents, journalists who I knew, who I had met—predominantly that.

The Hon. ADAM SEARLE: You were an investigator, were you, on the Emblems report?

Mr McERLAIN: Yes. Yes, I was.

The Hon. ADAM SEARLE: In that capacity, you endeavoured, within the limitations described in the Emblems report, or you were one of the people who attempted to come to grips with the truth or otherwise of

the central allegations; that is, the proposition that listening devices and other surveillance were conducted on police and others improperly and/or illegally. That was the central controversy?

Mr McERLAIN: Not sort of centrally. In my opening address, most of my investigations or most of my inquiries when I was part of Strike Force Emblems were a complaint that was given to us outside of the terms of reference, so I spent most of my time on what was Operation Boat and allegations there. The impropriety or otherwise of the two distinct device warrants I did not have much input into during that particular time at Emblems. Most of my time was investigating the allegations of—

The Hon. ADAM SEARLE: Boat and Paddle?

Mr McERLAIN: Boat and Paddle.

Mr DAVID SHOEBRIDGE: Which came first?

Mr McERLAIN: I think it was a dead heat there. We just could not get anywhere with that one.

CHAIR: You spoke earlier in your opening statement about being involved with the Emblems inquiry being a career-limiting involvement. Would you characterise your own career that way since then?

Mr McERLAIN: I do not think I said it was career limiting to me but—

CHAIR: That is what I am asking.

Mr McERLAIN: I have certainly been at the present rank for 10 years. I have certainly tried to progress but have not been successful.

CHAIR: Have you developed a perception that your involvement with Emblems might have been part of that process, or have you had any feedback after failing in promotion?

Mr McERLAIN: Certainly I do not have any evidence of that, and I certainly have not received any official feedback.

The Hon. TREVOR KHAN: Not all of us can end up commissioner.

CHAIR: I do not think Mr McErlain was seeking to be commissioner.

The Hon. TREVOR KHAN: No. Nor me.

CHAIR: In your case I would agree. There being no further questions, thank you for your attendance.

(The witness withdrew)

BRETT ANTHONY McFADDEN, Superintendent, NSW Police Force, affirmed and examined:

CHAIR: Would you like to start with a short opening statement?

Mr McFADDEN: Yes, please. Mr Chairman, Committee members, this is the third time I have been required to attend a public parliamentary committee concerning the circumstances and issues associated with Operation Prospect and Strike Force Emblems. The first occasion was on 11 October 2012, where I appeared before the parliamentary budget estimates committee. This was unprecedented at the time for a police officer of my rank and position. To my knowledge attendance at this forum is usually reserved for the Minister for Police and Emergency Services, the Commissioner and deputy commissioners of police. In 2012 the issues that have been raised at this inquiry had been subject to media commentary. I was confident the questions intended for me at that time related to the subject matter which is now being explored. However, it appeared to me that there were some concerns at the time held by certain members of that committee about the lawfulness and/or appropriateness of the questions proposed for my attention. Consequently, no questions were asked of me on that occasion and I was excused from giving evidence.

On 14 August 2013 I again appeared before the parliamentary budget estimates committee where, owing to the same concerns in relation to the lawfulness and/or appropriateness of questions to be asked, no questions were asked of me and I was once again excused from giving evidence. I sit here before you with an expectation that I may be required to answer questions contrary to the express terms of the secrecy provisions and several Acts of Parliament by which I am bound. These are matters which are normally considered to be subject of overriding public interest considerations. I do not take that expectation lightly. I take pride in my professional standing, which has at its core a foundation of honesty and integrity. As you would appreciate, I take my obligations to always act in accordance with the law seriously and as such I have given this matter extensive consideration. I must say it remains a concern for me.

I understand the Committee has made clear its view in relation to the compellability of a witness to answer questions despite the existence of statutory secrecy provisions. To my knowledge, the matter is not yet one that has been the subject of any judicial consideration. Mr Chairman, I acknowledge your correspondence to me dated 30 January 2015 in response to my concerns. Notwithstanding my personal reservations, I acknowledge the collective and well-considered legal opinions provided by Mr Bret Walker, Senior Counsel, and others and the determinative weight that this Committee has placed on those opinions. In full reliance on the unequivocal position that the Committee has widely publicised, I will answer the questions as required.

I am a police officer with over 27 years of service for the NSW Police Force. The professional, ethical and accountable manner in which I discharged my responsibilities throughout my career has given me great satisfaction and strength. At times this approach to the discharge of my duties has also been to my detriment. However, this is also the basis for my resilience. The issues raised thus far in this inquiry require resolution and, respectfully in my opinion, should have been confronted, considered and finalised years ago. Unfortunately we are clearly some distance from a resolution. I am acutely aware of the seriousness and significance of the issues under consideration. I am also cognisant that I am effectively being placed in between three of the most senior members of the NSW Police Force. Whilst this is somewhat an unusual position to be in, it does not in any way shake my resolve or otherwise deter me from providing honest, frank and accurate answers to the best of my ability.

I take pride in the position I hold as an operational local area commander and the fact that I have never aligned myself with personalities or individuals throughout my career. I have endeavoured to loyally serve the position of commissioner through the chain of command, including in more recent years deputy commissioners, assistant commissioners and peers at the superintendent level. It has been, and still remains, my clear focus to provide positive, effective and ethical leadership for those I engage with across the NSW Police Force and with the wider community. My service is provided honestly, with commitment and dedication and, most importantly, without fear or favour towards any individual. I thank you for the opportunity to make the opening comments, and I welcome your first question.

Mr DAVID SHOEBRIDGE: Thank you for your opening address. I think everybody sitting around the table recognises the difficulties for an officer of your rank, high as it is, coming forward and speaking about these matters. I appreciate the candour with which you have come forward. You raised a series of concerns in November 2001 regarding the special crime unit within the Special Crime and Internal Affairs command. Do you remember that?

Mr McFADDEN: That is correct.

Mr DAVID SHOEBRIDGE: What was your position as at November 2001?

Mr McFADDEN: I was a detective inspector attached to the investigations unit of the Special Crime and Internal Affairs command.

Mr DAVID SHOEBRIDGE: Did you say the statutory—

Mr McFADDEN: The Special Crime and Internal Affairs command—what has been referred to as SCIA.

Mr DAVID SHOEBRIDGE: At that time who was the commander of SCIA?

Mr McFADDEN: The commander of SCIA was Assistant Commissioner Andrew Scipione.

Mr DAVID SHOEBRIDGE: In that role you had a series of concerns raised with you about a number of matters regarding Mascot. Do you remember that?

Mr McFADDEN: Yes, I do.

Mr DAVID SHOEBRIDGE: Where did those concerns come from? Who raised those concerns with you?

Mr McFADDEN: I was approached by members of the special crime unit, with whom I had had a working relationship previously, and over a period of time, about a week, a number of concerns were raised with me and I explored those concerns with them.

Mr DAVID SHOEBRIDGE: Was this immediately prior to you raising your concerns with your commander? How long was the delay between the concerns being raised and you raising your concerns with the commander?

Mr McFADDEN: I would have made notes at the time. I do not have access to those notes, but it was in a matter of days, up to a week, from my recollection.

Mr DAVID SHOEBRIDGE: At the time those concerns were raised with you, what was the status or Mascot or Mascot 2 as it had become?

Mr McFADDEN: I could not tell you the exact status of that investigation.

Mr DAVID SHOEBRIDGE: Do you remember if it was fully completed, nearing its completion, live? You do not remember?

Mr McFADDEN: For clarity, I was attached to the investigations unit, which is a different operating arm of the Special Crime and Internal Affairs command, so visibility on the timings, the status of investigations that had been conducted by the special crime unit, was outside my sphere.

Mr DAVID SHOEBRIDGE: You directed an email to your commander on 29 November 2001. Does that sound correct?

Mr McFADDEN: That is correct.

Mr DAVID SHOEBRIDGE: You raised a series of issues but the first issue was concerning the legality of telephone intercept affidavits for, I think, operations Orwell and Jets.

Mr McFADDEN: Correct.

Mr DAVID SHOEBRIDGE: Without detailing individual names or individual officers, can you say broadly what your concerns were about those telephone intercept affidavits?

Mr McFADDEN: I would have to make reference to a document, if you have one handy that I could review.

Mr DAVID SHOEBRIDGE: Yes, if the Committee is happy. It is his email.

Mr McFADDEN: Are you referring to point one?

Mr DAVID SHOEBRIDGE: Yes, that is halfway down the first page, 29 November, 1900 hours. That is the email from you to your then commander, Mr Scipione. Is that right?

Mr McFADDEN: That is the document.

Mr DAVID SHOEBRIDGE: So point one. You see it as the number one.

The Hon. ADAM SEARLE: Do you recognise this as the email you sent to your then commander, Andrew Scipione?

Mr McFADDEN: This is a copy of the document that I forwarded to my commander.

The Hon. ADAM SEARLE: This is your email to Andrew Scipione?

Mr McFADDEN: Correct.

Mr DAVID SHOEBRIDGE: What is the substance of your complaint numbered one?

Mr McFADDEN: It is difficult to paraphrase something you do not want me to be specific on, so I am trying to get a gauge of what you want me to do with the question.

Mr DAVID SHOEBRIDGE: I am happy for you to be as specific as you need to be but without naming individuals if you can.

The Hon. ADAM SEARLE: In fact, point one does not name any individuals.

Mr DAVID SHOEBRIDGE: That is right.

The Hon. ADAM SEARLE: So there is no problem with that.

Mr McFADDEN: The document represents—

The Hon. LYNDA VOLTZ: I think his dilemma is that it is a confidential document and he does not want to say what is in the document and you are asking him to go to it.

Mr DAVID SHOEBRIDGE: Just the substance of your concerns without mentioning any individual names.

The Hon. TREVOR KHAN: You should put it to him this way. Will he refresh your memory by looking at the document and then tell us what your concerns were at the time? That is how it is done.

Mr McFADDEN: The difficulty I have—

The Hon. TREVOR KHAN: In the Tamworth traffic court anyway.

Mr DAVID SHOEBRIDGE: You should go back to it.

Mr McFADDEN: The difficulty I have is the document represents the best summary I can provide of the concerns provided to me. If there is an impediment relating to me reading that summary onto the record—

Mr DAVID SHOEBRIDGE: No, I see no impediment to you reading that summary because it does not disclose any names.

Mr McFADDEN: The document—I also want to flag that the document—

The Hon. LYNDA VOLTZ: The document is confidential. I think there is an impediment.

Mr McFADDEN: I want to flag the fact that, whilst I am the author of the document, how it came into the public forum is a concern for me. So reading something that I consider to be a confidential document onto the record, I also have reservations about.

Mr DAVID SHOEBRIDGE: We might try it this way before we go into confidential session. The first concern you had was an issue concerning the legality of telephone intercept affidavits for operations Orwell and Jets.

Mr McFADDEN: Yes.

Mr DAVID SHOEBRIDGE: And it was a very real concern that you raised.

Mr McFADDEN: Yes.

Mr DAVID SHOEBRIDGE: The second concern you had was an issue concerning the interception of drugs, et cetera, on private premises in Mascot and Florida. Do you see that?

Mr McFADDEN: Yes.

Mr DAVID SHOEBRIDGE: The third concern that you raised was the controlled release of fictitious information to facilitate search warrant applications and executions?

Mr McFADDEN: Yes.

Mr DAVID SHOEBRIDGE: You then detailed a number of conversations—well, a conversation you had with the then State Coroner regarding those concerns, is that right?

The Hon. LYNDA VOLTZ: Point of order: In regard to this being a confidential document, I think we need to make a decision on that because you are now going through the document and what is in it, and people who have been spoken to within that document are very identifiable.

The Hon. ADAM SEARLE: I am happy to move that we move into confidential session so we can deal with this issue.

Mr DAVID SHOEBRIDGE: I would like to finish my last question.

The Hon. LYNDA VOLTZ: No. I have raised a point of order.

The Hon. ADAM SEARLE: The issue is we have a document and we have not dealt with it.

The Hon. LYNDA VOLTZ: It is a confidential document and you are now identifying people in it.

The Hon. ADAM SEARLE: I move that we go into confidential session to discuss the document.

The Hon. TREVOR KHAN: Are we going into a deliberative or into in camera?

The Hon. ADAM SEARLE: We will have a deliberative to decide what to do.

The Committee proceeded to deliberate.

(Evidence continued in camera)

(The Committee adjourned at 5.36 p.m.)