

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 4

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

At Sydney on Friday 19 June 2015

The Committee met at 1.00 p.m.

PRESENT

The Hon. R. Borsak (Chair)

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

CHAIR: Welcome to the first hearing of the General Purpose Standing Committee No. 4 inquiry into the progress of the Ombudsman's investigation "Operation Prospect". As people would be aware, a select committee inquiry was held earlier this year to examine the conduct and progress of the Ombudsman's inquiry "Operation Prospect". The select committee report was tabled on 25 February 2015. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today the Committee will hear from the Attorney General, the Hon. Gabrielle Upton, MP, and Lloyd Babb, SC, Director of Public Prosecutions. Finally, the Committee will take evidence from the NSW Ombudsman, Mr Bruce Barbour, and the Deputy Ombudsman, Ms Linda Waugh. A further hearing will take place next Friday 26 June 2015. Before we commence I will make some brief comments about the procedures for today's hearing.

Today's hearing is open to the public and is broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website within the next day or so. In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. Therefore I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if any other person decided 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 Parliamentary Press Gallery should approach the secretariat to sign a copy of the broadcasting guidelines.

There may be some questions that a witness could only answer if they had more time or with certain documents on hand. In these circumstances witnesses are advised that they can take the question on notice and provide an answer within three calendar days following the receipt of the transcript. Given the subject matter of this inquiry, it is possible that some of the information witnesses may be asked to provide will be covered by statutory secrecy provisions. The position of the Legislative Council—the same as the Australian Senate and other Houses—is that statutory secrecy provisions have no application to Parliament except by express enactment and that secrecy provisions do not affect the powers of the Committee to require answers to lawful questions. Advice from Mr Bret Walker, SC, dated 14 January 2015, obtained in connection with the recent select committee inquiry, supports the Council's position regarding this matter. This advice can be accessed on the Council's website.

In accordance with the approach taken in the last inquiry, based on Mr Walker's advice the Committee has resolved to summons all witnesses, with the exception of the Attorney General, to appear before it for this inquiry only. Mr Walker stated that, although not necessary to protect witnesses, he strongly favoured the service of a summons to make it clear that witnesses are being compelled to answer questions or provide information. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. Finally, I ask everyone to turn their mobile phones off or to silent for the duration of the hearing.

GABRIELLE UPTON, Attorney General, examined by the Committee:

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

Ms GABRIELLE UPTON: I would. At the outset I want to confirm what I said to the Legislative Assembly last month and that is: There was no leak from me or from my office. It is worth noting for the Committee's benefit that the NSW Ombudsman does not report to me. I have also not received any briefings from or discussed with the Director of Public Prosecutions any referral of a deputy commissioner of police by the Ombudsman to his office. Inquiries made by my office to the Office of the Director of Public Prosecutions confirm that no relevant material relating to a referral was sent to my office. Inquiries by my office to the Department of Justice also confirm that no relevant material relating to a referral was sent to my office.

For the record, on 2 April 2015 I was sworn in as the Attorney General. On 17 April 2015 an article was published in the *Sydney Morning Herald* that reported that the NSW Ombudsman may be considering referring a New South Wales deputy commissioner of police to the Director of Public Prosecutions. That was the first time that I became aware of the matter. On 12 May 2015 I was asked a question without notice during question time in the Legislative Assembly. That question noted media reports that the NSW Ombudsman is considering referring a deputy commissioner of police to the Director of Public Prosecutions. In response to that question I stated that I conduct myself with integrity and I rejected any assertion of impropriety on my part. On 28 May 2015 I was asked a similar question during question time. In response to that question, I denied that there was a leak by me or my office. I have sought relevant assurances from my ministerial staff that my office did not disclose confidential information in connection with this matter. Again, I want to make it clear: There was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: Thank you for appearing today. We know you are not compelled to attend an upper House inquiry. I am sure I speak on behalf of the Committee when I say that we appreciate your attendance. Your answer on 12 May to Parliament referenced section 29 of the Director of Public Prosecutions Act, which is the section that talks about where the DPP does not believe the DPP should exercise the powers and references that power to the Attorney General. Has there been any discussion between you and the DPP about the exercise of the power under section 29 in relation to this matter?

Ms GABRIELLE UPTON: I will not talk about other discussions I have had with the Director of Public Prosecutions in relation to section 29 generally, but I come back to this inquiry, which is about a purported leak. In relation to that matter there have been no discussions and no relevant material in my office about this matter. Again, I state for the record: There was no leak from me or from my office in relation to that matter.

Mr DAVID SHOEBRIDGE: You said in your opening statement that there had been no material provided to your office by the DPP. Do I take it as well that there has been no material provided to your office from the Ombudsman?

Ms GABRIELLE UPTON: The Ombudsman does not report to me. There has been no material from the Ombudsman to me.

Mr DAVID SHOEBRIDGE: And you understand that when I am asking about the Ombudsman I am including the Ombudsman's office broadly.

Ms GABRIELLE UPTON: In relation to this matter, that is correct.

Mr DAVID SHOEBRIDGE: Has there been any communication between the Ombudsman, including his office, and anybody in your office that you are aware of regarding this matter?

Ms GABRIELLE UPTON: There has not.

Mr DAVID SHOEBRIDGE: How have you satisfied yourself as to that?

Ms GABRIELLE UPTON: As I stated for the record, I have sought relevant assurances from ministerial staff, and again I state for the record there was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: I accept your word. You have come here. You are under your oath and your obligation to tell the truth to the Parliament. But we do not have that same comfort from your staff because they are not here. Have you sought to have your staff provide that statement to you by way of a statutory declaration, which you would be willing to provide to us?

Ms GABRIELLE UPTON: I have come by invitation. I am the Attorney General. I am the elected official. I will not talk about the workings of my office. I have sought relevant assurances from my office, members of my staff, and I say to you, and I will say it again: There was no leak from me or from my office. And if there is a leak, if there is evidence, bring it forward.

Mr DAVID SHOEBRIDGE: We know there is a leak somewhere because a major newspaper has reported the fact that the Ombudsman is considering these charges. So you would agree with me that there is a leak somewhere.

Ms GABRIELLE UPTON: I simply state for the record again: it is not for me to speculate. There was no leak from me or from my office in relation to this matter.

Mr DAVID SHOEBRIDGE: I ask you again. How did you go about satisfying yourself that nobody in your office—those people who have not come here and are not putting their statement on the record—was the source of a leak?

Ms GABRIELLE UPTON: I sought the relevant assurances, as I said before, and I am telling you now, as I said in Parliament and I said in my opening statement: There was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: I am asking you how you sought those relevant assurances. What steps did you undertake in order to satisfy yourself?

Ms GABRIELLE UPTON: I have answered your question. I will not go into the workings of my office. I sought relevant assurances. I am here representing myself and my ministerial office. There was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: I accept that that is what you believe, but in order to be able to test the basis of that belief that you give to us it is necessary to understand what steps you took, what steps your office took to satisfy itself that there were no leaks from your office. I am giving you the opportunity now to put on the record what steps you took.

Ms GABRIELLE UPTON: I sought relevant assurances from members of my ministerial office. There was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: We keep getting the same statement that you sought relevant assurances. What did you do? What steps did you take to get the relevant assurances?

Ms GABRIELLE UPTON: There was no leak from me or from my office. I have answered your question.

Mr DAVID SHOEBRIDGE: With all due respect, you have not answered the question. What steps did you take to satisfy yourself—

The Hon. TREVOR KHAN: She has answered the question.

Mr DAVID SHOEBRIDGE: I am not after the conclusion; I am after the steps that you took to obtain those assurances. It is a pretty simple question. Did you talk to them? Did you interview them? Did you check their email records? What did you do?

Ms GABRIELLE UPTON: Mr Shoebridge, I am not going to go into the workings of my office. I will state again for the record that I sought the relevant assurances from people in my office and again I state—as I did in Parliament last month and I have stated in my opening statement and I state again—there was no leak from my office or from me.

Mr DAVID SHOEBRIDGE: Did you speak to any of your officers about their willingness to come here and speak for themselves about this matter and about their willingness to give a statement on the record as to their conduct?

Ms GABRIELLE UPTON: Mr Shoebridge, there was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: With all due respect, that is not answering the question. Have you asked any of your officers about whether they are willing to come here and give on oath the same assurances that you are giving to us second-hand?

Ms GABRIELLE UPTON: I am here today, I am the Attorney General, I represent my office and myself. You have called me, I have accepted that invitation and again I deny that there was any leak from me or from my office.

Mr DAVID SHOEBRIDGE: To understand if we can simply accept your denial I need to understand what steps you took to satisfy yourself. You are not willing to tell us that. Could you please tell us what steps you took to satisfy yourself?

The Hon. TREVOR KHAN: Point of order: She has answered the question. She has made an opening statement in which she has indicated what she has done. She has told you that she has sought relevant assurances from her office. She is entitled to answer the question relevantly and she has. She has now been asked the same question at least half a dozen times and she has answered it.

The Hon. LYNDIA VOLTZ: To the point of order: As Government members are aware, the workings of offices have been raised in upper House parliamentary inquiries before to the extent that electorate staff and ministerial staff have been called to give evidence. It is not unreasonable for a member to ask that staff of Ministers and members of Parliament put their story on the record in an inquiry. Committees have done that in the past at the request of Government members' parliamentary colleagues. The Attorney General can keep giving the same answer but it is not an answer to the question.

The Hon. TREVOR KHAN: Further to the point of order: It is long-established practice in these inquiries that when Ministers are called their answers have to be generally relevant. Members may not like her answer but she is being generally relevant. She has answered the question and repeating the question half a dozen times will not change that fact. Mr Shoebridge should move on.

CHAIR: Order! I rule in favour of the point of order. The question has been exercised enough.

Mr DAVID SHOEBRIDGE: Did you obtain an assurance from Mr Wilde that he was not the source of the leak and, if so, in what circumstances?

Ms GABRIELLE UPTON: I sought the relevant assurances from members of my ministerial office.

The Hon. ADAM SEARLE: What was your state of knowledge about Operation Prospect as at 17 April or prior to that date?

Ms GABRIELLE UPTON: I understood as of that date that it was an investigation that was being conducted by the Ombudsman in relation to internal police matters. That was the extent of my knowledge.

The Hon. ADAM SEARLE: What documents or material did you or your office have in your possession as at 17 April or prior about the matter? I know you have said you did not have anything to do with the laying of charges or any section 29 material, but what if any other material connected with Operation Prospect did you or your office have?

Ms GABRIELLE UPTON: I take you back to my statement: There was no material in my office about that matter.

The Hon. ADAM SEARLE: Just to be very clear, you had no material whatsoever about Operation Prospect or any of the matters canvassed in the 17 April *Sydney Morning Herald* story?

Ms GABRIELLE UPTON: That is correct.

The Hon. ADAM SEARLE: Were you aware as at that date that the Ombudsman was considering referring Deputy Commissioner Kaldas to the Director of Public Prosecutions [DPP]?

Ms GABRIELLE UPTON: I refer you to my opening statement: The first that I knew of that was what I read in the paper on the 17th.

The Hon. ADAM SEARLE: So this was a complete revelation to you?

Ms GABRIELLE UPTON: It was.

The Hon. TREVOR KHAN: Assuming the article is true.

The Hon. ADAM SEARLE: We can come to that when Mr Barbour appears. What relevant assurances did you obtain from your staff? What do you describe as the relevant assurances?

Ms GABRIELLE UPTON: I have answered that question before. I answered Mr Shoebridge. I said I sought the relevant assurances and I will not go into the inner workings of my office. Again I state that with those assurances I made a statement to Parliament last month. I have made that same statement today in my opening statement. I have repeated it several times. There was no leak from me or from my office and if there was—if you have any evidence of that leak I ask you to bring it forward now.

The Hon. ADAM SEARLE: You have taken up our kind invitation to give evidence. On behalf of your chief of staff you declined or he declined to attend. Can you tell us why that was?

Ms GABRIELLE UPTON: I am the elected official. I am the Attorney General. I am here on behalf of not only myself but also my ministerial office.

The Hon. ADAM SEARLE: Why exactly did Mr Wilde and you decline for him to come?

The Hon. TREVOR KHAN: Because she is the elected official. She has answered that several times.

Ms GABRIELLE UPTON: I am the elected official, Mr Searle.

The Hon. ADAM SEARLE: I think the Attorney General can answer for herself.

The Hon. TREVOR KHAN: Probably, but the question has been asked and answered several times.

CHAIR: Order! Mr Khan, if you are going to intervene you should take a point of order.

The Hon. ADAM SEARLE: Because you are not willing to give us information about the inner workings of your office we do not know what was the state of knowledge of Mr Wilde or any other person in your office, do we? We know you say that you did not know anything about these matters but we do not know the state of knowledge of your office, do we?

Ms GABRIELLE UPTON: I am going to repeat it again. I stated in the Houses of Parliament, I stated in my opening statement and I have stated a number of times today that there was no leak from me or my office. I do not know how much clearer I can be. Again I say if you have evidence of a leak from me or my office show me.

Mr DAVID SHOEBRIDGE: I will tell you how you could be clearer. You could tell us what steps you took, who you spoke to and what the relevant assurances were that you got from Mr Wilde and other members of your staff. You say you do not know how much clearer you can be; I am telling you. Could you please tell us?

Ms GABRIELLE UPTON: Again I come back my answer, Mr Shoebridge: I sought relevant assurances from the ministerial office. I am the Minister, I am the elected official, I have accepted your invitation and I have already given you my answer to that question.

Mr DAVID SHOEBRIDGE: But the other members of your office are paid public officials receiving substantial remuneration from the taxpayer and we are asking for accountability from them. What did you do to get accountability from them?

Ms GABRIELLE UPTON: I have already answered that question.

Mr DAVID SHOEBRIDGE: With all due respect, you have not; you have simply made a bald statement that you have sought assurances. We do not know what you have done to seek assurances. We do not know if you have sought statements from them, checked their emails or checked their phone logs. We do not know any of that. Why will you not tell us?

Ms GABRIELLE UPTON: I have already answered your question and, if you were listening to my opening statement, I did say I sought the relevant assurances—and I state that again—from members of my staff and again I state there was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: But you do not tell us on what basis you draw that conclusion so how can we accept it?

Ms GABRIELLE UPTON: I am making the statement again: There was no leak from me or from my office.

The Hon. LYNDIA VOLTZ: You said in your opening statement that you asked your staff regarding any confidential information. What are you defining as confidential?

Ms GABRIELLE UPTON: As it is generally known, a ministerial office will receive confidential information that is not generally known to the public.

The Hon. LYNDIA VOLTZ: Documents that are marked confidential or Cabinet-in-confidence?

Ms GABRIELLE UPTON: Generally, yes.

The Hon. LYNDIA VOLTZ: So you did not, for example, ask your media adviser or chief of staff if they had been approached by the media in regard to this issue?

Ms GABRIELLE UPTON: I sought the relevant assurances from members of my ministerial staff. I have stated for the record many times that there was no leak from me or my office.

The Hon. LYNDIA VOLTZ: You said you asked your staff whether they had provided any confidential information, which you define as documents marked confidential or Cabinet-in-confidence. What I am asking is whether you actually asked your media adviser or chief of staff whether they had been approached by the media?

Ms GABRIELLE UPTON: I sought the relevant assurances.

The Hon. LYNDIA VOLTZ: You asked them that question, is that what you are saying?

Ms GABRIELLE UPTON: I sought the relevant assurances.

The Hon. LYNDIA VOLTZ: That is a relevant assurance, is it not?

Ms GABRIELLE UPTON: I sought the relevant assurances. I am not going to talk any further about what goes on inside my office.

The Hon. LYNDIA VOLTZ: That is good but that is not what you are here for; you are here to talk about what goes on in your office. The relevant assurances, I would have thought, include asking your media adviser and your chief of staff whether they had been approached by the media. The answer to that is pretty simple. Did you ask them or did you not? If it is only about confidentiality you are talking about documents marked confidential or Cabinet-in-confidence.

Ms GABRIELLE UPTON: I sought the relevant assurances from my ministerial office members and again I state for the record there was no leak from me or my office in relation to this matter.

The Hon. LYNDA VOLTZ: We do not know that because we do not know what you asked them.

The Hon. ADAM SEARLE: What contact have you or any member of your office had with Mr McKenzie or Mr Baker or any other representative of Fairfax media in connection with this matter?

Ms GABRIELLE UPTON: I have had no contact with the gentlemen concerned.

The Hon. ADAM SEARLE: What about your staff members? What contact has your chief of staff or your media adviser had with Fairfax media in connection with this matter?

Ms GABRIELLE UPTON: In connection with this matter there has been no contact.

Mr DAVID SHOEBRIDGE: How do you know that? Was that part of the relevant assurances?

Ms GABRIELLE UPTON: I sought relevant assurances from members of my office. I am stating it again and I will keep restating it. As I said, there was no leak from me or from my office.

Mr DAVID SHOEBRIDGE: Did you ask them if they had spoken to Mr McKenzie?

Ms GABRIELLE UPTON: I sought the relevant assurances and I have answered your question.

Mr DAVID SHOEBRIDGE: It is a simple question. Did you ask them if they had spoken to Mr McKenzie, yes or no?

Ms GABRIELLE UPTON: I sought the relevant assurances, Mr Shoebridge. I have answered your question.

Mr DAVID SHOEBRIDGE: Why will you not tell us if you asked them whether they spoke to Mr McKenzie?

The Hon. TREVOR KHAN: Point of order: A question was asked, she has given a responsive, generally relevant answer. That is the end of the matter, I say.

Mr DAVID SHOEBRIDGE: Which is why I asked the further question, which is why will the Attorney not tell us whether or not her staff spoke to Mr McKenzie?

Ms GABRIELLE UPTON: I am the elected official. I am a Minister.

Mr DAVID SHOEBRIDGE: Part of your job is accountability.

Ms GABRIELLE UPTON: This is a parliamentary Committee. When I speak here I am speaking on behalf of myself and my office. Again, in saying that there was no leak from me and my office I do not know how much clearer I can be.

The Hon. ADAM SEARLE: Assuming the story in the *Sydney Morning Herald* is accurate, which is an assumption, it means somebody who had the information put it in the public domain. It is very damaging to the police force and to the inquiry being conducted. Is that a matter of concern to you, that sort of information being leaked into the public domain?

The Hon. Dr PETER PHELPS: Point of order: The question is grounded on the hypothetical that Mr Searle acknowledged, which is if the story is accurate. You cannot ask for a consequential answer when your premise is based on a hypothetical.

CHAIR: Order! I uphold the point of order.

The Hon. LYNDA VOLTZ: That is going to cut your questions down then, Peter.

The Hon. Dr PETER PHELPS: I don't ask questions, I seek answers.

Mr DAVID SHOEBRIDGE: Attorney, there is no question that the story has been damaging to the Ombudsman's inquiry. Do you accept that?

The Hon. TREVOR KHAN: Is that not a conclusion for us to make?

The Hon. LYNDIA VOLTZ: Can we have the Attorney answer for once?

Ms GABRIELLE UPTON: Mr Shoebridge—

The Hon. Dr PETER PHELPS: Point of order—

Mr DAVID SHOEBRIDGE: You cannot cut off your own witness.

The Hon. Dr PETER PHELPS: I can take a point of order about a question that is seeking an opinion. You can ask for a factual analysis but asking for opinion is outside the provisions for questions. You might as well ask her how she feels about the month of May.

The Hon. LYNDIA VOLTZ: The Government Whip is obviously mistaking this for question time in the Parliament. That is a rule for questions without notice, it is not a rule for Committees. The question is in order.

CHAIR: I will take that. Time has expired.

Mr DAVID SHOEBRIDGE: Attorney, I know you were cut off before but I again give you the opportunity to answer the question. Do you accept that the story that appeared in the *Sydney Morning Herald* has been damaging to the Ombudsman's inquiry?

Ms GABRIELLE UPTON: If there was a breach of the law that is concerning to me as Attorney General, yes.

Mr DAVID SHOEBRIDGE: What steps have you taken as the Attorney General to determine if there has been a breach of the law?

Ms GABRIELLE UPTON: I stated in my opening statement that the Ombudsman does not report to me on this matter and there was no relevant material in my office about this matter. I have not had a briefing or any discussions with the Director of Public Prosecutions about this matter. There was no leak from me or my office on this matter.

The Hon. ADAM SEARLE: Assuming we accept all of that, what steps have you or the Government taken in response to the apparent leaking of confidential information?

The Hon. TREVOR KHAN: Point of order: You might be able to ask this witness about what she has done if there is any appropriate—

The Hon. ADAM SEARLE: That is why I phrased it "you or the Government". She can tell us what she likes.

The Hon. TREVOR KHAN: That is right, but to ask what the Government might have done is too broad.

The Hon. ADAM SEARLE: To the point of order: The Crown is indivisible, every Minister is equal. I asked the question about the Attorney General or the Government. She can answer it in the way that she chooses. She is part of the Executive Government.

Mr DAVID SHOEBRIDGE: Of course if the answer is only the Premier can answer that question—

The Hon. LYNDIA VOLTZ: She can say so.

Ms GABRIELLE UPTON: Mr Chair, can the question be restated please?

CHAIR: Yes, I was just going to say that. I have lost the thread of that.

The Hon. ADAM SEARLE: Attorney, what steps have you taken, or the Government if you are aware, in response to the apparent leak of confidential information in respect of this matter?

Ms GABRIELLE UPTON: Mr Searle, that is a matter for the Premier. I have no further comment to make.

Mr DAVID SHOEBRIDGE: Attorney, did any member of the Premier's office communicate with your office regarding actual or potential charges arising out of Operation Prospect against a deputy police commissioner on or before 17 April of this year?

Ms GABRIELLE UPTON: No.

Mr DAVID SHOEBRIDGE: How do you know that?

Ms GABRIELLE UPTON: No.

Mr DAVID SHOEBRIDGE: But on what basis do you give us that conclusion? What have you done to satisfy yourself as to that?

Ms GABRIELLE UPTON: Mr Shoebridge, I am not going to talk about what goes on between ministerial officers, but the answer is no.

Mr DAVID SHOEBRIDGE: You just simply make that assertion without telling us on what basis you have satisfied yourself, is that right?

Ms GABRIELLE UPTON: My answer is no. I have answered the question.

CHAIR: There are no further questions, so thank you for attending.

Ms GABRIELLE UPTON: Thank you, Chair.

(The witness withdrew)

(Short adjournment)

LLOYD ADAM BABB, New South Wales Director of Public Prosecutions, sworn and examined:

CHAIR: Would you care to make a short opening statement?

Mr BABB: No, thank you.

CHAIR: We will proceed straight to questions.

Mr DAVID SHOEBRIDGE: Mr Babb, thank you for attending. You know that the purpose of this inquiry, at least so far as it relates to you, is to work out if you or your office had any involvement in providing material that found its way into the *Sydney Morning Herald* about potential prosecutions regarding the deputy commissioner arising out of the Ombudsman's Operation Prospect report.

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: I ask you at the outset: Have you had any communication with the Ombudsman's office about any potential charges arising out of Operation Prospect?

Mr BABB: Yes. On 19 November 2014 the Ombudsman sent me a letter asking me to provide advice in relation to that matter.

Mr DAVID SHOEBRIDGE: Did you provide advice?

Mr BABB: No, I immediately made contact with the legal counsel who was the nominated person on the letter.

The Hon. ADAM SEARLE: Was that Ms Lonergan?

Mr BABB: That was Mr Timothy Lowe.

The Hon. TREVOR KHAN: And said that's not your job.

Mr BABB: I said that the Act does not provide for me to necessarily provide that advice; that I am not funded to do it and that subject to funding being provided and a memorandum of understanding being established I would provide advice, and steps were taken for both those things to occur.

Mr DAVID SHOEBRIDGE: So has a memorandum of understanding now been entered into between your office and the Ombudsman's office?

Mr BABB: It has. There has been a limited memorandum of understanding established in relation to any referrals arising from Operation Prospect.

The Hon. ADAM SEARLE: When was that entered into—a rough time frame?

Mr BABB: I do not have the date.

The Hon. ADAM SEARLE: This year, last year?

Mr DAVID SHOEBRIDGE: 17 April?

The Hon. TREVOR KHAN: Probably the 16th.

Mr BABB: I would have to check. I think maybe late March.

Mr DAVID SHOEBRIDGE: So the memorandum having been entered into, have there been any referrals or communication since the memorandum of understanding?

Mr BABB: The material that was initially sent on 19 November was supplemented on 30 March 2015 and that material—

Mr DAVID SHOEBRIDGE: That post-dated the memorandum being entered into, is that right?

Mr BABB: I believe so. I would have to check it exactly.

The Hon. ADAM SEARLE: You can take that on notice.

Mr BABB: Yes, and so the material is now with my office.

Mr DAVID SHOEBRIDGE: Have you provided the advice to the Ombudsman's office?

Mr BABB: That is a question of legal professional privilege. I have not finalised advice in relation to the Ombudsman. There has been some communication but I have not finalised any advice in relation to the matter.

Mr DAVID SHOEBRIDGE: Did you have any communication with the Attorney General or the Attorney General's office about this matter?

Mr BABB: No. I certainly have not had any communication with Attorney General Upton in relation to this matter. There was some communication before the change of Attorney General simply in relation to—I sent some letters to the past Attorney General saying that the Ombudsman was asking me to do work that I had not up until this stage ever done before and we would need additional funding if we were to—

The Hon. TREVOR KHAN: Could I just ask a question seeing there have been three. Was that Attorney General Smith or Attorney General Hazzard?

Mr BABB: That was Attorney General Hazzard.

Mr DAVID SHOEBRIDGE: Was that in the caretaker period or was it at or about November last year?

Mr BABB: No. The first letter that I sent was on 12 December and the second letter was on a date in February.

Mr DAVID SHOEBRIDGE: And did it include any details about who was the subject of potential charges?

Mr BABB: No, it did not.

Mr DAVID SHOEBRIDGE: Did it make any reference to the police or a deputy police commissioner?

Mr BABB: No. From memory it may have referred to the name Operation Prospect but did not refer to anyone by name or to the fact that it was an investigation into police.

The Hon. ADAM SEARLE: Did you have any other non-written communications with the previous Attorney General about this matter?

Mr BABB: No, not that I can recall. The only issue I was raising was funding and the fact that it was new work.

Mr DAVID SHOEBRIDGE: Did they then recommend or confirm that the appropriate process was to enter into a memorandum of understanding with the Ombudsman's office?

Mr BABB: No, that was something that I raised immediately because I have a memorandum of understanding with the Police Integrity Commission and the ICAC. There needs to be some process for working out how requisitions that I might have will be answered and what the obligations of my office are and the referring agency are.

The Hon. ADAM SEARLE: Did you have any contact with the Department of Justice about this matter?

Mr BABB: No, I do not believe so. I believe that my only contact was in writing the two letters that I wrote and subsequently in April—and I think it was 8 April—the Department of Treasury wrote to me confirming that some arrangements had been made for some funding.

The Hon. ADAM SEARLE: Did either of the letters that you wrote to the Attorneys come back? Was there reply correspondence?

Mr BABB: No, there was not. It was the Treasury public servant who wrote back to me.

Mr DAVID SHOEBRIDGE: So you wrote to the former Attorney General at the end of last year—

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: —raising the issue?

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: And you got a response from Treasury on 8 April about funding?

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: Were there any other communications in the meantime that you had with the Premier, the Treasurer or the Attorney General in relation to this matter?

Mr BABB: No.

Mr DAVID SHOEBRIDGE: On 17 April did you see the *Sydney Morning Herald*, which included the leak about potential prosecutions?

Mr BABB: I did. I read that article and I think I read it on the 17th.

Mr DAVID SHOEBRIDGE: What did you do after you read it?

Mr BABB: I made a file note as to who in my office knew about the receipt of material from the Ombudsman so I had my immediate recollection and I did nothing further but clipped the article and put it on the file that I had and put the file note on top of it.

The Hon. ADAM SEARLE: Who in your office had been aware of this matter?

Mr BABB: Five people, including myself; so myself, my PA, one of my two deputy directors, John Pickering; a solicitor, Daniel Noll; and the Senior Crown, Mark Tedeschi.

Mr DAVID SHOEBRIDGE: Your office all the time has confidential and highly sensitive information?

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: And I assume you have procedures in place to protect it?

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: Could you describe to us what those procedures are?

Mr BABB: They vary. In relation to this instance I recognised the sensitivity of the matter straightaway. I did not enter it onto what we call our cases database, which can be checked by any lawyer or administration person within the office—we have 620 staff—so I took that precaution. I limited the people who

knew about it to only those people who needed to know about it and they were the precautions I took in this instance. There is not a one size fits all. All I can say is what I did in relation to this matter.

Mr DAVID SHOEBRIDGE: Knowing that there were only five people, did you take any steps to satisfy yourself, by inquiries to them, that they had not been the source of the leak in the *Sydney Morning Herald*?

Mr BABB: To be honest, I did not. All five of those people I implicitly trust and I was very confident that none of them would have leaked any material but I did not undertake any inquiries; I was just so confident that that would not have happened.

Mr DAVID SHOEBRIDGE: This is a matter that you might take on notice but could I ask you whether or not you could consider making those inquiries, even for the purpose of, if you like, shutting the gate and then inform the Committee about it afterwards?

Mr BABB: I would be happy to respond, having made those inquiries.

Mr DAVID SHOEBRIDGE: Could I also ask you to provide to the Committee the correspondence that has gone back and forth—and I understand that you may wish some of that to be treated confidentially? Could I ask you to take the provision of that material on notice?

Mr BABB: This is the correspondence between me and the former Attorney General?

Mr DAVID SHOEBRIDGE: Yes, you and the former Attorney and the correspondence you received from the Treasury office. I am not asking you about the correspondence that you got from the Ombudsman?

Mr BABB: What I will do is I will provide it with maybe just a—I will provide it. I understand the powers of this Committee to compel provision.

The Hon. TREVOR KHAN: I do not know that the powers of this Committee extend to the production of documents but be that as it may.

The Hon. ADAM SEARLE: They do but—

Mr DAVID SHOEBRIDGE: Could I also ask you to provide the memorandum of understanding that you have with the Ombudsman?

Mr BABB: That would generally be a privileged document. I believe that the Ombudsman is to be called. So if he waived his privilege, that would be—

The Hon. ADAM SEARLE: Who are the signatories to the memorandum of understanding? Is it you and the Ombudsman?

Mr BABB: Myself and the Ombudsman.

The Hon. ADAM SEARLE: Was the Department of Justice or the office of the Attorney General included in any of the drafts?

Mr BABB: No.

The Hon. ADAM SEARLE: So they would not have seen any versions of these documents?

Mr BABB: No. It was something that—

The Hon. ADAM SEARLE: Just agency to agency?

Mr BABB: Agency to agency—yes.

The Hon. ADAM SEARLE: Who drafted it? Was it your office or the Ombudsman's office?

Mr BABB: I think my office provided a first draft made from a template of what we use in relation to the Independent Commission Against Corruption [ICAC].

The Hon. ADAM SEARLE: And was the fact of the memorandum or its potential existence communicated with the Attorney General's office, the Department of Justice, or any other agency of government?

Mr BABB: I do not believe so. The committee asked for a copy — I will send through the correspondence. The only way it could have been is if I had mentioned it in those two letters that I have mentioned. From memory I cannot recall—

The Hon. ADAM SEARLE: It is not a trick question. Could you take it on notice and satisfy our curiosity?

Mr BABB: Certainly.

Mr DAVID SHOEBRIDGE: And there were no further clarifications or communications from Treasury to your office about the funding issue?

Mr BABB: No. The document I got dealt with the situation to the end of this financial year and, I believe, there was subsequently some allocation in the budget going forward. I think it is tied. I think I can only use it—

The Hon. TREVOR KHAN: We might find that out.

Mr DAVID SHOEBRIDGE: If you do not use it, you have to give it back.

Mr BABB: Yes.

Mr DAVID SHOEBRIDGE: Mr Babb, I will ask you baldly: Are you quite satisfied that the source of the leak in no way involved the DPP; is that what you are telling us?

Mr BABB: Yes, I am.

Mr DAVID SHOEBRIDGE: And you will make those further inquiries in order to satisfy yourself between now and—

Mr BABB: Yes; absolutely.

The Hon. ADAM SEARLE: When you do that, could you please set out what steps you have taken, exactly?

Mr BABB: In terms of talking to those people?

The Hon. ADAM SEARLE: To inform yourself. Yes.

Mr BABB: Yes.

The Hon. ADAM SEARLE: Whether it is phone logs, email logs—whatever you choose to do.

Mr BABB: Okay. My initial plan is simply to ask them and do nothing more than ask them.

The Hon. ADAM SEARLE: You do what you think is best, and let us know what you have done.

Mr BABB: Good.

The Hon. Dr PETER PHELPS: I have one quick question. Memorandums of understanding between various agencies are hardly irregular or unusual, are they, given the siloing of funds and the use of those funds between agencies?

Mr BABB: I would not think so.

The Hon. TREVOR KHAN: I ask a question that follows from that. I take it that the memorandums of understanding in this respect originally started because of the interaction between the DPP and the ICAC; would that be correct?

Mr BABB: I think so. I think that memorandum of understanding would have predated one with the Police Integrity Commission.

The Hon. TREVOR KHAN: Indeed, one of the issues as to why these came up is the hot topic of how prosecutions were progressing and who was responsible for doing various things. And the ICAC was pointing the finger at you and you were pointing the finger at the ICAC—not you, but the former director.

Mr BABB: Yes. Anyway, they are there to set out responsibilities of the respective agencies in the process.

Mr DAVID SHOEBRIDGE: It is not just with these; it is the secret investigative powers you have with the police, which you need for your day-to-day work, for requisitions and the like.

Mr BABB: I do, yes. With anyone that I am working with, it is just a way of everyone—

Mr DAVID SHOEBRIDGE: Knowing what they have to do and when.

Mr BABB:—knowing what they have to do and—

The Hon. Dr PETER PHELPS: And, more importantly, who is paying for it.

The Hon. ADAM SEARLE: Well, which cost centre it comes out of, yes.

The Hon. LYNDA VOLTZ: And what the chain of command is.

The Hon. ADAM SEARLE: Yes.

Mr BABB: Yes.

CHAIR: Quite often one might argue that big jobs or unusual jobs are outside the standard budget anyway.

Mr BABB: Yes.

CHAIR: And that is why you are seeking extra funding to get these things done.

Mr BABB: Yes, exactly.

The Hon. ADAM SEARLE: And, just to be clear, this one arose because you were asked to do something that you felt was outside of the ordinary activities of your office, and that has given rise to negotiations and the formalisation of the memorandum with the office of the Ombudsman.

Mr BABB: Exactly. Yes.

Mr DAVID SHOEBRIDGE: Do you think it is appropriate for the DPP to have this function on the provision of material from the Ombudsman's office?

Mr BABB: I suppose I thought it was appropriate enough to progress it and establish a memorandum of understanding and apply for funding. So, subject to proper processes being put in place and funding being available, I suppose my office is the best place to give advice and, if necessary, conduct any matters arising out of any investigative bodies. It is what I do in relation to the police, the ICAC and the Police Integrity Commission.

Mr DAVID SHOEBRIDGE: But it has not traditionally been something you do with the Ombudsman's office, because it does not have that criminal investigation role.

Mr BABB: No, I have not had any significant matter from the Ombudsman's office before.

Mr DAVID SHOEBRIDGE: In your experience and engagement with the Ombudsman's office, has it been a body which has displayed an obvious capacity to perform criminal investigations? Is this the kind of thing that they are good at?

Mr BABB: I cannot comment beyond saying I have not done any significant work that had been referred from the Ombudsman. I just do not know about their capacity.

Mr DAVID SHOEBRIDGE: It is virgin territory for you in that regard.

Mr BABB: Yes.

The Hon. LYNDIA VOLTZ: Did you have to request extra funds from Treasury?

Mr BABB: Well, I go through the relevant Minister, so I wrote my letters to the Attorney General.

The Hon. LYNDIA VOLTZ: So you would have written to the Attorney General, said you had had this request from the Ombudsman to undertake work, and he would have progressed that to, say, the budget committee of Cabinet?

Mr BABB: Yes, I believe so.

The Hon. LYNDIA VOLTZ: And then you would get a response back from the budget committee of Cabinet?

Mr BABB: I got a response straight back from a Treasury official.

The Hon. ADAM SEARLE: But this is reasonably unusual, is it not? Usually there is a bit more of a struggle to get additional funding.

The Hon. Dr PETER PHELPS: It depends on the size of the funding.

Mr BABB: Yes. And when it is tied, sometimes it is not as difficult.

The Hon. ADAM SEARLE: Just to be clear about your evidence, you wrote two letters to two different Attorneys?

Mr BABB: Two letters to the one Attorney.

The Hon. ADAM SEARLE: To the same Attorney. And then you received a letter from Treasury?

Mr BABB: Yes.

The Hon. ADAM SEARLE: And in between there were no other letters?

Mr BABB: No.

The Hon. ADAM SEARLE: And no other informal communications with any other agency or person in the Attorney's office, or the Department of Justice, or Treasury? So you did not pick up the phone to say, "Hey, where is this up to?" It just came to you.

Mr BABB: No. I generally like to have things in writing.

The Hon. ADAM SEARLE: Of course.

Mr BABB: And I followed up my initial requests with a second letter and then got a reply in April.

The Hon. LYNDIA VOLTZ: And you got the reply from Treasury in April?

Mr BABB: Yes.

The Hon. LYNDIA VOLTZ: So was that early or late April?

Mr DAVID SHOEBRIDGE: It was 8 April.

Mr BABB: I believe it was 8 April.

CHAIR: As there are no further questions, thank you very much for coming, Mr Babb. The Committee has resolved that answers to questions taken on notice—and I think you have a couple of those—be returned within three calendar days following the receipt of the transcript. The secretariat will contact you in relation to the questions you have taken on notice.

(The witness withdrew)

(Short adjournment)

BRUCE ALEXANDER BARBOUR, NSW Ombudsman, and

LINDA WAUGH, Deputy Ombudsman, affirmed and examined:

CHAIR: I welcome the Ombudsman and Deputy Ombudsman. Would either of you like to make an opening statement?

Mr BARBOUR: No, thank you.

Ms WAUGH: No, thank you.

Mr DAVID SHOEBRIDGE: Thank you for coming, Mr Barbour and Ms Waugh. On 17 April the *Sydney Morning Herald* published a story which leaked into the public a statement to the effect that the Ombudsman, Bruce Barbour, believes there is a prima facie case that Mr Kaldas intentionally misled the Ombudsman's office. Do you have any knowledge about how that came into the public domain, Mr Barbour?

Mr BARBOUR: No, I do not.

Mr DAVID SHOEBRIDGE: What steps have you taken in your office to determine whether or not staff in your office were or may have been the source of that statement?

Mr BARBOUR: First, it needs to be pointed out that the author of that particular article has categorically stated that the information did not come from anybody in my office. Secondly, I have assured myself by asking relevant questions of all relevant staff involved in Prospect and in relation to certain staff that may have been the staff allegedly referred to in a document prepared and provided to this Committee by Mr Tim O'Connor, I have sought statutory declarations and had them sworn under oath. I am satisfied—completely satisfied—as a result of those inquiries and also the assurances of the journalist that there has been no leak of information in relation to the subject matter of that article or indeed any other.

Mr DAVID SHOEBRIDGE: Any other?

Mr BARBOUR: Article.

Mr DAVID SHOEBRIDGE: Did you speak to the journalist?

Mr BARBOUR: No. He has contacted our office and he has also spoken very clearly to other journalists who indicate that it was not from our office.

Mr DAVID SHOEBRIDGE: When did he contact your office?

Mr BARBOUR: He contacted our office on 15 April to indicate that he was preparing a story and what was in the story. He indicated that he was contacting our office as a result of courtesy and, on 17 April, he contacted our office to advise that he had been contacted by lawyers representing Deputy Commissioner Kaldas to ascertain who had provided the information to him and he advised those lawyers, as he did us, that it was not provided by anybody from my office.

Mr DAVID SHOEBRIDGE: On 15 April, two days before it was published, on being advised by Mr McKenzie that he was going to publish an article to that effect, what did you do?

Mr BARBOUR: I did lots of things on 15 April. I would need to look at my diary.

Mr DAVID SHOEBRIDGE: In response to that, Mr Barbour.

Mr BARBOUR: I am not exactly sure what time of day it was. I would need to look at the exact records. If you give me a moment, I can tell you exactly what time it was. At 1.00 p.m. the contact was made. That contact was file-noted that information was provided to me. I would have advised the relevant people, and what was clear in the communication was that there was an article to be published. At that stage nothing had been published.

Mr DAVID SHOEBRIDGE: When you say you advised the relevant people, who are they?

Mr BARBOUR: My staff in Prospect.

Mr DAVID SHOEBRIDGE: Did you not think you owed an obligation to Deputy Commissioner Kaldas to advise of this potentially seriously damaging leak being published in the public domain?

Mr BARBOUR: My understanding was that the journalist had already advised his lawyers and they had communicated that to him. You need to ask the deputy commissioner whether that happened or not.

Mr DAVID SHOEBRIDGE: So you did not take any steps?

Mr BARBOUR: I just told you what steps I took.

Mr DAVID SHOEBRIDGE: To advise Mr Kaldas—

Mr BARBOUR: No, I did not take any steps to advise Mr Kaldas.

Mr DAVID SHOEBRIDGE: Are there a number of investigators working on Prospect who had previously worked in Melbourne?

Mr BARBOUR: Yes.

Mr DAVID SHOEBRIDGE: How many?

Mr BARBOUR: Three.

Mr DAVID SHOEBRIDGE: In respect of those investigators, you say you have taken statutory declarations from them?

Mr BARBOUR: Correct.

Mr DAVID SHOEBRIDGE: Will you provide the Committee with those statutory declarations?

Mr BARBOUR: I am happy to consider the provision of any information subject to a formal summons from the Committee or the House.

Mr DAVID SHOEBRIDGE: You will only provide it on summons?

Mr BARBOUR: Yes.

Mr DAVID SHOEBRIDGE: What was the content of the statutory declarations?

Mr BARBOUR: The statutory declarations confirmed to my complete satisfaction that there had been no contact from any of those people with the journalist and of course that accords with the information from the journalist.

Mr DAVID SHOEBRIDGE: The evidence that we have, and admittedly it is hearsay, is that Mr McKenzie said to Mr O'Connor from the Crime Commission that he had been talking to a person or persons within the Ombudsman's inquiry in Sydney and those persons were investigators who had previously worked in Melbourne. Did any of those investigators in your office indicate that they had spoken to Mr McKenzie?

Mr BARBOUR: I have already indicated to you that under statutory declaration they have indicated that they did not discuss any issues in relation to Operation Prospect or Deputy Commissioner Kaldas with Mr McKenzie. If you are referring to the information from Mr O'Connor, I would note that if Mr O'Connor genuinely had any reasonable grounds for suspecting that an employee of my office had breached his or her statutory secrecy obligations, I would have expected that as a law enforcement officer and a senior officer of the Crime Commission he would either have informed me or he would have promptly taken some other step to initiate an investigation in relation to those matters. He appears to have done neither. His speculation is directly refuted by clear statements from the journalist himself that my office was not the source of that information.

Even in its own terms the statement is nonsensical. Why would investigators be boasting that they "regarded the charging of Kaldas as a victory for the inquiry" when, as far as I am aware, he has not been charged with anything.

While it is surprising that an investigator would engage in speculation of this kind, there is clearly nothing in it that requires any response given Mr McKenzie's categorical denial that he received any information from my office. It is clear to me, and I am sure it should also be clear to Committee members, that the only person who can answer these questions is Mr McKenzie, and I would recommend that you put those questions to Mr McKenzie. He is the only person who can answer questions about what his source of information was. I am completely satisfied, as a result of my inquiries and also the statutory declarations sworn under oath—unlike Mr O'Connor's statement—that there is nothing to suggest that there was a leak from my office.

I would also point out to Committee members, particularly those members from the previous standing committee, that it should be recognised that information was provided in confidence to Committee members, and those Committee members were on notice in relation to matters relating to this from 3 February and have had access to the information, as I assume also have staff. I am not sure what inquiries have been undertaken by Committee members in relation to whether or not there has been any breach of security by Committee members who have had the information. To be asking questions now about information that all Committee members were previously advised of is disingenuous in the extreme.

Mr DAVID SHOEBRIDGE: Mr Barbour, the evidence that is on the public record, if you call it that, regarding Mr McKenzie's position—

Mr BARBOUR: I am happy to go into camera if you would like to discuss issues in camera.

Mr DAVID SHOEBRIDGE: Just let me finish. The evidence of Mr McKenzie was, as contained in a *Sydney Morning Herald* article that was published online yesterday, that on Thursday night Mr McKenzie said the source of his story about Mr Kaldas was "not from inside the Ombudsman's office. Mr Barbour declined to comment". The evidence on the record from Mr McKenzie was that the source of his story was not from inside the Ombudsman's office.

Mr BARBOUR: Yes, and that was exactly the same information that Mr McKenzie provided to my staff in my office on 17 April.

Mr DAVID SHOEBRIDGE: Mr O'Connor's signed statement states that about a week to 10 days following the publication of the story about the leak—so this is post-facto—"I recall a conversation with Mr McKenzie which occurred on the telephone", and then Mr O'Connor says that that conversation was encrypted. It was in the course of that conversation a week to 10 days later that Mr McKenzie is said to have said to Mr O'Connor that he had been talking to persons inside your office, that those persons were investigators who had previously worked in Melbourne, that he did not have regard for those persons as great investigators, and that those persons regarded the charging of Kaldas as a victory for the inquiry. Do you accept that what Mr McKenzie said on the record in the *Sydney Morning Herald* does not refute the fact that Mr O'Connor could have had this conversation at the time that he said?

Mr BARBOUR: I appreciate that the truth is somewhat inconvenient to you but all I can do is reiterate the fact that you need to ask Mr McKenzie these questions. I do not intend to speculate about anything that Mr McKenzie may have spoken about to a third party. I have no indication of whether or not what Mr O'Connor has set out is true or accurate. I am more than happy to rely on the sworn statutory declarations of my staff. I cannot help you in relation to a conversation that was had between two other parties.

Mr DAVID SHOEBRIDGE: But you can help this Committee as to whether or not your investigators from Melbourne had been communicating with an investigative journalist—

Mr BARBOUR: I have already indicated to you that they have not.

Mr DAVID SHOEBRIDGE: —following the 17 April story that was delivered by Mr McKenzie?

Mr BARBOUR: I have already helped you and clearly you did not hear what I was saying to you. I indicated to you that the statutory declarations that they have—

Mr DAVID SHOEBRIDGE: No, Mr Barbour, you said—

The Hon. TREVOR KHAN: Point of order.

Mr DAVID SHOEBRIDGE: —that Mr McKenzie had categorically denied it.

The Hon. TREVOR KHAN: Point of order.

Mr DAVID SHOEBRIDGE: That is not true.

The Hon. TREVOR KHAN: Point of order.

CHAIR: Point of order.

Mr BARBOUR: I indicated to you that my staff—

The Hon. TREVOR KHAN: Point of order.

Mr BARBOUR: —had not had any discussions with Mr McKenzie or the journalist. I cannot be any clearer than that. You can make up what you want, but I cannot be any clearer. As I said, I appreciate the truth is an inconvenience.

CHAIR: You have a point of order?

The Hon. TREVOR KHAN: I do have a point of order. If Mr Shoebridge is going to continue to ask questions he should not speak over the witness when the witness is attempting to answer.

The Hon. ADAM SEARLE: The article of 17 April suggests that you were considering referring Deputy Commissioner Kaldas to the Director of Public Prosecutions [DPP] to face criminal charges. That information was correct, was it not?

Mr BARBOUR: The Committee is aware from private information, and I understand that the DPP has confirmed that he has received correspondence from me seeking advice. Beyond that, I am not in a position to discuss any of the issues.

The Hon. ADAM SEARLE: But you have not denied that the story in the *Sydney Morning Herald* is true and, if it is true, somebody has put it into the public domain. How many people in your office would have had knowledge about what you were considering at that time?

Mr BARBOUR: Staff in relation to Operation Prospect would have an understanding of most matters relating to the nature of the investigation, and that is why I have asked them the relevant questions to satisfy myself that there was no conversation with Mr McKenzie or indeed any other journalist. That was despite the fact that Mr McKenzie had advised that the source was not from my office.

The Hon. ADAM SEARLE: I see that Mr McKenzie said in the *Sydney Morning Herald* article today that the source was not from inside your office. That does not rule out the possibility that persons connected to the inquiry might have confirmed elements of the story. We will not know unless we get some further evidence, but apart from the statutory declarations, have you interrogated the phone records or the email systems involving your staff members?

Mr BARBOUR: My staff have offered to do that if I would choose to do so, but I do not believe it is necessary. Clearly the only way to clarify where this information came from is to ask Mr McKenzie. I am satisfied, given his denial that it came from my office, together with the material that I have received from my staff, that there was no leak of that information from my office.

The Hon. ADAM SEARLE: How many people in your office had the knowledge?

Mr BARBOUR: I have just indicated to you that the staff within Operation Prospect would have operational information.

The Hon. ADAM SEARLE: So all 13 of them—13 to 15 people?

Mr BARBOUR: The number of staff vary from time to time, so I cannot put a precise number, but around that, yes.

The Hon. ADAM SEARLE: Other than your office and the Director of Public Prosecutions who you were in contact with, what other Government agencies would have had access to this information, if any?

Mr BARBOUR: Well, none. Apart, of course, from the confidential information provided to this Committee.

The Hon. ADAM SEARLE: Where do you think the information came from?

Mr BARBOUR: As I said, I do not intend to speculate, nor do I think it is appropriate for this Committee to speculate. Clearly the only person who can answer those questions is Mr McKenzie and the Committee should endeavour to ask Mr McKenzie for his information. I also do not intend to speculate about exactly what Mr McKenzie said to the journalist. Clearly Mr McKenzie may have had a much more detailed conversation with that journalist, and you might also want to call that journalist. Certainly to the extent that it was reported, it confirms what Mr McKenzie had told my staff as well.

The Hon. LYNDIA VOLTZ: The Director of Public Prosecutions [DPP] said this morning that they had put in a request to the then Attorney General for funding to deal with requests by your department. Did Treasury or another department ever come back to you about additional funding requests?

Mr BARBOUR: No. I imagine those negotiations were undertaken directly between the DPP and those agencies.

The Hon. LYNDIA VOLTZ: Thanks.

The Hon. ADAM SEARLE: Mr Barbour, at the last parliamentary committee hearing that you gave evidence at, I think on 3 February, you indicated that it was your intention to get documents to persons adversely named, or about whom adverse findings might be made, in March-April, with the view that your office would finalise and deliver its reports to Parliament during or at the end of June. That now seems unlikely to occur. Can you update the committee on where the two investigations your office is inquiring into are up to?

Mr BARBOUR: Absolutely. Firstly, it is important to stress that there is much talk that this investigation, Operation Prospect, is delayed. I will try to put this to rest once and for all. It is not delayed. It is inappropriate to say it has been delayed. From the outset of this investigation, I have been at pains to clearly articulate that it will be a very protracted and very resource-intensive investigation. It has been to my best endeavour, when pressed, to try to put forward dates when I believe that it will be complete, but that has always been predicated on the basis that this is an extremely long, involved, complex investigation that will take time.

I have done my best to set dates and to try to meet them, but there are a range of activities that clearly are outside my control. One of those was the select committee inquiry that was conducted earlier this year, which inevitably caused considerable time line difficulties for the investigation and inquiries. To your specific question, we have progressed matters significantly since the select committee inquiry. If you would like me to take you through what we have done and where we are currently at, I am happy to do so.

The Hon. ADAM SEARLE: I am happy for you to give that answer on notice. Can you tell me whether persons to be adversely named, or about whom adverse findings might be made, have had those matters to which they need to respond communicated to them?

Mr BARBOUR: Yes. It is best for me to give you a little detail in relation to that. Otherwise it might be suggested that things are not on track. I advised the select committee that the process that we were following was that Senior Counsel would provide submissions in relation to matters that have been the subject of hearing, and that those submissions would be dealt with, analysed and added to by way of information from the other elements of the investigation. That process has been undertaken.

The first submission was received from counsel assisting on 13 March. It was sent to adversely affected persons on 1 April 2015. The second submission was sent to adversely affected persons on 8 May 2015. The

third submission was provided to my office by Senior Counsel on 1 May. That was by far the largest of the submissions and it needed additional work. It was provided to affected persons between 12 and 16 June. The fourth submission was received on 13 May. It was sent to adversely affected persons between 12 and 16 June. The final submission was received by my office on 5 June. We are currently working on that and we will do our best to ensure that it is released to adversely affected persons.

The material has gone to 23 individuals who are adversely affected. Some have received individual submissions, some multiple submissions. All submissions have had to be redacted to ensure that people only receive matters that relate directly to them. To give you an indication of the scale of what we are working towards, the third and fourth submissions alone amount to almost 700 pages of information, with 2,000 footnotes and various references.

Mr DAVID SHOEBRIDGE: What is the time frame for that adverse notice procedure to play out?

Mr BARBOUR: We have asked people to respond as quickly as they can. We have typically given either a four- or six-week turnaround time. One of the things that we are mindful of—and I am sure the committee would recognise the importance of this—is to ensure that we offer procedural fairness to people who are adversely affected. We have had requests already from legal representatives and individuals for an extension of time. One party that received submissions that we sent out on 1 April has requested significant additional time. They have taken three days to go through relevant documents and information relating to their portion of the submission.

It is anticipated that they will return their comments by the end of June. Someone who received their documents on 16 June has indicated through their lawyer that they will not be in a position to respond until the end of August. Given the very serious matters that are attended to by these particular documents, the impact that they can have on people's careers and reputations, and that they may well raise criminal actions in the future, I am extremely concerned that people receive sufficient time to provide proper, comprehensive comments. Anything other than that would not be fair.

Mr DAVID SHOEBRIDGE: So before you go down a path that might lead to criminal prosecutions, you ensure that there is procedural fairness. Is that what you are saying?

Mr BARBOUR: Only where it is relevant to do so. In relation to any suggestion of that kind as a result of an investigation of matters where a view might be formed, then that would be appropriate if it were part of an administrative investigation. That would not necessarily be the case in relation to the referral of all criminal charges. It would depend on when, where and what they are.

Mr DAVID SHOEBRIDGE: Is that a long-winded way of saying that you did not give that procedural fairness to Mr Kaldas before you referred the material to the DPP on 19 November?

Mr BARBOUR: I do not know. Is that what you intended to ask?

The Hon. ADAM SEARLE: He just did ask it.

Mr DAVID SHOEBRIDGE: Did you give that procedural fairness to Mr Kaldas?

Mr BARBOUR: No.

Mr DAVID SHOEBRIDGE: Why not?

Mr BARBOUR: Because, as I indicated to you, that particular issue is the subject of legal professional privilege. I do not believe it would be appropriate to answer that question.

Mr DAVID SHOEBRIDGE: I will give you one reason, which flows from the documents we have, that I will ask you to respond to.

The Hon. TREVOR KHAN: I take a point of order.

CHAIR: What is your point of order?

The Hon. TREVOR KHAN: My point of order is—and I know that Mr David Shoebridge is trying to correct himself—if he wants to make a speech on a matter he can do so in another forum. He should ask questions of the witness rather than make speeches.

CHAIR: With respect, that is not a point of order. We have not yet heard what he has to say.

The Hon. TREVOR KHAN: He knows what he is going to say.

CHAIR: Please proceed.

Mr DAVID SHOEBRIDGE: Is the reason you did not give Mr Kaldas that procedural fairness that you thought it was a victory for your inquiry to have the charges against Mr Kaldas?

Mr BARBOUR: That is just nonsense and offensive.

Mr DAVID SHOEBRIDGE: You say it is nonsense and offensive, but in the information that Mr O'Connor gave to us he made it quite clear that Mr McKenzie told him that your officers thought it was a victory for your inquiry to get the charges against Mr Kaldas.

Mr BARBOUR: Yes.

Mr DAVID SHOEBRIDGE: You understand that there is a basis for the question, so will you please answer it.

Mr BARBOUR: The question is clearly offensive. I appreciate that it is in Mr O'Connor's statement, but the fact that you place weight on that is troubling. Clearly, that would not happen in my organisation. I refute it entirely.

Mr DAVID SHOEBRIDGE: Did you ask your investigators to look at that very issue?

The Hon. TREVOR KHAN: I take a point of order again. Mr David Shoebridge's time has expired. He will have another opportunity in due course. In fact, I think he was using the Hon. Adam Searle's time.

CHAIR: That is for them to judge. Do you have any questions?

The Hon. TREVOR KHAN: Yes, I do.

CHAIR: Please proceed.

The Hon. TREVOR KHAN: Mr Barbour, you were asked a question earlier by the Hon. Adam Searle about the progress of the investigation. I know you have given some answers. The Hon. Adam Searle indicated that you could take the question on notice. Do you want to tell us anything more about the progress of the inquiry?

Mr BARBOUR: I think it would be helpful to clarify a couple of issues. Firstly, in my evidence to the previous standing committee I indicated that we were endeavouring to complete all of our hearings in the latter part of February or shortly after. I must accept the fact that we were not able to conclude them all in February. We conducted hearings with an additional 16 people and those hearings did not conclude until 31 March. That has necessitated, obviously, a slip in the time line but one that was unavoidable, given the nature of the material that needed to be sought from those hearings. I have indicated the progression of the submissions from Senior Counsel. We have been dealing with them promptly and getting them out, as I indicated was the procedure to be followed when I gave evidence previously.

This inquiry is on track. It is clear to me that there are many people trying to frustrate it. It is clear to me that many people are trying to come up with all sorts of reasons, assertions, allegations, misinformation and often fabrications about it. It no longer surprises me. It is most unfortunate that it happens, particularly given the serious nature of the inquiry, but it will not deter me from doing what is right and proper in relation to the steps that I must follow. I will not be bullied by people who are putting into the public domain misinformation and fabrications about what we are doing.

The Hon. TREVOR KHAN: Thank you. You referred to, I think, five separate submissions being made by Senior Counsel. I am not being critical, but why was it necessary to have five steps for the submissions relating to affected persons?

Mr BARBOUR: You will recall that in my evidence and the material that I submitted to the Senate select committee previously I set out in detail the various issues that were the subject of investigation. We have tried to put those issues together so that they form discrete submissions which will ultimately go into a final report collectively. That way we can deal with particular issues and the people who are relevant to those particular issues can get self-contained submissions. It is the most sensible, quick and easy way to deal with the issues. Although I say "quick and easy", it is voluminous. It is very involved and very complicated.

It is a standard procedure. It is one adopted by any major investigative agency—for example, the Independent Commission Against Corruption [ICAC] and the Police Integrity Commission [PIC]. The role of counsel assisting I spent some time addressing in the previous hearings as well, so I will not go through that again.

The Hon. TREVOR KHAN: Thank you.

The Hon. ADAM SEARLE: Of the 23 persons about whom adverse findings might be found by the investigations, are you able to disaggregate how many fall into the inquiry that arose from Strike Force Jooriland and how many fall into the original police bugging scandal matter?

Mr BARBOUR: No.

The Hon. ADAM SEARLE: You cannot or you will not?

Mr BARBOUR: I cannot do that at this stage. I can indicate that where particular issues are appropriate to deal with collectively we are doing so. Where they are severable, we are doing so.

The Hon. ADAM SEARLE: Are there many people who fall into both inquiries?

Mr BARBOUR: Yes. You might recall that, at the previous hearings, I indicated that it was not possible to separate these issues into interim reports for that very reason.

The Hon. ADAM SEARLE: I do remember you saying that. I think you gave a time line of August for some people to come back with comments on the submissions. Is it fair to say, then, that the inquiry might not be completed this calendar year and might go into next year?

Mr BARBOUR: I honestly do not want to be in a position where I need to put down a firm date because, clearly, the carriage of this matter will be with the new Ombudsman, who has been announced, subject to my term of office ending on 30 June. All I can really speak about is where the inquiry will be at the time of my departure. That would be the only appropriate area for me to speak on.

The Hon. ADAM SEARLE: This is a very unsatisfactory state of affairs, is it not? You have had carriage of these inquiries now since 2012. You have talked about the volume of material, the amount of evidence that you have received and the hearings that you have presided over. At this stage, do you have draft reports that you have authored?

Mr BARBOUR: As I have indicated, submissions relating to evidence and provisional conclusions and findings are in the process of being sent out or have been sent out.

The Hon. ADAM SEARLE: They are the submissions made by the counsel assisting.

Mr BARBOUR: Yes. They have been added to by the investigators and by the Operation Prospect team. Subject to what comes back from the people who are being provided with them, the submissions will ultimately form the basis of sections of the report. Contextual information, historical information, background information and various other parts of the report have already been drafted.

The Hon. ADAM SEARLE: But any finalised reports in this matter will not be finalised by you.

Mr BARBOUR: Correct.

The Hon. ADAM SEARLE: They will be finalised by the next Ombudsman.

Mr BARBOUR: Correct.

The Hon. ADAM SEARLE: That Ombudsman will not have had the benefit of seeing and hearing the evidence. Is that correct?

Mr BARBOUR: Yes.

The Hon. ADAM SEARLE: At best, that person will be able to read transcripts. Is the evidence video recorded?

Mr BARBOUR: No. But, yes, there are transcripts of all the evidence and they will clearly be available for the next Ombudsman to read.

The Hon. ADAM SEARLE: How many hundreds of pages do they run to?

Mr BARBOUR: I suspect they run to thousands of pages.

The Hon. ADAM SEARLE: I think your evidence last time was that there were over 140,000 documents, over a million pages.

Mr BARBOUR: Obviously there are audio recordings of the evidence as well that can be listened to.

The Hon. ADAM SEARLE: Of course. However, are you suggesting that the new Ombudsman will have to listen to hundreds of hours of audio recordings to get a feel for the evidence and to assess it properly?

Mr BARBOUR: How he approaches that task will be up to the new Ombudsman.

The Hon. ADAM SEARLE: But it is not satisfactory, is it, for these inquiries not to be finalised before you leave office?

Mr BARBOUR: Unfortunately they will not be finalised before I leave office.

The Hon. ADAM SEARLE: But your term of office could have been extended either by way of your seeking an extension or the Government offering you an extension. That is correct, is it not? It has happened before.

Mr BARBOUR: Yes.

The Hon. ADAM SEARLE: Did you seek an extension in order to complete these tasks?

Mr BARBOUR: No, and the Committee is aware that I was not proposing to seek an extension from advice that I gave on 3 February.

The Hon. ADAM SEARLE: That is true. However, at the time Committee members—I am speaking for myself—were certainly under the impression, given what you said that it was likely you would complete these tasks by the end of your term of office.

Mr BARBOUR: We are certainly working towards that end.

The Hon. ADAM SEARLE: Sure. I am not being critical. I am simply saying that that is the assumption we were all working on; that is, that these reports authored by you and you having taken the evidence would see the light of day before your term of office ended. When did it become clear to you that you would not finish the task before your term of office expired? I am not asking for the day or the hour.

Mr BARBOUR: I do not know the exact day. However, it was fairly clear when it became obvious that the submissions were not coming in as quickly as we would have liked to facilitate them going out, and also

when we were getting significant requests for extensions of time from affected parties. I made that known to all the people involved in this matter at the earliest opportunity; I wrote to them or my deputy wrote to them and I placed information on the website in relation to that.

The Hon. ADAM SEARLE: Was that in April or May?

Mr BARBOUR: Roughly, yes.

The Hon. ADAM SEARLE: We are in this unsatisfactory situation wherein you have had carriage of these very important investigations involving a staggering amount of material and now it is all going to be dumped on a new Ombudsman, who will have to try, in a second-hand way, to wade through it all and to evaluate whether the track you were on was adequate or proper, or whether submissions made by persons affected should be adopted in whole or in part. With the best will in the world, it will be an almost impossible task. Do you accept that?

Mr BARBOUR: No, I do not see it as being impossible. I certainly see it as being a challenging task, but one that is well within the capacity of the person who has been appointed as Ombudsman.

The Hon. ADAM SEARLE: Even though he has not heard the evidence and is not in a position to make proper credit assessments having heard and seen the evidence firsthand?

Mr BARBOUR: The problem with that proposition is that it speculates about the basis of the findings. It is assuming that decisions will be made in relation to credit.

The Hon. ADAM SEARLE: I will put a fairly simple proposition. It is not too much of a stretch, is it, to say that there is a lot of evidence—much of it oral—from different witnesses, and, as a matter of logic, at least part of the recommendations emerging from any inquiry of this nature will depend upon an assessment of that evidence received from the witnesses firsthand? That is correct, is it not?

Mr BARBOUR: I think that the Ombudsman who has been appointed has not only the capacity but also significant experience to be able to perform that task very satisfactorily.

Mr DAVID SHOEBRIDGE: Has he ever done anything like this before to your knowledge? Has he picked up an inquiry 2½ years in with thousands of pages of transcript and finished it?

Mr BARBOUR: He is clearly indicating by his acceptance of the appointment that he is up to the task.

The Hon. ADAM SEARLE: This is not a criticism of Professor McMillan, so do not take it that way. However, just to be clear, all the evidence has been gathered under your watch, you presided over most or all of the hearings and heard the evidence from various witnesses. To the extent that the report is written before your term of office expires, it will be based on the way in which you have viewed the material in total—the submissions from affected people, reports, material provided by the investigators and counsel assisting—and ultimately it will be seen through the prism of your assessment, and it will not be finalised before you leave office. That means that the new Ombudsman either adopts what you have done or wades through everything from scratch. Either way, that is simply not acceptable, is it?

The Hon. Dr PETER PHELPS: Point of order: That is a speech, not a question.

The Hon. ADAM SEARLE: I think the witness understood.

CHAIR: I uphold the point of order.

The Hon. ADAM SEARLE: It is not a satisfactory process, is it, that the person who has presided over the gathering of the evidence and the preparation of the material to date is not the person who finalises the recommendations?

Mr BARBOUR: I do not agree with you that it is not a satisfactory process. Is it a different process from what ultimately one would have thought would be the case? Certainly. Is it unsatisfactory? No, but I am not sure about the impediment. Suggesting that it will be too difficult a task for the new Ombudsman implies a

criticism of him that I think is very unfair. Will it be a big task? Absolutely. However, I do not think he, I or anybody else appointed to such an important role would shy away from a big task.

The Hon. ADAM SEARLE: It is not an implied criticism of the proposed new Ombudsman; it is a criticism of the process we are now left with. It is not satisfactory for a report to be issued under the name of a person who did not prepare it, is it?

Mr BARBOUR: The report will be his report, and he will issue it only if he is satisfied with it. I cannot imagine why you would think that Professor McMillan would issue a report that was under my hand.

The Hon. ADAM SEARLE: At what stage of completion do you say the material will be when you leave office?

Mr BARBOUR: I have already indicated—

The Hon. ADAM SEARLE: With respect, you have not really.

Mr BARBOUR: I have; I have indicated what stage we are at, what we are expecting in return, and that I am hopeful that next week the final segment will go out to those persons affected adversely in relation to that.

Mr DAVID SHOEBRIDGE: Mr Barbour, you have now spent more than 2½ years on this matter; is that right?

Mr BARBOUR: Once again we can get into a discussion about when this started. When I read documents prepared by people in relation to this matter, articles and pronouncements on your website or your Twitter account, mention is made of three years and four years. The reality is that there is a lot of misinformation out there.

Mr DAVID SHOEBRIDGE: When did you start it?

Mr BARBOUR: What I indicated to the Committee at the previous hearing and when I gave evidence in answer to questions from Mr Searle was that we were not fully operational, fully staffed and underway until April 2013. To my mind, that is an appropriate start date for this investigation. That means it has been underway for two years and two months.

Mr DAVID SHOEBRIDGE: But the matter was referred to your office at the end of 2012; is that correct?

Mr BARBOUR: Yes, the matter was referred from the Police Integrity Commission inspector on that date.

Mr DAVID SHOEBRIDGE: You have been working on it for 2½ years to date, and it is likely that the office will not get answers to the procedural fairness questions until August. Is that fair enough?

Mr BARBOUR: Potentially later than August.

Mr DAVID SHOEBRIDGE: Therefore, it is highly likely that it will not be completed until at least the end of this year?

Mr BARBOUR: As I said, I do not want to answer questions relating to the completion of the report because I am not sure how Professor McMillan will approach that issue. That is a matter for him. I do not want to mention any dates. When I try, to the best of my ability, to give dates—

Mr DAVID SHOEBRIDGE: You keep getting it wrong.

Mr BARBOUR: They end up being forwarded and communicated as suggestive of a delay. I do not think that is appropriate, so there is little point in doing it.

Mr DAVID SHOEBRIDGE: You are looking at one police bugging scandal and the release of some documents that follow it, and your inquiry is going to take longer than the entire Wood royal commission. Are you serious when you tell the public that your inquiry is on track? It is a disgraceful delay.

Mr BARBOUR: I note for the record that the Deputy Chair of this Committee has referenced the Wood royal commission by way of comparison to this. Clearly, anyone who is reasonable and objective would find that comparison laughable.

Mr DAVID SHOEBRIDGE: Because one was into an entire police force and yours is only into a bugging scandal.

The Hon. TREVOR KHAN: Point of order: Mr David Shoebridge is falling into his old habit of attacking the witness halfway through an answer. He should allow the witness to finish his answer before he launches into his next attack.

CHAIR: I uphold the point of order.

Mr BARBOUR: If I could be allowed to continue. You have compared this inquiry—Operation Prospect—with the Wood royal commission. To do so is utterly incomprehensible and wrong. Let me detail this for you, and I am sure you would have taken time to look at this prior to making the suggestion. The Wood royal commission lasted for more than three years, it spent in excess of \$60 million, and had by its conclusion utilised 250 staff. There were five counsel and senior counsel assisting, supported by six support staff; there were six operation directorate staff; and there were 33 team investigators and 18 team solicitors. I could go on listing the staff. All that such a comparison does is undermine Operation Prospect and give voice to those who would like nothing more than that it be terminated. It is an inappropriate comparison; clearly they are not comparable.

To one extent there is an interesting comparison. We have done well over 100 hearings and during the entire time with all of those resources and all of those available staff, the royal commission did approximately 400 hearings. We have done over a quarter of the number of hearings that they did, which on any measure is significant. Similarly, if you wish to compare investigations, an appropriate investigation to use would be the Police Integrity Commission investigation Operation Florida. It also took a considerable period of time.

Committee members would be aware that Operation Florida dealt with issues a small part of which emanated from Operation Mascot, not with the breadth of issues that Operation Prospect is addressing. That matter was the subject of years of private investigations. Hearings commenced on 8 October 2002, there were 78 days of hearings fewer than Operation Prospect over 14 months, and the final report of that investigation was handed down 33 months after the hearings commenced. Investigations of this nature, complexity and volume take time. I am happy to go through all the information I provided the last time around about the volume of material we are examining.

The Hon. ADAM SEARLE: When it became clear to you that you would not be able to complete the task prior to your term of office concluding and in order to ensure continuity for these important matters, why did you not seek an extension of time to conclude the task given to you?

Mr BARBOUR: I made the decision given the nature of the appalling comments that have been made about me, about my office and about the length of my term that it was in the best interests of my office for me not to seek a further term. I again draw your attention to the fact that the Deputy Chair of this Committee has said on a number of occasions that for me to have received a shortened term represented in all likelihood me forcing the Premier to reappoint me. In other words, I can only infer from that that were I to seek a further term I would be doing so to extend Operation Prospect and I would be forcing the Premier to reappoint me.

Mr DAVID SHOEBRIDGE: That is your own bizarre speculation.

Mr BARBOUR: No, that is from your—

The Hon. ADAM SEARLE: The matter of which you now have conduct is very serious. You have gone out of your way to say how difficult and complex the material is and how significant it is to the persons involved. The fact that you will not complete it jeopardises those investigations.

Mr BARBOUR: I do not agree with that.

The Hon. ADAM SEARLE: You are really cutting and running rather than seeing it through. That is what you are doing, is it not?

Mr BARBOUR: I am not cutting and running!

The Hon. ADAM SEARLE: Then why did you not seek an extension to finish the job Parliament gave you?

Mr BARBOUR: Because I am criticised either way, and because it is not in the best interests of the office. It must be remembered that what is being attacked by people in relation to Operation Prospect is one of the major integrity agencies of this State. This is but one investigation that is underway.

The Hon. ADAM SEARLE: I put it to you that your departure will damage the institution of your office because you are leaving this matter unfinished.

Mr BARBOUR: I disagree. The damage being done to the institution of the Ombudsman's office is the fabrication and misinformation that is being spread deliberately to try to prevent this inquiry continuing. That is what is damaging the office.

The Hon. ADAM SEARLE: The best way to achieve that outcome, sir, would be for you—

Mr DAVID SHOEBRIDGE: To finish the report.

The Hon. ADAM SEARLE: —to finish your job before you leave office.

The Hon. Dr PETER PHELPS: Point of order: That is not a question; Mr David Shoebridge and the Hon. Adam Searle are simply hectoring the witness.

The Hon. ADAM SEARLE: I am not hectoring the witness.

The Hon. TREVOR KHAN: I will be more specific: Mr David Shoebridge must stop hectoring.

The Hon. ADAM SEARLE: That may be so, but I am asking questions at the moment.

The Hon. Dr PETER PHELPS: There was no question.

The Hon. ADAM SEARLE: So your answer is that because you would be criticised either way you have chosen to leave your task unfinished when you leave office. That is your evidence.

Mr BARBOUR: I am not choosing to leave a task. I am completing my term of office that was provided to me. I have always advised people that I was leaving on this date. I advised the Committee in February that I was leaving on this date. I am not doing anything other than leaving at the conclusion of my term.

The Hon. ADAM SEARLE: That is true but we all believed that you would finish the task before you left office. That was the impression you left us with. I think that was your impression in February. That turned out not to be the case. The fact that you will not be concluding these inquiries jeopardises their credibility. Do you accept that proposition?

Mr BARBOUR: No, I don't.

The Hon. ADAM SEARLE: Even though the report will be finalised by someone who did not hear the evidence. That is your evidence.

Mr BARBOUR: The Ombudsman, when he commences work, will determine the approach that he adopts to completing this inquiry. He will inherit an inquiry that is well advanced, well organised and well progressed, indicative of what I have said to you before in terms of where we are at in relation to these matters.

I do not accept the proposition that this will cause an inappropriate deviation or some sort of inappropriate outcome.

Mr DAVID SHOEBRIDGE: The incoming Ombudsman will have a half-baked report and will be confronted, if there are any credit issues, with the fundamental disability of not having seen the demeanour of the witnesses. Do you agree with that?

Mr BARBOUR: That will be a matter for the Ombudsman to determine whether or not he needs to look at issues and whether or not there are issues of credit that he needs to consider.

Mr DAVID SHOEBRIDGE: But if there are any issues of credit that he needs to consider, not having seen the demeanour of the witnesses and not having sat there while they were being questioned will put him at an enormous disadvantage, will it not?

Mr BARBOUR: He may decide that he wants to speak with them. I do not know. As I have indicated to you, he will need to make those decisions. I do not intend to speak for Professor McMillan.

Mr DAVID SHOEBRIDGE: So you at least accept this much: having exited on 30 June, if there is a credit issue that needs to be determined that exit may mean witnesses have to be recalled so questions of credit can be assessed by the incoming Ombudsman. More delays.

Mr BARBOUR: I have indicated that that is a matter for the incoming Ombudsman.

Mr DAVID SHOEBRIDGE: It is a problem you create for the incoming Ombudsman by leaving the report half-baked when he takes his term of office.

Mr BARBOUR: The report is not half-baked.

Mr DAVID SHOEBRIDGE: Is it finished?

Mr BARBOUR: What are you suggesting by "half-baked"?

Mr DAVID SHOEBRIDGE: Incomplete, far from finished, not concluded, not signed.

Mr BARBOUR: Clearly the report is not complete. I have already indicated that. I cannot indicate it any clearer to you.

Mr DAVID SHOEBRIDGE: By not having the report complete, by having, did you say, 100 days of evidence—

Mr BARBOUR: Over 100 days of hearings, yes.

Mr DAVID SHOEBRIDGE: By having over 100 days of hearings of evidence that has been—

Mr BARBOUR: Sorry, let me correct that. It is 80 days of hearings, over 100 witnesses.

Mr DAVID SHOEBRIDGE: I will start again. Over 100 witnesses with over 80 days of hearings, which may have all manner of credit issues in them, that may all have to be revisited by the incoming Ombudsman if there are issues of credit. How can you say that your report and your inquiry are on track given that?

The Hon. TREVOR KHAN: There are about four questions in there. How can a witness answer something like that?

CHAIR: Is this a point of order?

The Hon. TREVOR KHAN: Yes, it is.

The Hon. ADAM SEARLE: I think Mr Barbour can take care of himself.

Mr DAVID SHOEBRIDGE: There is just one question.

Mr BARBOUR: I cannot assist you with any answer other than what I have already given you. I have indicated to you where we are at in terms of progress with this matter. I have also indicated to you that Professor McMillan will make decisions about how he deals with these particular issues when he becomes Ombudsman. He is an extremely experienced person. He is a professor of law. He is a former Commonwealth Ombudsman. He is currently the Australian Information Commissioner. I have absolutely no doubt that he will determine the best way of approaching these issues. I do not agree with the propositions that are being put that this in some way will be creating a major problem for the continuation of Operation Prospect.

The Hon. ADAM SEARLE: It is credibility.

Mr DAVID SHOEBRIDGE: On the last occasion when you appeared before an upper House inquiry you said you had not reached any firm conclusions at that point. Is that right?

Mr BARBOUR: Correct, and I still haven't.

Mr DAVID SHOEBRIDGE: Yet at the same time your office had referred potential charges against one of the witnesses who had appeared before you. That was a firm conclusion, was it not?

Mr BARBOUR: But they are two entirely separate issues.

Mr DAVID SHOEBRIDGE: You had not reached a firm conclusion on the charges?

Mr BARBOUR: No, you are clearly conflating two different issues. I am more than happy to discuss those issues with you if you want to in camera. I provided confidential information in relation to those issues. If you wish to canvass those issues I am happy to go in camera to canvass those issues, but they are clearly two entirely different issues and there is no benefit in conflating them whatsoever.

Mr DAVID SHOEBRIDGE: You can understand, can you not, that anybody reading Mr O'Connor's version of the conversation he had with Mr McKenzie would be deeply troubled at the potential partiality of your inquiry because it has Mr McKenzie saying that your investigators saw the charging of a deputy commissioner as a victory? You would understand the unease people have in reading that?

Mr BARBOUR: The unease I have in reading the statement of Mr O'Connor is that a senior investigator holding a very significant position in the NSW Crime Commission has secret conversations with journalists that are not recorded and not minuted in any way. I would think that those are matters that this Committee would be far more concerned with. They are certainly matters that I am concerned with.

Mr DAVID SHOEBRIDGE: I assure you, I join with you in that concern. But that does not diminish the concern that I have when I read that evidence which asserts that investigators from your office are dealing in a partial manner with a key witness. Do you understand that having one concern does not remove the other?

Mr BARBOUR: I cannot be any clearer than I was at the commencement of these proceedings in answer to your questions. I have asked my staff whether they have spoken with Mr McKenzie or any other journalist about any of these matters. For the three staff from Melbourne, I have sought from them signed statutory declarations. There is absolutely no information that suggests that those conversations took place—

Mr DAVID SHOEBRIDGE: Apart from Mr O'Connor's statement.

Mr BARBOUR: I am not concerned with Mr O'Connor's statement and I indicated to you that I think anybody who is reasonable and objective would look through that and see how transparent it is. It does not suggest anything other than he had a conversation. And, as I said to you, if you wish to find out information about that, you need to properly put that to Mr McKenzie. I do not intend to speculate about a conversation that I was not party to. I am not intending to speculate about something that was not sworn to, and I am content at the answers that I have received from my staff members. You can put the question in as many ways as you want but it does not change the truth. The truth is that I have that information from my staff and if you wish to pursue this matter you need to pursue it with Mr McKenzie. I cannot help you any further with it.

Mr DAVID SHOEBRIDGE: The truth is you have not checked the phone records of your staff. Is that right?

Mr BARBOUR: My staff have offered for me to check that but I go back to the answers, once again, I have given you. Mr McKenzie has indicated that he has not received this information from my staff. My staff have sworn that they have not had any contact with Mr McKenzie. I do not accept what is put forward by Mr O'Connor. I would suggest that the Committee should also not accept it unless there is direct evidence to confirm it from Mr McKenzie. I suggest you ask those questions of Mr McKenzie. We can go around in circles, we can do this dance as long as you want but it does not change the facts.

Mr DAVID SHOEBRIDGE: Save for one important matter. Mr McKenzie has said that the original source did not come from inside your office. He has not said that the recollection of Mr O'Connor is wrong or false. Do you understand the difference?

Mr BARBOUR: Have you spoken to Mr McKenzie?

Mr DAVID SHOEBRIDGE: On the material that is on the public record, Mr McKenzie has said—

Mr BARBOUR: Without speaking to Mr McKenzie, you cannot put words into Mr McKenzie's mouth.

Mr DAVID SHOEBRIDGE: Let me finish. Mr McKenzie, on the public record, has said that your office was not the source of the original leak.

Mr BARBOUR: That is not correct.

Mr DAVID SHOEBRIDGE: Mr McKenzie has not said on the public record that Mr O'Connor's recollection is false. Do you understand the difference?

Mr BARBOUR: Of course I understand the difference but what you are saying is not correct. All that you are referring to is what has been reported by a journalist. I have no idea what else Mr McKenzie may have said; nor do you. But to assume the worst is inappropriate. If you wish to try to find out this information, I can only reiterate and reiterate yet again and again and again: You need to talk to Mr McKenzie. If you put any evidence to me that supports that my staff have spoken to somebody I will deal with it. But I have evidence from my staff to the contrary, which I am very happy to accept. I have done what is appropriate. I have spoken with my staff and I have statutory declarations from them. If you wish to seek further information about this you need to do so with Mr McKenzie. I cannot help you any further.

Mr DAVID SHOEBRIDGE: Have you checked the phone records and the other records of your office to confirm whether or not the statements from your investigators are true?

The Hon. TREVOR KHAN: Point of order: This question has been asked and answered at least three or four times. The horse is flogged to death. It is getting to a point of boredom.

CHAIR: I uphold the point of order.

The Hon. ADAM SEARLE: You must see that there is a huge disruption to the inquiry by your not completing the inquiry. As a reasonable person do you accept that?

Mr BARBOUR: No, I do not accept that.

The Hon. ADAM SEARLE: Do you accept that having the final recommendations and findings signed off by someone other than the person who took the evidence is a significant problem to the credibility of the final report and recommendations? Do you accept that?

Mr BARBOUR: No, I do not accept that.

Mr DAVID SHOEBRIDGE: Since the last inquiry we have now had evidence from Mr Barrett and Mr Mercer that your failure to advise Mr Barrett about the number of telephone intercepts against him and him

first finding out when he was in the back room of this inquiry caused him great and unnecessary distress. Do you accept that the way you went about that was wrong?

The Hon. TREVOR KHAN: Point of order: My point of order is that, looking at the terms of reference, the ventilation of this material has absolutely nothing to do with what we are supposed to be doing. What we are now seeking to do is essentially attack the Ombudsman on an irrelevant matter, and it is inappropriate. If we want to talk about delays and you want to ask fresh questions about delays, that seems to be a point in order. If we want to ask about leaks, that seems to be within the terms of reference. But this line of questioning does absolutely nothing except attack the Ombudsman and it is inappropriate.

Mr DAVID SHOEBRIDGE: To the point of order: It arises directly from the evidence this Committee has received, and I think those witnesses to the previous inquiry deserve an answer from Mr Barbour.

Mr BARBOUR: Thank you, Mr Khan, for your point of order, but I am more than happy to address that concern because I believe it is the select committee that owes the apology to Mr Barrett in relation to those matters and not myself. The select committee put questions to me on notice and I answered those questions. Those questions related to the disclosure of that information in relation to those hearings. I indicated in my answers to those questions on notice to this Committee that the more timely point in the investigation for these matters to have been disclosed would have been in my report where all the evidence could be considered in context, together with my findings, despite my repeated expressions of concern about the difficulties and risks to the public interest and to those involved in requiring me to speak publicly about Operation Prospect at this point of time, including in the detailed document that I supplied to the Committee in advance.

I was required under compulsion of summons to answer questions and to attend before this Committee despite my warnings that it was not appropriate to do so and despite my concerns that there would be welfare issues for people involved. Notwithstanding those concerns, I was compelled to answer questions by this Committee and I answered them. The questions that you are referring to I answered in response to questions asked of me by Mr Searle. To suggest that I am at fault for answering questions that I was compelled to answer by this Committee after I warned of exactly the consequences that you and Mr Barrett are now raising is extraordinary.

The Hon. TREVOR KHAN: I think I will withdraw the point of order.

Mr DAVID SHOEBRIDGE: How difficult would it have been for you to pick up the phone and tell Mr Barrett about it prior to putting it on the record here? How difficult would that have been for you?

Mr BARBOUR: I have answered the question that you asked of me.

Mr DAVID SHOEBRIDGE: I suggest there would have been no difficulty at all and it would have been an enormous courtesy and you failed to do that.

The Hon. Dr PETER PHELPS: Point of order: The member cannot answer his own question. It is up to him to ask questions of witnesses.

The Hon. TREVOR KHAN: It is the Russian prosecutor style coming out.

The Hon. ADAM SEARLE: He could put a proposition and invite the witness to agree or disagree.

Mr DAVID SHOEBRIDGE: How difficult would it have been for you to have picked up the phone and spoken to Mr Barrett and Mr Harding and told them in advance?

Mr BARBOUR: I have indicated in my evidence to the previous Committee that it is inappropriate to discuss the evidence of this matter and the matters that were under consideration. I had grave concerns about doing so publicly and those concerns were ignored. I do not just pick up the phone and talk to witnesses involved in a hearing of this kind. To do so would be categorically and utterly inappropriate.

Mr DAVID SHOEBRIDGE: To send them a letter?

Mr BARBOUR: I have answered the question.

Mr DAVID SHOEBRIDGE: How difficult would it have been to send them a letter?

Mr BARBOUR: The reason that information came out was because you asked the questions and you ignored my warnings about the risks. If anybody owes Mr Barrett and Mr Harding an apology it is the members of that Committee for requiring me to answer those questions.

Mr DAVID SHOEBRIDGE: How could you not have told them in the course of your investigations that core information about them? How could that not have been something that came up in the course of your inquiry with them?

The Hon. TREVOR KHAN: Point of order: I take the point of order again, notwithstanding that the witness might be prepared to continue to answer the questions. This is not within our terms of reference, it is unhelpful to our report and, quite frankly, you are not scoring too many points here, David.

CHAIR: Order! I disallow the point of order. The Ombudsman has engaged in the discussion and is answering questions. I think the questions should proceed.

The Hon. ADAM SEARLE: Why did you not reveal to those witnesses the information that you answered here?

Mr BARBOUR: But I did not intend to reveal it to them at all.

The Hon. ADAM SEARLE: My question was why?

Mr BARBOUR: I answered the questions asked of me and I gave detailed evidence in my submissions to the previous Committee and also in my answers to questions about why it was inappropriate to do so and I adopt those. They are just as relevant now as they were then.

The Hon. ADAM SEARLE: I may have misunderstood but my question was about when you originally examined those witnesses why you did not choose to reveal to them the totality of the information you had that related to them in that process.

Mr BARBOUR: I have already answered all of those questions at the previous Committee and I indicated to you that the only questions I asked of witnesses were those questions where they were able to actually provide direct evidence.

CHAIR: Did the witness take any questions on notice?

The Hon. ADAM SEARLE: I think there was one but it is a matter for the Ombudsman whether he wishes to address it.

Mr BARBOUR: I think ultimately we addressed it because Mr Khan asked me the question and I answered it.

The Hon. ADAM SEARLE: I am content with that. We may have some supplementary questions.

CHAIR: Thank you for attending the hearing. The Committee has resolved that any answers to questions taken on notice be returned within three calendar days following the receipt of the transcript. The secretariat will contact you in relation to the questions you may have taken on notice.

(The witnesses withdrew)

The Committee adjourned at 4.02 p.m.