

REPORT OF PROCEEDINGS BEFORE

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

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

CORRECTED PROOF

At Sydney on Thursday 29 January 2015

The Committee met at 9.30 a.m.

PRESENT

The Hon. R. Borsak (Chair)

The Hon. N. Blair

The Hon. T. Khan

The Hon. N. Maclaren-Jones

The Hon. A. Searle

Mr D. Shoebridge

The Hon. L. Voltz

CHAIR: Welcome to the first hearing of the Select Committee inquiring into the conduct and progress of the Ombudsman's inquiry, Operation Prospect. Before I commence I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present.

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

There may be some questions that witnesses would only answer if they had more time or with certain documents to hand. In these circumstances witnesses are advised that they may take a question on notice and provide an answer within five calendar days following receipt of the transcript.

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

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

In the submissions received to date, inquiry participants have made a number of serious allegations against certain persons. I remind all witnesses who may reflect adversely on other people not to misuse parliamentary privilege and ensure that your comments are relevant to the inquiry's terms of reference. 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 to silent for the duration of the hearing.

Prior to commencing the examination of the first witness I will be reading a statement onto the record. This is unusual but absolutely necessary when the serious nature of the events is described. My statement is as follows. At about 4.00 p.m. on 19 November 2014 I had a visit from Mr Brad Hazard, the Attorney General of New South Wales, to my offices in Parliament House. The visit was unannounced. The subsequent conversation lasted for approximately 30 minutes, part of which was overheard by some members of my staff, before the Attorney General left my office at my insistence. In my view, supported by the nature of the Attorney General's behaviour and statements made, the Attorney General sought to cajole me, then threaten me and ultimately tried to bribe me into withdrawing from the inquiry, thus causing it to be delayed or probably to fail.

The Attorney General asked that the discussions be kept off the record, to which request I agreed. He commenced by stating that it was his legal duty as Attorney General to warn me that what I was doing by chairing the Committee into the Ombudsman was upsetting all the judges and senior legal people of this State. He also said that I was playing politics with this inquiry and that it was threatening the rule of law in New South Wales. I, of course, vehemently rejected such an outrageous suggestion. I explained to the Attorney General my community duty and the motivation for holding the inquiry. The Attorney General attempted to convince me that I would potentially get into hot water with these people, that is, the legal profession, and that he had a duty to safeguard the administration of the law in New South Wales. I told him that the power of the Parliament

exceeds any duties or powers that he had and that the Parliament made the law and it was his duty to do as Parliament instructed.

I also told him that I did not look kindly on him turning up and seeking to influence and pressure a duly appointed chairman of a committee of the Legislative Council to withdraw from the inquiry. Mr Hazzard then threatened me with a reference to the Privileges Committee if I did not conform with his wishes, and then immediately offered me a secret briefing from the Ombudsman on his current inquiry. I refused this offer. When I asked on what grounds he would make such a reference, Mr Hazzard said words to the effect, "Your public statements have been biased." At this point the exchange became very heated. I asked him to leave my office, which request he refused. I then told the Attorney General that if he was going to make such a referral, he should go ahead as I would then not be bound by any pre-agreed undertaking for an off-the-record discussion and I would then go public with his outrageous behaviour.

If all the preceding statement was not enough, the Attorney General then offered me a secret copy of the Emblems report, which he could fix up and get for me. I refused any such offer and told him the only way I would or could get legal access to such a report would be through the orders of the House. This statement was witnessed by my staff in the outer office as I had opened my office door to eject Mr Hazzard. At this point I explained again the complaints made to me by certain police about the activities of the Ombudsman, his current line of inquiry, and that this was the key motivation for me pursuing the setting up of an inquiry. He seemed to accept this in the end.

I then provided the Attorney General with both notices for calls for papers, SO 52 and 53. He read them. However, he did not seem to understand them. I sent him on his way with copies to dwell upon. I was so disturbed by this encounter, which was clearly an attempt to intimidate me and, failing that, to attempt to remove, corrupt or compromise me as Chair of this inquiry, that next day I attended at the offices of ICAC and made a formal complaint regarding this encounter.

On 26 November 2014 I received a letter from the Hon. Megan Latham, Commissioner, stating in part that "we will not be investigating the allegations you have raised". I table a copy of this letter for the information of the Committee. I make this statement in the clear knowledge and belief that the Attorney General sought to subvert the will of the Legislative Council and its duties and powers of review. I also believe the Government's further course of conduct in denying documents under the orders of SO 52 and 53 indicate a deliberate and opportunistic attempt to subvert the will of the Parliament and prevent the Committee from reviewing properly and openly the activities of the Ombudsman and the events that led up to his inquiry by this Committee. I condemn the actions of the Government and the Attorney General in the strongest possible terms. I table this statement.

Document tabled.

STEVEN JOHN BARRETT, Journalist, Seven Network Australia, sworn and examined:

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

Mr BARRETT: Yes, I would.

CHAIR: Please proceed.

Mr BARRETT: I will read this out first and then hand it out, if there is no problem with that.

CHAIR: Yes, read it first.

Mr BARRETT: I have not done anything wrong. I repeat: I have not done anything wrong. I did not place my name on a warrant for a listening device. I appear to be the only person named in the warrants who is not being provided financial assistance from the legal representation office. I am informed and believe that this is because I am not a police officer or a former police officer. The fundamental question is the examination as to why I was put on a listening device warrant. That is what any investigation should be focused upon. The Ombudsman has moved away from the basic approach.

The Ombudsman initially advertised for the victims to come forward to assist Operation Prospect. I came forward and provided material on that basis. I was not asked one question when I was subject to a compulsory examination by the Ombudsman about my complaint; rather, the questioning focused on how I came into possession of the documents. Cath Burn appears to be the author of a document that was annexed to my submission. It is important to know who drafted that document, who published the document, why it was published, who it was published to and for what purpose it was published.

In relation to me not receiving any legal representation because I am not a police officer or a former police officer, I would like to put on the record that I am a journalist of some 36 years experience, and I would like my fellow colleagues of the media to take note of this. A public inquiry is essential not only to examine why I and others were placed on a listening device warrant but to examine what the upper echelons of the NSW Police Force are doing. The Government needs to know why judges of the Supreme Court of New South Wales have been duped. Thank you.

Document tabled.

Mr DAVID SHOEBRIDGE: Thank you for coming forward and giving evidence to the Committee. Can I ask you the circumstances in which you first found out that your name was included on one or two warrants?

Mr BARRETT: Yes. I have published this in newspapers. For the record here today, I was a producer at the *60 Minutes* program at the Nine Network. I would often get a lot of mail. I would generally take my mail home and read it at night. As I was sitting in my lounge chair I opened up this document which said "NSW Crime Commission listening device warrant". I then started to examine the document and read through the names in the document. I then started to realise a number of people's names on the document—some very, very senior police officers that I knew. I then looked at what the allegations were: pervert the course of justice, money laundering, corruption and all these very, very serious criminal accusations. As I went through the document I flipped over to the next page and I am looking at the page saying, "I know that person's name and I know that person's name" and then I saw my own name, Steve Barrett, and I nearly died when I realised the gravity of this legal document. That is how it happened. Somebody sent it in the post to me and I read it when I was at home.

Mr DAVID SHOEBRIDGE: You say that was in about April 2002 or so?

Mr BARRETT: Yes, I was still at *60 Minutes*. It would have been about April 2002, yes.

Mr DAVID SHOEBRIDGE: A couple of days later you saw the further disclosures in the *Sydney Morning Herald*, is that right?

Mr BARRETT: It was not too long after that I found out that other journalists also had received copies of this listening device warrant, which was the one sworn on 14 September—the day before the Olympic Games—before Justice Virginia Bell.

Mr DAVID SHOEBRIDGE: That was the one with 114 names and you were one of the 114?

Mr BARRETT: That had 114 names on it. Sorry, just go back to your question?

Mr DAVID SHOEBRIDGE: You saw some further disclosures in the *Sydney Morning Herald* afterwards, did you?

Mr BARRETT: Yes. I remember that I was down at Goulburn on a farm and I was made aware of the *Sydney Morning Herald*, on Saturday 13 April 2002, front page story about a police bugging scandal which named hundreds of police, citizens of New South Wales and a journalist. I then received a phone call from the late Richard Carleton from my program, which was rather embarrassing, and it went from there.

Mr DAVID SHOEBRIDGE: What was the impact upon you there and then as a journalist of having your name on that warrant and being associated with—

Mr BARRETT: Devastating. I am a journalist that has a large contact network, which is what the basis of journalism is. When people found out that I may have been bugged a lot of my sources just dried up. It devastated me and in the end, I will tell you, I think it cost my job at *60 Minutes*.

The Hon. ADAM SEARLE: Why? Was that because you could not do your job effectively as a journalist?

Mr BARRETT: It became a problem for me because my superiors were saying to me, "Stop being so focused about this thing." My then boss John Westacott told me to wear it as a badge of honour, and that upset me even more. There were certain things that happened in my office—Anita Jacoby was my roommate—certain things like, one morning I came into work and I noticed that the ceiling had been tampered with and there was all dirt on my desk. I immediately freaked out and got security down because knowing I had been on a warrant I thought that somebody was putting cameras in the ceiling. So the paranoia set in and it disturbed me greatly.

The Hon. ADAM SEARLE: Did the warrant say why you were on the document?

Mr BARRETT: That has been my pursuit for the past 15 years. I have asked every single person in government agencies responsible for this and still to this day we are none the wiser. They keep blocking and blocking and blocking. So, in answer to your question, the reason why I was put on the warrant even though Cath Burn does explain in a highly confidential document certain things—that we were all going to a farewell, which I never ever went to—that has been about the only, let me say, reason or some sort of explanation, whether you wanted to believe it or not, but that is as far as I have got to this day.

Mr DAVID SHOEBRIDGE: But the warrant that you had read—for the benefit of other members I will not read any of the names on it but the preamble to it—commenced: "I Virginia Bell being an eligible judge within the meaning of the Listening Devices Act, having been satisfied that there are reasonable grounds that the prescribed offences specified in paragraph (1) have been or are likely to be committed ..." and then there is a run of offences: "money laundering, contrary to section 73 of the Confiscation of Proceeds of Crime Act"—

Mr BARRETT: Everybody is still asking me where the money is.

Mr DAVID SHOEBRIDGE:—"corruption, contrary to section 200 of the Police Service Act; corruptly receive a benefit, contrary to section 249 of the Crimes Act; conspiracy to pervert the court of justice, contrary to section 319 of the Crimes Act; conspiring to pervert the course of justice, contrary to the common law; and tampering with evidence, contrary to section 317 (a)", and then there is a list of names and you are on it. That must have been appalling to you professionally?

Mr BARRETT: It was devastating, especially at the same time when that document was sworn before the Supreme Court by officers of the NSW Police Force and I am doing high-level negotiations with the Police Commissioner's office on very sensitive stories for *60 Minutes*. I have copies of those there. High-level pieces of

information were given to me as a journalist/producer for the *60 Minutes* program on the good faith that the Commissioner and the higher echelons of the NSW Police Force trusted me with this—tapes from the royal commission re the Dolly Dunn segment. Very, very important public matters that the police hierarchy trusted me with. On the other hand, the other side of the police hierarchy had me on a shocking document, a legal document like that, which, as I said at the start of this Committee, I have done nothing wrong. It has devastated me. It has destroyed my career as a journalist I believe and somebody needs to answer—that is what I feel. There needs to be an answer to this not only for me but also for a lot of other people, good people, good citizens that I know.

The Hon. LYNDA VOLTZ: You said earlier that you identified other names on the warrant as people you knew?

Mr BARRETT: Absolutely.

The Hon. LYNDA VOLTZ: They were people that you would have an association with; not necessarily journalists but possibly police officers?

Mr BARRETT: Long-term associations, yes.

The Hon. LYNDA VOLTZ: I refer you to what Cath Burn said in her memorandum of understanding, which you have included in your submission, in regard to the warrants and affidavits.

Mr BARRETT: Yes.

The Hon. LYNDA VOLTZ: You have seen the warrant?

Mr BARRETT: I have seen the warrant, of course.

The Hon. LYNDA VOLTZ: Have you seen the affidavit?

Mr BARRETT: I have seen one affidavit that relates to the Virginia Bell warrant.

The Hon. LYNDA VOLTZ: She makes it clear that you are mentioned in the affidavit covering the 19 April to 20 July warrant?

Mr BARRETT: That is right, and I am not in the warrant 3½ months later that was sworn before Virginia Bell.

The Hon. LYNDA VOLTZ: Sorry, you are not in the—

Mr BARRETT: I am not in the affidavit.

The Hon. LYNDA VOLTZ: No, that is right and that is what she says—

Mr BARRETT: There is no reason for me to be on the Virginia Bell warrant because I am not in the affidavits.

The Hon. LYNDA VOLTZ: We will get to that. You are not mentioned in the September affidavit but she states that you are mentioned in the April affidavit. Have you seen the April affidavit?

Mr BARRETT: No, I have not.

The Hon. LYNDA VOLTZ: So the evidence you received by post was only the two warrants?

Mr BARRETT: No. The first one was the Virginia Bell warrant and then some months later—and I cannot be sure how long later but probably about four months, five months, later—the other warrant, the John Dowd warrant surfaced.

The Hon. LYNDA VOLTZ: Did the affidavit surface at the same time?

Mr BARRETT: No.

The Hon. LYNDA VOLTZ: That came at a later stage?

Mr BARRETT: I believe so, yes.

The Hon. LYNDA VOLTZ: To your knowledge in the public domain no-one has seen the affidavit that you are mentioned in?

Mr BARRETT: No, well I have not seen it. If you are talking about the one where Cath Burn states April to June or something, no I have not seen it.

The Hon. LYNDA VOLTZ: April to July.

Mr BARRETT: Yes.

The Hon. LYNDA VOLTZ: Do you know if the September affidavit makes mention of the earlier warrants?

Mr BARRETT: I cannot tell you that.

The Hon. LYNDA VOLTZ: She gives an explanation that you are a known associate of named targets. That would imply that people in the warrant were people that were known to you. That would be consistent, would it not?

Mr BARRETT: I do not know what she means by a "known associate". I am a professional journalist who knows a lot of professional police officers, and that is the best way to explain it.

The Hon. ADAM SEARLE: To put it another way, do you think from that material that it is possible that you were on the warrant not because you were a target but because the police you knew and interacted with might have been targets? Or do you think you might have been a target in your own right?

Mr BARRETT: I think there is absolutely no reason whatsoever for me to be on any at all. End of story.

Mr DAVID SHOEBRIDGE: You have seen an explanation given by now Deputy Commissioner Burn about why you were on the warrant. She did a memorandum, which you have annexed to your submission. Do you recall the memorandum that she drafted I think the day before the *60 Minutes* interview with then Commissioner Ryan?

Mr BARRETT: Correct. It was the same day that the front page of the *Sydney Morning Herald* appeared.

Mr DAVID SHOEBRIDGE: Attached to that memorandum is a very lengthy schedule or list which goes through the 114 names on the September warrant. Do you remember that?

Mr BARRETT: Yes, I do remember that.

Mr DAVID SHOEBRIDGE: Your name, of course, is on that list.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: And we have Deputy Commissioner Burn's explanation.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: I know that you reject utterly the explanation that has been given.

Mr BARRETT: Absolutely.

Mr DAVID SHOEBRIDGE: If I repeat it here let me assure you that I in no way give it credence but I think probably for your fairness you need to be able to reject it on the public record.

Mr BARRETT: The Committee has already published my submission so it is out there. I have no objection.

Mr DAVID SHOEBRIDGE: We have not published this attachment but I can tell you now—

The Hon. LYNDA VOLTZ: Point of order: It is actually in his submission. So it is on the public record.

Mr DAVID SHOEBRIDGE: The explanation given was, "**Steve Barrett** not mentioned in September Affidavit King send-off list ..." I stop there. What do you think she meant by "King send-off list"?

Mr BARRETT: A detective sergeant by the name Jim King who I believe was about to have some—well, a very impromptu farewell.

Mr DAVID SHOEBRIDGE: That was on 30 June of the year of the warrant and the warrant, of course, was in September?

Mr BARRETT: Correct, three months later, 3½ months later.

Mr DAVID SHOEBRIDGE: That hardly explains your inclusion in the September warrant? That is your position?

Mr BARRETT: My understanding of the listening device legislation is that they have to swear every 21 days the truth, and it is impossible for me to be on the Virginia Bell warrant if Cath Burn states and publishes in her own hand that I was going to the Jim King farewell. I mean, I may as well have been going to Elvis Presley's farewell. It is ridiculous.

Mr DAVID SHOEBRIDGE: That is, if he has gone.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: It goes, "The King send-off the list—part of Mascot strategy to gather corroborative evidence". But it then makes this slur against you: "Suspected to have been involved in or have knowledge of corrupt or criminal conduct by police".

Mr BARRETT: Rubbish.

Mr DAVID SHOEBRIDGE: And it says, "Mentioned in affidavits covering 19 April 2000 to 16 July 2000." What do you say to a police officer putting that statement next to your name—"suspected to have been involved in or have knowledge of corrupt or criminal conduct by police"?

Mr BARRETT: Any professional investigator, especially when they use the word "suspected", all they had to do was come to me. I have never ever, ever been approached by anybody from Mascot 1, Mascot 2, Operation Florida. The Special Crime and Internal Affairs police—never. If anyone would have just approached me, I would have openly told them what I know. But the accusations made against me, that I am involved in all this sort of activity, I totally, totally, totally reject.

Mr DAVID SHOEBRIDGE: It then goes on to say, Mr Barrett, "Known associate of named targets. Allegation that he may have a tape of the firearms located at a search warrant of interest to the inquiry." What do you say to that?

Mr BARRETT: Well, in my career as a crime reporter/investigative journalist, I have probably been to 300, 400, incidences where I have videotaped, as part of my profession, police walking out with firearms. I have got no idea what she is talking about. The other thing I would like to put on the record is that when I was interviewed by Strike Force Emblems, set up by the police department to investigate so-called impropriety with these listening device warrants, Strike Force Emblems did not even have that document, so they were deprived of it and I was deprived of it. I never had the opportunity to answer that back then.

Mr DAVID SHOEBRIDGE: Mr Barrett, I am asking you these questions because I think it is our obligation to work out if there is any substance to these kinds of slurs against your name, which would in any way justify these listening device warrants, and you reject them.

Mr BARRETT: Totally reject them.

Mr DAVID SHOEBRIDGE: If we could just run forward some 14 years—

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: —since this memo was to the Ombudsman.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Did the Ombudsman ever ask you these questions—any questions? You have been asked by the Ombudsman to give evidence. Did the Ombudsman ask you about these matters?

Mr BARRETT: No.

The Hon. ADAM SEARLE: What did the Ombudsman ask you about?

Mr BARRETT: The Ombudsman's counsel assisting, 99.9 per cent of the questioning was, "Do I know this person?", "Do I know that person?", "Who gave you this document?", "How did this document turn up?"

The Hon. ADAM SEARLE: So nothing about the substantive matters or the warrants?

Mr BARRETT: Nothing. There was no question asked of me about my basic complaints about how I ended up on the warrant, had I done anything wrong. The only question that was asked by the Ombudsman was, basically, would he agree that I may have not done anything wrong, even though my name is included on this heavy legal document, the warrant—on the Virginia Bell warrant—and I disagreed. I told him it was impossible because the explanation by Cath Burn was the fact that the so-called reason, the farewell I was supposed to go to, happened 3½ months earlier. That is probably the only area and some other area where the Ombudsman gave me some warning about dark forces at work, which I totally did not understand where he was coming from.

The Hon. ADAM SEARLE: Was this the Ombudsman himself, or his counsel assisting?

Mr BARRETT: The Ombudsman himself.

Mr DAVID SHOEBRIDGE: I would like to come back to this later.

The Hon. TREVOR KHAN: Mr Barrett, can I refer to the submission prepared by your lawyer, paragraph 11, which deals with annexure E and which I will call the Burn briefing note?

Mr BARRETT: Is that the—would you just pardon me for one moment?

The Hon. TREVOR KHAN: Sure.

The Hon. ADAM SEARLE: Does he have a copy of his statement?

The Hon. TREVOR KHAN: Yes, I think that is what is coming.

The Hon. LYNDA VOLTZ: Here, I will give you a copy too.

The Hon. ADAM SEARLE: Make sure he has a copy of his statement.

Mr BARRETT: I just need to get that annexure that you are talking about.

The Hon. TREVOR KHAN: That is all right. Rest assured there is no zinger coming.

Mr BARRETT: No, no. I am happy to cooperate in any way. Okay, paragraph 11?

The Hon. TREVOR KHAN: Paragraph 11.

Mr BARRETT: Thank you.

The Hon. TREVOR KHAN: That talks in terms of the Burn briefing note being 13 April 2002. I am correct, am I not, that Peter Ryan gave his interview to *60 Minutes* on 14 April?

Mr BARRETT: No.

The Hon. TREVOR KHAN: It was not?

Mr BARRETT: No. His interview was on the Saturday afternoon at 2 p.m.

The Hon. TREVOR KHAN: That is what I am getting to. What date was that?

Mr BARRETT: It was recorded the next—and went to air the following day on the Sunday when *60 Minutes* airs.

The Hon. TREVOR KHAN: Right.

Mr BARRETT: The actual interview by Richard Carleton was conducted on the same day that Cath wrote this highly protected document.

The Hon. TREVOR KHAN: That answers the question that I had there. Were you involved in actually doing the Peter Ryan interview?

Mr BARRETT: I was contacted by Richard Carleton on that morning and it was a most embarrassing conversation for me. I had to explain my way out of it because Richard Carleton wanted to know what am I doing—drug running, corruption, and all this. God bless his soul, the late Richard was a very thorough journalist, so I explained it to him. Then he told me that he was interviewing Peter Ryan under the orders of the police Minister, Michael Costa, who ordered that Peter Ryan do the interview.

The Hon. TREVOR KHAN: Right. You were not present when the interview was done?

Mr BARRETT: No, I was down in the country.

The Hon. NIALL BLAIR: God's country.

Mr BARRETT: Goulburn.

The Hon. NIALL BLAIR: Absolutely.

Mr BARRETT: Relatives.

The Hon. TREVOR KHAN: All right. Thank you very much.

The Hon. ADAM SEARLE: Just on your paragraph 11, the Cath Burn memo, she gives, I think as you have discussed, an explanation there that you are on the King send-off list. That is mentioned in paragraph 10 of your submission in that extract of the interview between Mr Carleton and former Commissioner Ryan.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: The former commissioner advances the explanation that the officer gathering the covert material was going to a function at which a lot of people would be present.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: Do you remember that explanation?

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: That is consistent with the Cath Burn memo.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: But you were not at that function.

Mr BARRETT: No.

The Hon. ADAM SEARLE: And the function had happened earlier.

Mr BARRETT: Correct.

Mr DAVID SHOEBRIDGE: Three months before.

Mr BARRETT: I was never invited, did not know about it, did not go.

The Hon. ADAM SEARLE: Now I ask you to jump forward to your paragraph 14.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: There is an extract from a transcript of an interview between Cath Burn and another police officer.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: She is asked about how the Commissioner, Peter Ryan, came to give the explanation.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: She answers, I think in questions 11 and 13, that she did not know why Ryan gave that explanation. Do you recall that?

Mr BARRETT: Yes. I agree with the context of that record of interview.

The Hon. ADAM SEARLE: She seems to be saying in that interview that she does not know why Commissioner Ryan gave that explanation. That is how you understand it?

Mr BARRETT: She does.

The Hon. ADAM SEARLE: But that is not consistent with the extract from her own memo in paragraph 11.

Mr BARRETT: Correct.

The Hon. ADAM SEARLE: What do you deduce from that tension, I guess, between her memo and her record of interview?

Mr BARRETT: Well, I find it extraordinary that Cath Burn can specifically type up a highly protected document on the same day that her commissioner is being interviewed, and then the explanation that Cath gives about a farewell is exactly the same explanation that her commissioner gives on national television, which is still on the public record today and has never been tested or corrected, in my view.

The Hon. ADAM SEARLE: But in this later record of interview, it seems to have slipped her mind.

Mr BARRETT: Well, it does. I mean, I just find it extraordinary that her own commissioner can go on television on a national program and it has slipped her mind.

Mr DAVID SHOEBRIDGE: This was an area where she had been working for a number of years and had been deeply involved in it. This was not just a slight involvement that she had. This would have been a matter core to her professional career at the time.

Mr BARRETT: She was involved in Mascot 1, Mascot 2 and the whole operation. As she says there, she is acting commander on every page she has typed; but not only that, I understand she was one of the personal managers of the person known as M5 that started this whole secret operation.

The Hon. LYNDA VOLTZ: Can I just get some clarification here?

Mr BARRETT: Sure.

The Hon. LYNDA VOLTZ: I just want to be devil's advocate for a moment.

Mr BARRETT: Yes.

The Hon. LYNDA VOLTZ: Is it also not possible that what Cath Burn was typing up was in response to the *Sydney Morning Herald* article on 13 April?

Mr BARRETT: One can only assume that.

The Hon. LYNDA VOLTZ: The document she was typing was not for the Peter Ryan interview, perhaps, but possibly has been asked, by her commanding officer or by someone, to be a response to the *Sydney Morning Herald* article.

Mr BARRETT: Can I answer it in this way: I rang Michael Costa's office, the then police Minister, because I was unhappy with the Peter Ryan explanation, which I felt was dodgy, or inaccurate, or confusing. Michael Costa in the police Minister's office, through his spokesman who is a friend of mine, Eamonn Fitzpatrick, told me, as a direct response to the *Sydney Morning Herald* article on that Saturday, Costa ordered Peter Ryan to be briefed and to be interviewed by *60 Minutes*. So whoever briefed Mr Ryan to say such a thing is still unclear, but you have Cath Burn's explanation in the interview of Strike Force Emblems and you have her highly protected document that was published on exactly the same day as the article.

Mr DAVID SHOEBRIDGE: It would be remarkable if, before he went on national television, the commissioner did not get the briefing from the acting commander of the relevant unit.

The Hon. TREVOR KHAN: I do not know if you can say that.

Mr BARRETT: Well, if it looks like a duck and it quacks like a duck, it is a duck.

Mr DAVID SHOEBRIDGE: Except that Mr Khan does not believe it is a duck.

The Hon. TREVOR KHAN: No, no.

Mr BARRETT: I do not know. That is all I can say.

CHAIR: Order!

Mr BARRETT: I cannot give an opinion one way or the other, and I just let the documents speak for themselves.

Mr DAVID SHOEBRIDGE: Okay.

The Hon. TREVOR KHAN: Can I ask a question that follows on from what the Hon. Lynda Voltz asked?

CHAIR: Yes.

The Hon. TREVOR KHAN: The document that I will call the Burn briefing note seems to be an incomplete document. It does not have a front page one, for instance. Is that right?

Mr BARRETT: Is that the highly protected document?

The Hon. ADAM SEARLE: Yes, it is.

The Hon. TREVOR KHAN: It is your annexure E.

Mr BARRETT: My annexure?

The Hon. ADAM SEARLE: It does have "highly protected" written on the top.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: I think there is a copy of it in that statement, if you want to have a look at it, Mr Barrett. It is next to you.

Mr BARRETT: If my memory serves me correctly, I think it has "highly protected" written on every page.

The Hon. ADAM SEARLE: It does.

Mr DAVID SHOEBRIDGE: It is annexure E, if you want to have a look at it.

Mr BARRETT: Okay. I do not need to.

The Hon. LYNDA VOLTZ: No, no. It is not for publication.

Mr BARRETT: Sorry, what was the question?

The Hon. TREVOR KHAN: The question is this: It is not clear from the document itself who it went to. Is that not right?

Mr BARRETT: I do not know where it went to, no.

The Hon. TREVOR KHAN: It is not clear on the face of the document where it went to.

Mr BARRETT: No, and these are the questions I asked.

The Hon. TREVOR KHAN: Sure.

Mr BARRETT: But I do not know where it went to.

The Hon. TREVOR KHAN: In terms of the questions that Mr Searle was asking you, we actually do not know who, if anyone, briefed Peter Ryan, for instance, do we, at this stage?

Mr BARRETT: I do not know who briefed Peter Ryan, but in the chain of command, because it was a SCIA operation, it is only logical in my mind—and this is only my opinion.

The Hon. TREVOR KHAN: Yes.

Mr BARRETT: In my mind, if a commissioner of police is going to be briefed about a matter concerning a very secret operation by SCIA, well then somebody involved in SCIA—whether it was the SCIA commander at the time, who I think was Andrew Scipione—but it appears that Cath wrote a document and she wrote the document as acting commander of SCIA. So I just do not know.

The Hon. ADAM SEARLE: Just to be clear, you have some concerns. I think you had spoken to the police Minister's office.

Mr BARRETT: On that weekend?

The Hon. ADAM SEARLE: Yes.

Mr BARRETT: Yes, I did.

The Hon. ADAM SEARLE: Then you are told, as a direct result of concerns that you raised, that the police commissioner is going to give an explanation on television.

Mr BARRETT: Yes. I was aware of that—early in the morning, yes.

The Hon. ADAM SEARLE: He goes on television and he gives an explanation.

Mr BARRETT: The following day it was published on television, yes.

The Hon. ADAM SEARLE: This Burn briefing note advances the same explanation as the one given by the police commissioner.

Mr BARRETT: Correct.

The Hon. ADAM SEARLE: The briefing notice signed by Cath Burn as acting commander of—you call it SCIA, that is the Special—

Mr BARRETT: Special Crime and Internal Affairs, correct.

The Hon. ADAM SEARLE: She was the acting commander of that body at that time?

Mr BARRETT: Well, she typed up the document and it was her publication.

The Hon. TREVOR KHAN: Well, we know she signed the document, or it appears she signed it. We do not know who typed it. That would be fair too, would it not?

Mr DAVID SHOEBRIDGE: She adopted it.

The Hon. TREVOR KHAN: Yes.

The Hon. ADAM SEARLE: There is a document with her signature—

Mr BARRETT: It is her name on the document, on every page.

The Hon. ADAM SEARLE: Subsequently in this interview with the Strike Force Emblems people, she cannot remember?

Mr BARRETT: Correct.

The Hon. LYNDA VOLTZ: Sorry, can I just clarify. She does not say she cannot remember; she has no idea who briefed him.

The Hon. ADAM SEARLE: Yes.

Mr BARRETT: Correct.

Mr DAVID SHOEBRIDGE: Mr Barrett, you are not the only one in Ms Burn's memorandum who is said to be going to the King send-off. In the memorandum there is page after page of people.

Mr BARRETT: Yes.

The Hon. TREVOR KHAN: About 36.

Mr DAVID SHOEBRIDGE: Yes, I think it is about 36 people who are said by Ms Burn to be included on the warrant, in part, because they were going to the King send-off.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: When she is asked about that in the record of interview in June 2003—and you extract that in paragraph 14—the question is put to her:

Q6 O.K. All right, O.K. In relation to the listening device warrants, were you aware of the comments made by former Commissioner of Police Ryan on 60 Minutes, can you recall that?

A 60 Minutes?

Q7 Yes, can you recall those?

A No.

Of course this is a national television program that is covering the exact operation that she had been intimately involved in for a number of years, but she has no recollection of it. It did go to air nationally, did it not?

Mr BARRETT: Absolutely.

Mr DAVID SHOEBRIDGE: Then the interviewer says:

Q8 He states that the warrant related to a function—

A O.K.

Q177 — that all persons would be attending.

A Ahhmm.

Q9 Have you any comment to make about that statement that he has made?

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

Q10 Well is that statement true?

A No.

The Hon. ADAM SEARLE: It is not that she does not know.

Mr DAVID SHOEBRIDGE: It is not that she does not know. She is asserting that the statement that people were included on the warrant because they were going to the function is untrue. Mr Searle describes it as a tension between the explanation she gives to the Strike Force Emblems investigators and the explanation in her memorandum, but it is more than a tension, it is a direct contradiction.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: She has 36 people. One of the reasons they are on the warrant is because they are going to the King send-off, and when it is put to her about Commissioner Ryan's explanation, that a number of them were on the warrant because they were going to the send-off, she says that is untrue.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Have you ever had an explanation given to you that satisfies you as to why you were included on this warrant?

Mr BARRETT: Never, and I have written to the NSW Police Commissioner, a number of his deputies, the head of the New South Wales Crime Commission, the head of the Police Integrity Commission. I have written to the Inspector of the Police Integrity Commission, Mr David Levine. I have written to a former

Attorney General, Bob Debus. I have been trying for 15 years to get to the bottom of this and I have been blocked all the way.

Mr DAVID SHOEBRIDGE: What about more recently?

Mr BARRETT: I thought the Ombudsman would do that, but it appears as though that is why we are here today.

Mr DAVID SHOEBRIDGE: I said I wanted to come back to this again. Can you tell the Committee about the circumstances in which you were called before the Ombudsman and when that happened?

Mr BARRETT: Blow by blow, the Premier of the day, Barry O'Farrell, announces that there will be an Ombudsman inquiry into this long-running complaint. The Premier indicates that it will be open and transparent. Newspaper advertisements were placed by the Ombudsman for—as we now call ourselves—whistleblowers or victims to come forward. We cooperated with the media call-out. We gave extensive submissions; a rather thick file. We sent that to the Ombudsman and that is the last I had heard of anything, and then the next thing I know I am hit with a summons/subpoena and was called down to not an open and transparent inquiry but behind-closed-doors inquiry—examination.

The Hon. ADAM SEARLE: Were the questions to you directed about how you got your information, not about the substantive matters involving the listening devices?

Mr BARRETT: As I said, probably 99.9 per cent of the questioning was, "Who gave you that?", how did I get my information, and I was not asked any questions about what I was asked to do originally and that was the basic complaint.

The Hon. ADAM SEARLE: The submission you have made to this Committee, you made a similar submission to the Ombudsman's inquiry?

Mr BARRETT: Much more extensive.

The Hon. ADAM SEARLE: More extensive.

Mr BARRETT: There is the file.

The Hon. ADAM SEARLE: And you were not asked about that extensive material by the Ombudsman or his counsel assisting?

Mr BARRETT: I was asked about documents and they referred to my—but it was basically "Where did this document come from?", "How did it turn up?", "How did you get it?"

Mr DAVID SHOEBRIDGE: Nothing about the substantive allegations against you in Burn's memorandum?

Mr BARRETT: No.

The Hon. TREVOR KHAN: Mr Barrett, sorry to jump around.

Mr BARRETT: Not a problem.

The Hon. TREVOR KHAN: Were there any documents that you provided to the Ombudsman that you have not provided to us?

Mr DAVID SHOEBRIDGE: You can take that on notice.

Mr BARRETT: Just say that again. Are there any?

The Hon. TREVOR KHAN: Are there any documents provided to the Ombudsman that you have not provided to us, and picking up on what Mr Shoebridge said, if you cannot answer that question perhaps your lawyer in due course can go through your previous submission, identify any documents and provide them to us.

Mr BARRETT: I would like to take that question on notice and I will explain why. There is a massive amount of documents that I have collected over the past 15 years.

The Hon. TREVOR KHAN: We are not being critical.

Mr BARRETT: So I just cannot answer that. I need to take that—just pardon me one moment. I think I will take that on advice. Thank you.

The Hon. ADAM SEARLE: To get back to your statement to this Committee, on page 4, paragraph 14, question 10—this is about the explanation given by Commissioner Ryan on *60 Minutes*. At question 10 Ms Burn is asked whether the statement is true about people attending that function as being the reason, and she appears to deny the truth of that statement. In your paragraph 11 it is the same explanation she advances in her briefing note.

Mr BARRETT: Correct.

The Hon. ADAM SEARLE: Do you have an explanation for that inconsistency?

Mr BARRETT: I do not have any explanation, but I just say I find it extraordinary.

The Hon. ADAM SEARLE: Extraordinary, what, for a person in her position to give such different explanations for the same matter?

Mr BARRETT: That a person at such a high rank of acting commander can type up a document about the same subject, "Listening device warrants under attack", and then her commissioner of police going on a national television program the next day giving exactly the same explanation. That is what I find extraordinary.

The Hon. ADAM SEARLE: Particularly if, as she says, the statement is not true?

Mr BARRETT: Well, I find that even more extraordinary.

Mr DAVID SHOEBRIDGE: There is a fundamental problem with the explanation that maybe she was aware of by the time the interview was done with Strike Force Emblems, which is the timing. You cannot justify including people on a warrant in September on the basis that they will be attending a function and you want to record their interactions at the function if the function had happened three months before in June. That is just untenable, is it not?

Mr BARRETT: Under the legislation that I think was brought in by the late Hon. Neville Wran, the Listening Devices Act, if you swear false information, as I understand the Act—that is why I moved on it because I understand the Listening Devices Act very well because I have had a lot to do with it in my role as a journalist—it is impossible that somebody can swear information to the Supreme Court about an event that has already occurred 3½ months earlier. It does not make sense.

Mr DAVID SHOEBRIDGE: As a justification for them being on a warrant and wanting to record their evidence—

Mr BARRETT: Not only me, but I think Cath Burn said there are 48 names on the Virginia Bell warrant that were not backed up in any affidavits. Out of the 48, all were supposed to have gone to the farewell, which was 3½ months earlier.

The Hon. LYNDA VOLTZ: Can I ask you, because you know the Listening Devices Act, if you were doing a rollover warrant, what would be the requirements?

Mr BARRETT: To tell the truth before the Supreme Court.

The Hon. LYNDA VOLTZ: What would be the requirements to roll over previous warrants?

Mr BARRETT: Well, I have never rolled over a warrant, but I understand the basic Listening Devices Act and nobody told me or I did not read any legislation that it had ever changed. The Listening Devices Act

1984 was still the Listening Devices Act 1984, which clearly states that you have to refresh the warrant every 21 days and the information sworn before the Supreme Court on oath has to be correct and true. Clearly me going to a farewell three months before and that information, as Cath Burn puts as the reason—there is a very big problem there.

The Hon. TREVOR KHAN: That assumes—

Mr BARRETT: In my view.

The Hon. LYNDA VOLTZ: Let us take this as an example. You have a warrant in September. You have earlier warrants. In your September warrant, you swear an affidavit with information, and also within that affidavit you state that the information also relies on the previous warrants and—

Mr BARRETT: Three and a half months earlier.

The Hon. LYNDA VOLTZ: And you attach an annexure of those warrants.

Mr BARRETT: And what is your question?

The Hon. LYNDA VOLTZ: I am asking you, if you have got an affidavit in September that also encompasses information in warrants that have previously been issued, does that encompass those people on those warrants as to why they are in that September affidavit?

The Hon. TREVOR KHAN: Point of order. I understand where Ms Voltz is going but this is actually beyond—

The Hon. LYNDA VOLTZ: I understand that.

The Hon. TREVOR KHAN: —the capacity of this witness.

The Hon. LYNDA VOLTZ: I am asking for an explanation. The witness is asking about the September affidavit and whether that is included.

Mr DAVID SHOEBRIDGE: It might be fair if the witness takes it on notice and gets some advice from his lawyers before responding. That might be entirely appropriate.

The Hon. TREVOR KHAN: A lot of lawyers could not answer that one.

Mr BARRETT: I am happy to do that.

The Hon. ADAM SEARLE: Mr Barrett, I think what my colleague was getting at is the suggestion that because warrants are rolled over, maybe later warrants include material cut and pasted from earlier warrants and, therefore, the information in a later warrant might have been true three months later if it had not been deleted in a later —

The Hon. LYNDA VOLTZ: What I am getting is whether the earlier warrants were mentioned in that September affidavit. We will take it on notice.

The Hon. ADAM SEARLE: To be clear, Mr Barrett, you never went to the King farewell, did you?

Mr BARRETT: I never went to the King farewell and irrespective of how old the information was, my view is that I should not have been on any goddamn warrant.

The Hon. ADAM SEARLE: I understand that.

The Hon. TREVOR KHAN: Everyone talks about not having been to the King farewell. Were you invited to the King farewell?

Mr BARRETT: Never.

The Hon. ADAM SEARLE: Did you know Mr King?

Mr BARRETT: And when I found out about the Cath Burn document, as any investigative journalist would do, I went to Jim King and I double-checked it and I asked him for a statutory declaration, which he was happy to give me. End of story.

The Hon. ADAM SEARLE: You did know Mr King?

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: You were not invited to his farewell and you did not attend?

Mr BARRETT: Exactly.

CHAIR: On page 10 at paragraph 49 in your submission, you use a sporting analogy. I think we have exercised the issue around the warrant fairly sufficiently. Will you explain to us what you mean in that paragraph when you refer to the "first eleven" and "second eleven"?

Mr BARRETT: Well a lot of the names that I recognised on the warrant were extremely well-respected, very experienced police officer detectives, such as—

The Hon. ADAM SEARLE: Do not name them.

Mr BARRETT: I will just say their ranks. There were former assistant commissioners of police.

The Hon. LYNDA VOLTZ: Is that—

CHAIR: Go ahead. There is no point of order.

Mr BARRETT: There were police officers with the rank of detective superintendent. There were a number of people who had worked on some very fine high-profile cases such as the investigation of John Wayne Glover, the granny killer, and the investigation of the murder of heart surgeon Victor Chang. They were major investigations in New South Wales. They were people of great repute—police officers—who I would say were the top operators and who I would call the first eleven. I had never heard of a lot of the people who I then realised were working for the SCIA. I have been reporting crime in this city for a long, long time and I did not know these people. There is the analogy: The first eleven, who were very professional police officers of good repute in my view, and other people who I had no idea who the hell they were.

CHAIR: To what end in your view?

Mr BARRETT: To what end in my view? A lot of good, hardworking police officers. One I know, who I will not name at the moment, took his own life and one attempted to take his life. I am aware of situations where his colleagues had to rush from the city and take him down off a rope. The consequences are far—wide-reaching.

CHAIR: I take you to paragraph 50 headed, "A Further Motive—Nobbling the Media". Do you want to go there? You said you do not understand why you were on those warrants. Do you want to talk to that particular paragraph in your statement?

Mr BARRETT: I consulted many, many police officers and many lawyers who have had experience with swearing listening device information affidavits before Supreme Courts. I went to different jurisdictions and I went to an assistant commissioner in the Northern Territory, and to a very high ranking homicide investigator in Victoria. They were aware of these massive warrants. They basically laughed about it and said that in their view it was extremely bizarre. The reason why I say "nobbling the media", as I said at the start of this hearing today, I have done nothing wrong, I am not a criminal, and I am not involved in any of these charges that they put there. What other possible reason would there be? The only reason I can think of is that I knew a lot of the people—the first eleven—who were on the documents. The only logical reason in my mind is that they thought that if something leaks someone might tell Steve Barrett. In my mind that is the only justification for putting me on the list; that is, so that someone could have control or the ability to control the information factor, if you like.

The Hon. ADAM SEARLE: To be clear, your contention is that you might have been put on the warrant by one group of police officers—

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: —for them to use you to target the second group of police officers—the first eleven?

Mr DAVID SHOEBRIDGE: Or to silence him.

Mr BARRETT: That is in my submission and that is the only logical conclusion I can come to.

The Hon. ADAM SEARLE: More fundamentally, in your paragraph 49 your contention, based on what you know and the lack of other explanation you have been given over 15 years, is that these warrants were a device used by one group of officers somehow to blacken the names of a second group of officers for reasons of their own personal career advancement. Is that what you are saying?

Mr BARRETT: In all the conversations that I have had with informed people, I have had to come to that conclusion. There appears to be a sort of "square-up" happening here. I have read documents and *Sydney Morning Herald* articles written by Neil Mercer—who will give evidence to this Committee—where the source factor, M5, admitted that he perjured himself in evidence. He has admitted that he was being used as a "square-up" against other police to settle old scores. That has been published in the public arena. That is why my mind formulated point 49.

The Hon. ADAM SEARLE: It was a faction fight at the most senior levels of police—

Mr BARRETT: Exactly.

The Hon. ADAM SEARLE: —being fought out using the listening devices warrants?

Mr BARRETT: I cannot think of any other reason.

The Hon. ADAM SEARLE: That is why you are calling for an open and independent judicial review—to get all this out in the open once and for all?

Mr BARRETT: I am certainly calling for an open and independent judicial review. This matter has gone on for far too long. The former Minister for Police, Mike Gallacher, made a promise to me personally through another journalist—Adam Walters. On the night that Les Kennedy died, Mike Gallacher made contact and promised, "Tell Steve Barrett that we will get to the bottom of Strike Force Emblems and I am looking for an independent judge or judicial officer in another State." Getting back to your question, yes, I do believe that we need somebody from another State—an independent person—to have a look at this very, very sad saga.

The Hon. ADAM SEARLE: And you do not think the Ombudsman in this State is up to that or is not discharging that role properly?

Mr BARRETT: No, and I do not think he is because I have seen documents before where other police—this is not the first time this matter has come before the Ombudsman's desk and he has rejected it. It has been rejected and there has been no will. Then we finally get to the Ombudsman and in good faith we are asked to hand over all of our documents, as we do. In my view, the whistleblowers became the guilty. I was being asked questions such as "Who gave you this?", "Who gave you that?", "Who gave you this?", "Who gave you that?"

The Hon. ADAM SEARLE: But there was no thorough investigation of the substance of your complaint by the Ombudsman?

Mr BARRETT: Can I just—

The Hon. ADAM SEARLE: Before you do that can you answer the question? It is brief and simple.

Mr BARRETT: Can you ask it again?

The Hon. ADAM SEARLE: In your view, and based on your personal experience of being questioned by the Ombudsman, do you believe that the Ombudsman was looking into the substance of your complaint or was mainly concerned with the leaking of the documents?

Mr BARRETT: I believe the Ombudsman was mainly concerned with the leaking. There is evidence of that in submission No. 8 to this Committee. If you go to the second last page—page 4. This person was interviewed by Operation Prospect investigators, the Ombudsman's investigators. The submission, which has the names blanked out, states:

- I attended two meetings with these investigators. I raised with ...—

Some person who I imagine was the investigator—

the issues as related above to which—

I do not know who that person is, whether it was the Ombudsman or the Deputy Ombudsman.

... was most concerned in relation to me providing journalist Mr Steve BARRETT with a 'Statutory Declaration' in relation to the matter.

The person unknown—

- ... appeared to be more concerned about Mr BARRETT agitating about the cover up of this matter more so than allegations about false swearing and/or issue of listening device warrants.

They are not my words, but that is another person who sums up in my mind that I was under some sort of attack rather than getting to the central complaint, which was how the hell did I end up on a listening device warrant on such heavy charges as money laundering, drug running.

Mr DAVID SHOEBRIDGE: When you gave your evidence to the Ombudsman he had summonsed you; is that right? There was a formal requirement to attend.

Mr BARRETT: I was summonsed and I was warned that I was not allowed to divulge any of my evidence to anyone.

Mr DAVID SHOEBRIDGE: Under some sort of threat of criminal sanction?

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Who gave you that warning?

Mr BARRETT: The Ombudsman.

The Hon. ADAM SEARLE: Personally?

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Then, having given you that warning, did he say to you, "Well, of course, if you have a reason that you may want to disclose it—you might want to talk to a doctor or you think there is a public interest reason to disclose it—you can come and see me and I can vary the order"? Did he tell you that?

Mr BARRETT: No.

Mr DAVID SHOEBRIDGE: Anything at all to that effect?

Mr BARRETT: Not that I recall.

Mr DAVID SHOEBRIDGE: It was just a blanket silence that he imposed upon you?

Mr BARRETT: He basically told me that I had finished my evidence that day. I am not sure if he said, and I will just check this—basically I was not offered any of those opportunities.

Mr DAVID SHOEBRIDGE: I take you back to the warrant, the affidavit and the explanation given by Ms Burn. Ms Burn's analysis of the affidavit was, I think, that 48 people who were on the September warrant were not even mentioned in the affidavit, and you were one of those 48 people.

The Hon. TREVOR KHAN: They are mentioned in the affidavit; their names are mentioned.

Mr DAVID SHOEBRIDGE: Ms Burn says that of the total, 66 were mentioned in the September affidavit, and the majority of the remaining names were mentioned in previous affidavits.

Mr BARRETT: You are talking about the Virginia Bell warrant—the first warrant that surfaced in Sydney.

Mr DAVID SHOEBRIDGE: That is right. For the sake of clarity, Ms Burn says that of the total, 66 were mentioned—that is, 66 out of 114—in the September affidavit, and that the majority of the remaining names were mentioned in previous affidavits. We can take from that that she says that 66 of the 114 were named in the affidavit. That leaves, I think, 48 or so who were not mentioned, yet a warrant was issued by the Supreme Court.

Mr BARRETT: Correct.

Mr DAVID SHOEBRIDGE: Knowing that the Parliament put in place the protection whereby it is not just the police issuing the warrants themselves—they must persuade a Supreme Court judge that there is a proper basis on which to issue these warrants—

The Hon. ADAM SEARLE: And now a High Court judge.

Mr DAVID SHOEBRIDGE: Yes. Do you feel that the system has protected your civil liberties and rights?

Mr BARRETT: It has not protected my civil rights as a citizen of New South Wales and I believe that it has destroyed my reputation as a journalist.

Mr DAVID SHOEBRIDGE: Have you seen the explanation given by a former Supreme Court judge, Justice Levine, who ended up being involved in this as the Inspector of the Police Integrity Commission and doing a review of Task Force Emblems? Justice Levine said, I think in evidence before another parliamentary committee, that when he was a judge and these warrants came across his desk in private hearings—that is just him and the police present—they were complex and long and he would check to see whether they included obvious errors such as names like "M. Mouse" or "D. Duck". If there were no obvious errors, he would just approve them. How do you feel about that in terms of protection of citizens' civil liberties in this State?

Mr BARRETT: Perhaps he should have been looking for Superman. I do not know. How do I feel about it? I do not feel very safe.

Mr DAVID SHOEBRIDGE: No. I assume that you would have liked to have raised those matters with the Ombudsman. Did the Ombudsman address any of those matters with you in his inquiry?

Mr BARRETT: No.

The Hon. ADAM SEARLE: In your opening statement you said that you felt that judges had been duped. Do want to elaborate on that? Is this the matter you were getting at—the unreliability of the information provided in those warrants?

Mr BARRETT: It can be one way or the other.

The Hon. ADAM SEARLE: Please elaborate.

Mr BARRETT: When a person takes the oath and swears information as true and correct before a Supreme Court judge, as I have sworn an oath here today, that information has to be triply checked and has to be 100 per cent correct. The information sworn before Virginia Bell is not correct. Backed up by the affidavits and backed up by the explanation of Cath Burn, 48 people whose names were sworn before Virginia Bell are not on the affidavits.

The Hon. ADAM SEARLE: That would mean that there is no evidence to support the issuing of the warrant in respect of those people.

Mr BARRETT: I totally agree with you.

The Hon. ADAM SEARLE: It would mean those warrants were not legal.

Mr BARRETT: That is why I say either the judges—maybe they did not read any affidavit but the onus of proof under the legislation is on the police officers from that particular unit, SCIA, who take the oath and swear the information to be true and correct. It can only be that two things have either happened here. Either the judges have been duped, misled or no-one has checked. If that is the case there is a duty of care breakdown of a very high proportion, because we all know what happened after that.

The Hon. ADAM SEARLE: What are you referring to there?

Mr BARRETT: Then it led into a PIC hearing, which then became Operation Florida. I put on the record there was some good work done. Some people did go to jail. But the argument, and the central reason why we are here today, is that good citizens of New South Wales, good police, journalists—I do not know if there are any other journalists on any other warrants. It is up for the members of the media to ask questions of certain people, but I do not know. But there was a fallout to this to this day which is still being covered up. I think some people should go and read the book *All the President's Men*.

The Hon. LYNDIA VOLTZ: If at the end of this inquiry we go through all the evidence and we take consideration of the April affidavit, the September affidavit and look to the letter of the law on how affidavits should be sworn and we find—this is only a hypothetical—that there was evidence to support those names being on the warrant, will people be satisfied?

Mr BARRETT: I will answer this by saying I have given many, many, many people in high office that opportunity over a 12-year period. All they had to do was tell me. Now, because it has become a cover-up, no, I do not think people will be satisfied. We are not here because of the wrongdoing; we are now here because, as the *Telegraph* said recently, we are here to inquire into the secrecy into the secrecy into the secrecy into the secrecy. To answer your question: No, I do not think people will be satisfied. If we do have an independent inquiry and your question is will people be satisfied, I think people will only be satisfied when we get to the truth.

The Hon. LYNDIA VOLTZ: When we take into consideration the whole breadth of evidence, because only certain evidence has been released, for example, we have the September affidavit but we do not have the April affidavit—

Mr BARRETT: Correct.

The Hon. LYNDIA VOLTZ: If we then see the April affidavit and there is supported, corroborated evidence for those people to have been included on warrants—

Mr BARRETT: Are you suggesting to me if there is evidence of criminality on my behalf?

The Hon. LYNDIA VOLTZ: No. One thing about a warrant is—and I think there was a notice in the police news about this—that the inclusion of a name on a warrant does not imply that someone has done something wrong. The inclusion on a warrant implies that police need access to a listening device that those persons may be captured by.

Mr BARRETT: I do not agree with that when you look at the explanation. I do not agree with that because even if what you are saying to me is now standard practice, which I do not think it is, because no-one

has changed the Listening Devices Act, it has not changed, but what you are putting to me is just incomprehensible because—

The Hon. ADAM SEARLE: I think, Mr Barrett, what she is putting to you is the view of the police force in this State as to how they see listening devices operating.

The Hon. LYNDA VOLTZ: How they take out warrants.

Mr BARRETT: You cannot put anybody on a warrant because they go into a party 3½ months before. It must have been the world's longest drinkathon.

The Hon. ADAM SEARLE: Particularly if they were never invited.

The Hon. LYNDA VOLTZ: We will ask about how that list ended up. Just putting that aside and if we go to the statement at page 11 where we go back to the document written by Cath Burn. This is where your name appears.

Mr BARRETT: Am I looking at my submission at page 11?

The Hon. LYNDA VOLTZ: Paragraph 11.

Mr DAVID SHOEBRIDGE: It is where you extract the bit from the memorandum.

The Hon. LYNDA VOLTZ: Where they say "Known associate of named targets" as one of their reasons for capturing you by warrant—

Mr DAVID SHOEBRIDGE: You are an investigative journalist, are not you, Mr Barrett?

Mr BARRETT: Absolutely.

Mr DAVID SHOEBRIDGE: If that becomes a reason for police to put journalists on listening device warrants then heaven help us.

Mr BARRETT: They would be doing it every goddamned day.

Mr DAVID SHOEBRIDGE: Every crime reporter in the State would have their—

The Hon. TREVOR KHAN: And a lot of lawyers.

Mr DAVID SHOEBRIDGE: And a lot of lawyers.

The Hon. LYNDA VOLTZ: "Mentioned in affidavits covering 19 April 200 to 16 July 2000", we do not know what that says, yes?

Mr BARRETT: I do not know what it says.

The Hon. LYNDA VOLTZ: And it says, "Known associate of named target." So you have some information that someone has given you and that person has not given you all the information.

Mr BARRETT: When you say I have some information that some person has given to me—

The Hon. ADAM SEARLE: You have got both warrants.

The Hon. LYNDA VOLTZ: You have the September affidavit that you have had access to.

Mr BARRETT: The September affidavit I think turned up very, very late—a long time ago. Yes, but only that. Only that.

The Hon. LYNDA VOLTZ: But in her statement she says you are mentioned in the affidavits covering 19 April to 16 July 2000.

Mr BARRETT: Yes, and I want to know why.

The Hon. LYNDA VOLTZ: Because those ones have not been out in the public domain, so we do not have all the information. You have part of the information.

The Hon. ADAM SEARLE: You do not have the earlier affidavit, do you?

Mr BARRETT: We do not have the earlier affidavit, correct.

The Hon. LYNDA VOLTZ: What I am saying is if we can access that information and it comes to light that—this is no reflection that you have any criminality or been involved in any criminal act—the police had a reasonable belief that you should be on that warrant based on the evidence—and the evidence provided for a listening device is substantially different from what you provide as proof of evidence in court. You can use, for example, hearsay evidence. If they had a reasonable expectation to put you on that would you then be satisfied?

Mr BARRETT: No, I would not be. I do not want my name on any listening device warrant. I have not done anything wrong. Then how dare they put me on another warrant when I was not even there. It is wrong, in my view. I totally reject it.

The Hon. ADAM SEARLE: Getting back to your statement about the judges being duped, I think you proposed that either the information provided to the judges was false and/or there was a possibility that the judges did not check.

Mr BARRETT: Could you repeat that again?

The Hon. ADAM SEARLE: In your opening statement you said that you felt that the judges of this State had been duped.

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: In earlier questioning I think you elaborated on that and you put forward that either the information provided by the police in a sworn affidavit was false—

Mr BARRETT: Yes.

The Hon. ADAM SEARLE: —and/or the judges had not properly done their job; that is, checking to see that all—

Mr BARRETT: Totally examined it.

The Hon. ADAM SEARLE: Checking to see that all the names in the warrant were supported by the evidence.

Mr BARRETT: The affidavit.

The Hon. ADAM SEARLE: The affidavit.

Mr BARRETT: Correct.

The Hon. ADAM SEARLE: That they properly matched up. You felt that one or both of those explanations applies in your case.

Mr BARRETT: Yes. Can I just elaborate? I did in my submission to the Ombudsman—I was shown, in my view, a proper procedure of an application for a listening device warrant before the late Justice Barry O'Keefe. Barry O'Keefe knocked back the New South Wales police detectives who were trying to invade the privacy of a paedophile and Barry O'Keefe said, "You have not done your homework properly. I am not going to give you the power to invade anybody's privacy." That was shown to me as the absolute rule of law of how strict Supreme Court judges are when applying for these warrants.

The Hon. ADAM SEARLE: Or should be.

Mr BARRETT: That was, to me, the proper way under the Listening Devices Act of I think it is 1984.

Mr DAVID SHOEBRIDGE: But, of course, the police would know who the duty judge was at any particular time. There is a suggestion in other submissions that they would go judge shopping and they would know the judges that would be more lenient and less likely to ask those tough questions. Have you had that proposition put to you?

Mr BARRETT: Yes, I have been told that but, again, I have not been down to the Crime Commission and I am not the one taking out the warrants.

Mr DAVID SHOEBRIDGE: Mr Barrett, you said that you were given that secrecy directive by the Ombudsman after you gave your evidence.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Your statement in paragraph 51 reads:

We are also instructed that the New South Wales Ombudsman has served summonses on journalists to attend the inquiry especially those who have been critical of what has so far transpired is merely a ploy to prevent further reporting and should be seen for what it is.

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Are you making a reference there to that secrecy directive that you got and that you said other journalists have got?

Mr BARRETT: Yes.

Mr DAVID SHOEBRIDGE: Did you have anything more you wanted to say in relation to that?

Mr BARRETT: I was not allowed, because I was under an oath that I gave the Ombudsman and an order from the Ombudsman, because I have never discussed any of my evidence with anybody, but I am aware that other journalists have been called and let me just say they were not happy.

Mr DAVID SHOEBRIDGE: There is that stifling effect upon journalists if they are all subject to a secrecy order from the Ombudsman. They do not know where you might be crossing the borders and find yourself in hot water.

Mr BARRETT: In my view it was an attack on the freedom of the press in this country, and we live in a democracy.

Mr DAVID SHOEBRIDGE: Have you spoken with your lawyer about the obligations that somebody like the police or the Crime Commission or the Police Integrity Commission have when they are appearing in these what are called ex-parte hearings? It is just them and the judge in a private hearing where they are trying to get their warrants. Has anyone explained to you what the duties of an applicant are when they are in a proceedings—

The Hon. TREVOR KHAN: Point of order: This really goes beyond the capacity of this witness. He is asking for what this witness has been told by his lawyer, who I am sure is a competent lawyer, about what that lawyer knows about the obligations that other lawyers and other people have when they go before courts, for instance. That really is, to say the least, a long bow.

CHAIR: I accept that point of order. Can you reword it?

Mr DAVID SHOEBRIDGE: I will draft it in a different way.

The Hon. TREVOR KHAN: Draft it in a way where you actually get substantive evidence.

Mr DAVID SHOEBRIDGE: Would you be concerned that if in the affidavits that the police have put forward, including the affidavits that were put forward to get the listening device warrant against you, the police, the Crime Commission and the Police Integrity Commission had only put forward the evidence that supported their case and supported the warrants but had failed to put any exculpatory material—any material that would suggest that they should not get their warrant?

Mr BARRETT: Extremely concerned.

Mr DAVID SHOEBRIDGE: If, in fact, they had been extraordinarily one-eyed in these private hearings would that concern you?

Mr BARRETT: Absolutely.

Mr DAVID SHOEBRIDGE: Would it concern you if when Ms Burn in the course of one of her two records of interview with the Strike Force Emblems group was asked whether or not there was inculpatory as well as exculpatory material included in the affidavits she had said in relation to exculpatory:

So exculpatory, I just can't even think of a time when there was exculpatory information, I'm sure there would have been and I don't know if it was put in the affidavits.

In other words, the police are only putting one side of the case even though they are in a private hearing and it is just them and the judge. Does that trouble you?

Mr BARRETT: Greatly.

Mr DAVID SHOEBRIDGE: Do you think that is a matter that we as a Committee should be looking at? Are you asking us to review the way those warrants were obtained and the cogency and the ethics of the material that was put before the judges?

Mr BARRETT: I ask the Committee to look at all of that.

CHAIR: Thank you for coming today. I think you have taken one or two questions on notice.

Mr BARRETT: I have probably three but my lawyer will—

The Hon. TREVOR KHAN: He has been taking notes the whole time.

Mr BARRETT: That is why I employed him.

CHAIR: The Committee has resolved that answers to questions taken on notice be returned within five calendar days following the receipt of the transcript. The secretariat will contact you in relation to questions you have taken on notice so there will not be any doubt what they are and what they are about. Previously the Committee had resolved to publish two warrants from 2000 and one supporting affidavit. Following correspondence received regarding this issue the Committee has now resolved to defer the publication of the two warrants and has resolved not to publish the affidavit. It will remain confidential. A statement to this effect has been placed on the Committee's website.

(The witness withdrew)

BRIAN ROBERT HARDING, former NSW Police Force officer, sworn and examined:

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

Mr HARDING: Yes please. I have done nothing wrong. I did not place my name on a warrant for a listening device. I am grateful that I have been given this opportunity by this Committee to provide both written and oral submissions. The Ombudsman's inquiry Operation Prospect is fundamentally a secret investigation into the conduct of Strike Force Emblems, which was a secret investigation into the secret activities of Special Crime and Internal Affairs in relation to Strike Forces Mascot, Florida and Boat.

Operation Prospect has broadened in recent times to include a focus on how certain documents came into my possession and the possession of others. It appears that the wrongdoers, those that obtained the original warrants, have been successful in having the Ombudsman respond to their complaints to shift the focus of the investigation into an inquiry into myself, other complainants and the whistleblower or whistleblowers. It would appear that the whistleblower or whistleblowers were unable to report the unlawful conduct to his/her immediate superiors because more than likely they were the ones engaged in the unlawful activity during Mascot, Florida and Boat.

The whistleblower or whistleblowers had an obligation to report the unlawful activity under section 316 of the Crimes Act 1900 and did so by disseminating the material to those affected by the unlawful activity. The only way forward and to shine some light on these matters is an open public inquiry. I would also like to table a letter that my legal adviser received from the Office of the Ombudsman. It is dated 26 September 2013 and I can explain the background to that. I also supply you with a copy of the statement that I just made.

Documents tabled.

Behind that letter is a response by my solicitor and it is dated the next day.

Mr DAVID SHOEBRIDGE: A leak inquiry into a leak inquiry into a leak inquiry.

Mr HARDING: It sounds like it.

Mr DAVID SHOEBRIDGE: Did you want to speak to this?

Mr HARDING: How that came about, on that day it was well before there were any restrictions or embargoes placed on any potential witnesses—in other words, I could talk to anyone I wanted to—and I received a telephone call from a journalist named Dan Box from the *Australian*. He wanted to meet with me and I did. He wanted to know the status of the Ombudsman's inquiry and had I heard anything and I told him what I knew. I also gave him access to some of the documents, which he read and later returned to my solicitor. As I understand, it was after that that Dan Box rang the Ombudsman for comment by them, which generated this letter to my solicitor.

Mr DAVID SHOEBRIDGE: What is the correspondence sent to Mr O'Brien's office that it is referring to? This is a letter from the Ombudsman to your solicitors, O'Brien Lawyers, apparently raising concerns about disclosure of some communication from the Ombudsman to Mr O'Brien's office, which was not the subject of any secrecy orders. What is that Ombudsman's communication?

Mr HARDING: I am not quite sure but I received anonymously quite a few documents in two separate deliveries and I am guessing that is what it refers to. Again, I make the point that all of this took place before there were any restrictions placed on us, any embargoes, any warnings.

The Hon. TREVOR KHAN: You had not given evidence at this stage?

Mr HARDING: No. It was well before that.

Mr DAVID SHOEBRIDGE: Your solicitors are behind you. Perhaps they could enlighten you about the correspondence that has been referred to here.

Mr HARDING: Which paragraph?

Mr DAVID SHOEBRIDGE: It says, "While it is not possible at this stage to determine the source of the material quoted by the journalist", the material would appear to closely reflect correspondence sent to your office from the Ombudsman on 1 July and 2 July 2013 in response to complaints you had made on behalf of Mr Steve Barrett and Mr Brammer.

Mr HARDING: I can help you with that.

Mr DAVID SHOEBRIDGE: What is the Ombudsman's correspondence?

Mr HARDING: They wrote to me through my solicitor advising the areas which they were going to look at. There was a list of them. But it was not included in that list that they were going after the whistleblowers, if you like.

Mr DAVID SHOEBRIDGE: Could you perhaps furnish to the Committee that correspondence?

Mr HARDING: I think I might—

The Hon. ADAM SEARLE: Not now but you can take it on notice.

Mr HARDING: Okay.

The Hon. TREVOR KHAN: You may or may not know. I take it in the correspondence from the Ombudsman there was no warning of death and destruction should it be—

Mr HARDING: No. That came later.

Mr DAVID SHOEBRIDGE: The Ombudsman said that there is a whole lot of things he wants to discuss with you but it did not include questions of leaks and the like.

Mr HARDING: No.

Mr DAVID SHOEBRIDGE: What happened when you got in front of the Ombudsman?

Mr HARDING: I gave evidence, of course. With great respect to them, it was very superficial. I nearly met myself at the front door. By the time I went in Mr Barbour explained what he was going to do. I was asked some questions about the procedures in relation to affidavits, and I briefly gave him the benefit of my experience in those matters. But it seemed to me that the focus was where I got the documents from.

Mr DAVID SHOEBRIDGE: You say in paragraph 21 of your submission, without going into the details of that compulsory examination, that the bulk of the examination "focused on how our client came into possession of the applications for the listening device warrants and the supporting affidavit of the person who swore the affidavit". Is that a fair recollection of what went on?

Mr HARDING: Yes, it is. I would estimate that I was probably in the witness box about 20 minutes and I would guess that a good half of that was taken up by Mr Barbour explaining what he was going to do, submit a report, the procedures involved and a general reassurance that it would be a thorough investigation.

The Hon. TREVOR KHAN: When did you give that evidence to the Ombudsman?

Mr HARDING: I cannot remember the date. I could get it for you. It was last year.

The Hon. TREVOR KHAN: Did you appear before the Ombudsman pursuant to a summons?

Mr HARDING: Yes.

The Hon. TREVOR KHAN: Would your solicitors, I suspect, still have that summons?

Mr HARDING: I think so, yes.

The Hon. TREVOR KHAN: If they do have it, are you prepared to provide us with a copy of that summons?

Mr HARDING: Certainly.

The Hon. TREVOR KHAN: Was that received long before you gave your evidence?

Mr HARDING: I am not quite sure. It was not a terribly long time. Attached to the summons were all the instructions about what you can do and who you can talk to.

The Hon. TREVOR KHAN: That was my next question. That summons had, in a sense, the initial warnings about giving disclosures as to the giving of evidence and the like.

Mr HARDING: Yes. In fact, I have kept a copy of that but I do not have it here.

The Hon. TREVOR KHAN: Had you spoken to one of the inspectors for the Ombudsman before you gave your evidence?

Mr HARDING: No. It was all by correspondence.

The Hon. TREVOR KHAN: So it was completely fresh in a sense; when you first turned up before the Ombudsman that was in a sense your first physical contact with anyone.

Mr HARDING: Face to face, yes. Apart from that, it was all letters to and from my solicitor.

The Hon. TREVOR KHAN: Are you prepared to provide us with copies of that correspondence that flowed to and from?

Mr HARDING: Absolutely.

Mr DAVID SHOEBRIDGE: Let me be clear. Your recollection of the correspondence from the Ombudsman of 1 and 2 July that is referred to in that letter was the Ombudsman saying, "We want to look into certain matters in relation to Operation Prospect" and it did not include a reference to tracking down the whistleblowers?

Mr HARDING: No. The first notification I had of that was this letter that you have just been supplied with, and that was after I spoke with Dan Box from the *Australian*.

Mr DAVID SHOEBRIDGE: You were talking about your experience before the Ombudsman. Was that what is called a section 19 hearing, or do you not know?

Mr HARDING: I think it was.

Mr DAVID SHOEBRIDGE: You said the first 10 minutes was the Ombudsman explaining about the nature of the inquiry and no doubt talking about the questions to be asked. What about the final 10 minutes? What was that about?

Mr HARDING: As I said before, it was to do with my experiences with the preparation of affidavits generally, and I explained to him the procedure which used to exist in the years that I was involved in that sort of activity. The impression I had was the bulk was to do with where I received the documents from.

Mr DAVID SHOEBRIDGE: Have you ever seen a memorandum from then acting commander of the special crime unit, Ms Burn, now Deputy Commissioner Burn, that is dated 13 April 2002?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: There is an attachment to it.

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: It has a whole list of names, including yours. Have you seen that?

Mr HARDING: Yes. I have it here.

The Hon. ADAM SEARLE: That is your annexure D, is it not? Your paragraph 18?

Mr HARDING: I think it is, yes.

Mr DAVID SHOEBRIDGE: There is a description about you. I do not in any way endorse or support or give any credence to the description that is against you. You will note that there is an explanation about why you would be on the affidavit.

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: What do you have to say about that explanation?

Mr HARDING: When I read it I was angered. There is only one reason that I could be on this list and that is M5. To make it perfectly clear, I was introduced to M5 coincidentally. By that, I mean I was at police headquarters talking to a task force. I had information which was of interest to them, and one of my friends on that task force said to me, "Have you met M5?" I said no and he said meet so and so and I did. I think it was 1989 and that is my sole contact with him. As far as I know, I have never done a job with him, I have never socialised with him, I have never been in his company, apart from that chance introduction.

Mr DAVID SHOEBRIDGE: And that was not an acrimonious exchange at all?

Mr HARDING: No. It was just "How do you do?"

Mr DAVID SHOEBRIDGE: What about the proposition that you were included on the warrant because of the King send-off list?

Mr HARDING: No. I heard what Steve Barrett had to say. I am in exactly the same position. I had been out of the police for four years in 2000. I did not go to police functions, although I maintained my friendship with quite a few police. I did not know the function was on, and even if I did know the function was on I would not have gone because I have met Jim King, more or less along the same lines as I met M5, but he was not a friend. Particularly in September, where I was working at that time, was Ansett. I was the national cargo security advisor and I was responsible at the Sydney end for the urine samples that had been taken from the various athletes, with others of course. I was totally focused on that and there was no way I was going to a function.

The Hon. TREVOR KHAN: How about June?

Mr HARDING: June of?

The Hon. TREVOR KHAN: Of 2000.

Mr HARDING: Just my normal duties. I used to travel a lot so I may well have been interstate.

The Hon. TREVOR KHAN: The suggestion is that this function, if it occurred, was on 30 June.

Mr HARDING: Yes. I do not know where I was, but I have diaries which will tell me.

The Hon. TREVOR KHAN: I am not being critical in any way but because you nominated September I am giving you the opportunity of saying whether in June—

Mr HARDING: No. As I said, I did not know the function was on, and even if I did know I would not have gone. I heard what has been said here today. The applicability of a June function to a September warrant is ridiculous.

Mr DAVID SHOEBRIDGE: To be clear, you do not ever remember being invited, you definitely did not go, there is no valid explanation to put you on the warrant.

Mr HARDING: No, absolutely not. About that time there was a send-off for another police officer, and I thought it was that send-off, which I did not go to either. But it clearly states here the King send-off. I did not know about it and I would not have gone anyway.

The Hon. TREVOR KHAN: Could there be another detective or police officer by the name of King and we are all tracking down the wrong copper?

The Hon. ADAM SEARLE: You mean there was more than one party?

Mr HARDING: There is only one King who was associated with M5 and M5 was one of the organisers of this function, so I think it is odds on that that is who we are talking about and this is the function.

Mr DAVID SHOEBRIDGE: So there was a function that you know of—

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: —that M5 had a role in putting together.

Mr HARDING: Yes, the Chatswood club. Apart from Chatswood I do not even know where it is or what it is.

The Hon. ADAM SEARLE: That was for Mr King as far as you know.

Mr HARDING: Yes.

The Hon. ADAM SEARLE: How do you know that?

Mr HARDING: I read it somewhere and there is an affidavit here from Jim King in which he sets it all out.

The Hon. ADAM SEARLE: A statutory declaration. In paragraph 18 of your submission you extract there what is said about you and the reason for you being on the warrant. It is not just that you were on the King send-off list. There is a suspicion about your involvement or your knowledge and I will not retell that. I want to ask you about the process of listening devices. One of the explanations that has been advanced to this Committee for so many names being on that warrant, and presumably in the supporting affidavit, is that not all of the persons listed were targets in their own right. Some of them were included simply because they were going to be in the vicinity and their conversation could be recorded. Is that, from your knowledge as a police officer, the usual practice to put everybody on a warrant who may be recorded, whether or not they are a target at that stage?

Mr HARDING: That is a possibility but I do not think it applies in this case because all of the names on this extended list were on the warrant, and there is an alleged justification in this list prepared by Deputy Commissioner Burn as to why they were there.

The Hon. ADAM SEARLE: Not just that they were going to be at the function but they knew or were suspected of being involved in something?

The Hon. LYNDA VOLTZ: Or had knowledge of.

Mr HARDING: Yes. Which I reject.

The Hon. ADAM SEARLE: In your case.

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: Indeed, there is an adverse inference against you in there. It is not just had knowledge of, there is an adverse inference. You reject that too, do you?

Mr HARDING: I do. I do not know what—I know what SOD stands for.

Mr DAVID SHOEBRIDGE: Statement of debrief.

Mr HARDING: Yes. I have never read it and I do not know what was said, but I again make the point that it could only be M5 and I have never done a job with him. I just do not know what knowledge or alleged knowledge he would have of my activities as a police officer.

The Hon. ADAM SEARLE: You have never subsequent to this been interviewed by any police officers or strike forces about your knowledge or involvement in corrupt or criminal conduct by police?

Mr HARDING: No, not to this day.

Mr DAVID SHOEBRIDGE: When did you leave the force?

Mr HARDING: It was November of 1996.

Mr DAVID SHOEBRIDGE: By this stage it is about four years?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: Did anyone from Mascot ever approach you or speak to you?

Mr HARDING: No, never.

Mr DAVID SHOEBRIDGE: Have you sought an explanation as to why you are included on the warrant?

Mr HARDING: Only through when I was interviewed by Emblems and I outlined virtually everything that I am telling you know. That is the only redress that I have effectively sought, plus I wrote I think it was a 15-page letter to the Ombudsman.

Mr DAVID SHOEBRIDGE: Roughly when was that? You can provide it to us later if you like?

Mr HARDING: That was 22 May 2013.

The Hon. ADAM SEARLE: What prompted you to write that letter?

Mr HARDING: There was an advertisement and I discussed it with Mr O'Brien, my solicitor, and through him I supplied this document.

The Hon. LYNDA VOLTZ: When you left the force where were you working?

Mr HARDING: I was a staff officer; I was the superintendent at North-West Region.

The Hon. ADAM SEARLE: You retired from the police force?

Mr HARDING: I resigned.

The Hon. ADAM SEARLE: You resigned?

Mr HARDING: Ultimately, yes.

The Hon. LYNDA VOLTZ: They say you are mentioned in the April affidavit.

Mr HARDING: Yes.

The Hon. LYNDA VOLTZ: Have you ever seen that April affidavit?

Mr HARDING: No.

The Hon. LYNDA VOLTZ: Have you heard—because there are a lot of documents out there—of anyone ever having access to the April affidavit?

Mr HARDING: Not as far as I know. I have seen two affidavits. I saw the September affidavit and I saw another affidavit which was prepared by a police officer named—

The Hon. LYNDA VOLTZ: Do not worry about the name. The later one—

Mr DAVID SHOEBRIDGE: I would appreciate it if you could provide us with that name on notice and the details about that second affidavit—do you know roughly when it was?

Mr HARDING: You can have the document.

The Hon. LYNDA VOLTZ: I suspect it is one that was annexed that we have.

The Hon. ADAM SEARLE: We may have it.

The Hon. LYNDA VOLTZ: Yes.

The Hon. TREVOR KHAN: In terms of I think I called it the Burn briefing note earlier—

The Hon. ADAM SEARLE: Annexure D to your statement.

Mr HARDING: Yes.

The Hon. TREVOR KHAN: Did you receive that as part of the two bundles of documents that you received?

Mr HARDING: Yes, I did.

The Hon. TREVOR KHAN: Was there a covering page on that document or is as presented as you got it?

Mr HARDING: Just as it is now.

Mr DAVID SHOEBRIDGE: Would that be unusual? Is that the standard format for briefs of that type?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: They would not necessarily have a glossy cover or anything?

Mr HARDING: No, this is the way we used to submit them back then—issue background.

Mr DAVID SHOEBRIDGE: You see at the bottom of the second page it says, "1. Commander of Special Crime Unit."

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: Is that who it was directed to?

Mr HARDING: Yes. There can be 1, 2, 3, 4—you nominate. Sometimes it was handwritten but that tells me—

Mr DAVID SHOEBRIDGE: That is who it has been sent to?

Mr HARDING: That tells me that it was directed to her commander.

Mr DAVID SHOEBRIDGE: Do you know who her commander was at that time?

Mr HARDING: I think it was Mr Scipione.

The Hon. TREVOR KHAN: So you put the address on the bottom?

Mr HARDING: Yes.

The Hon. TREVOR KHAN: That is unusual.

The Hon. NIALL BLAIR: Can I ask also in relation to that document, same spot, do you understand what the footnote is? The identification number down the bottom?

Mr HARDING: No, I do not.

The Hon. NIALL BLAIR: And the date?

Mr HARDING: No, I do not.

Mr DAVID SHOEBRIDGE: Did you ever raise these issues with the police hierarchy, including Mr Scipione and others about why you were included?

Mr HARDING: I only found out about it in 2012. I had been out of the police a long time by then.

The Hon. LYNDA VOLTZ: At the start of Ms Burn's statement she talks about rollover warrants.

Mr HARDING: Yes.

The Hon. LYNDA VOLTZ: Have you dealt with rollover warrants?

Mr HARDING: No. The experience I have had was that you obtain a warrant for a specific purpose and a specific time frame.

The Hon. ADAM SEARLE: By 2000 you had been out of the police force for a number of years.

Mr HARDING: Four years.

The Hon. ADAM SEARLE: Four years?

Mr HARDING: Yes.

The Hon. ADAM SEARLE: Do you know whether or not you were listened to pursuant to these warrants?

Mr HARDING: I have got no idea.

The Hon. ADAM SEARLE: But you learnt about all of this when you were interviewed by Strike Force Emblems? When they questioned you about this?

Mr HARDING: That is right, I was questioned. By then I had read the two warrants—I had received a copy of the two warrants.

The Hon. LYNDA VOLTZ: So you had been sent the two warrants?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: I think you said earlier that you found out about it in 2012?

Mr HARDING: That is all the documents that you now have: the affidavits, this report—

The Hon. ADAM SEARLE: We are just trying to understand what you knew.

Mr DAVID SHOEBRIDGE: But you found out obviously that you were on the warrants a good while before then?

Mr HARDING: Yes. I think it was 2002.

The Hon. LYNDA VOLTZ: How did you find out?

Mr HARDING: I received a copy anonymously. It was mailed to me.

The Hon. TREVOR KHAN: I suspect around about the same time that Mr Barrett found out?

Mr HARDING: Look, they went everywhere. I was not the only one and Mr Barrett was not the only one either.

The Hon. LYNDA VOLTZ: Have you ever heard of that happening before?

Mr HARDING: No, I have not.

Mr DAVID SHOEBRIDGE: The Ombudsman gives an explanation in his statement that the warrants were tendered in some Local Court proceedings as part of a prosecution arising under Mascot—

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: —and it was from being tendered in those Local Court proceedings that they, through the magic of the legal profession or others, filtered through to police and others.

Mr HARDING: That makes sense.

Mr DAVID SHOEBRIDGE: Is that your understanding?

Mr HARDING: Yes.

The Hon. TREVOR KHAN: But that, of course, does not explain some of the other documents that have been disseminated to you, does it?

Mr HARDING: No.

Mr DAVID SHOEBRIDGE: But I am only talking about the original warrant.

The Hon. TREVOR KHAN: Sure.

Mr HARDING: I have got no idea.

The Hon. ADAM SEARLE: How did you react to finding out that your name was on the warrants?

Mr HARDING: I was angry, very angry.

The Hon. ADAM SEARLE: Did you do anything as a consequence?

Mr HARDING: I spoke to some of my colleagues who were also on the warrants and I cannot repeat the comments that they made.

The Hon. ADAM SEARLE: Did you speak to the Police Association?

Mr HARDING: No, I did not.

The Hon. ADAM SEARLE: Did you ever make a complaint to the police hierarchy or to the Commissioner of Police at the time about this?

Mr HARDING: No. We started talking informally with journalists; I started talking informally with lawyers just to work out the best way forward. Of course, the first positive thing that happened to us was the formation of Emblems.

The Hon. TREVOR KHAN: Just following on from there, in order that we get some sort of time frame—you received the warrants in what we can say was a white plain paper envelope or something?

Mr HARDING: It was mailed.

The Hon. TREVOR KHAN: Sure. Was it long after that that you first spoke to your lawyers?

Mr HARDING: Pretty well straight away.

The Hon. TREVOR KHAN: Straight away?

Mr HARDING: I would have spoken to my former colleagues who were on the warrant. I definitely spoke to Steve Barrett and various others. There were differing opinions as to what should take place. The attitude of some was to let it go through to the keeper, others were that we had to do something about it—I formed one of that group. But it was just wrong.

The Hon. TREVOR KHAN: If you could just focus on this. I am trying to work out a time frame.

Mr HARDING: Alright. I received a copy of the warrants in 2002. I was interviewed by Emblems in 2003.

The Hon. TREVOR KHAN: If I could just stop you there. I am looking for a reference point that will enable us to in some way determine when the warrants came into your hands and if you consulted your lawyers—I take it was that O'Brien Lawyers at that time?

Mr HARDING: Not at that stage.

The Hon. TREVOR KHAN: Would you be able to, in terms of whoever those lawyers were, go back to them and see if they have some sort of note as to when you made the approach?

Mr HARDING: I can do that.

The Hon. TREVOR KHAN: If they were able to provide us with that date, are you able to indicate roughly, whether it be days, a week, a fortnight, a month, between when you first found out by the receipt of an envelope containing two warrants and when you went to the solicitors? Do you know how long that roughly was?

Mr HARDING: After this passage of time I am not confident that I could be accurate.

Mr DAVID SHOEBRIDGE: You might take that on notice and chew it over for a bit.

Mr HARDING: Yes.

The Hon. TREVOR KHAN: I know that is a way of dismissing it. I am not asking necessarily for complete accuracy. Are you able to again indicate if you have a feeling whether it was weeks or months between when you got the envelope and when you spoke to the lawyers?

Mr HARDING: I will give you an undertaking to try.

Mr DAVID SHOEBRIDGE: When you got the warrants did you then find out there was some public reporting on it?

Mr HARDING: There was some press items written. I cannot tell you—

Mr DAVID SHOEBRIDGE: Do you remember if your name was mentioned or not?

Mr HARDING: I do not think it ever appeared in—oh, it could have but I did not keep it. To be quite honest my immediate reaction was to rip them up and throw them away but I did keep them.

Mr DAVID SHOEBRIDGE: At that time what was your professional work?

Mr HARDING: In 2002?

Mr DAVID SHOEBRIDGE: Yes.

Mr HARDING: I was the National Cargo Security Advisor Air New Zealand/Ansett.

Mr DAVID SHOEBRIDGE: It was an important job where your integrity was important to you?

Mr HARDING: Absolutely. I also held the honorary position of chairman of the Freight Security Council of Australia in which I chaired meetings of all the high-profile companies: Qantas, DHL, Toll and we had regular meetings with every State and Federal police force, customs, quarantine, the whole lot.

Mr DAVID SHOEBRIDGE: Then you lob onto that a warrant has your name on it underneath a list of offences, including money laundering, corruption, conspiracy, perversion of the course of justice, tampering with evidence. How did you feel about that?

Mr HARDING: I heard Steve say "devastation"; I felt a feeling of humiliation. You felt the urge to explain yourself. My name was mentioned in the media at some stage, I just cannot be precise as to when that took place. You felt the urge that you had to explain yourself but I had plenty of people also in the same boat, which gave me some comfort.

Mr DAVID SHOEBRIDGE: Did you find yourself explaining it in a professional context?

Mr HARDING: Yes. You would be having a beer or something like that and someone would say, "What about that?" and you would just have to shrug your shoulders and say, "Well I didn't do it. I don't know why I am there." All the rest of it.

The Hon. ADAM SEARLE: In paragraph 14 you talk about your interview with Strike Force Emblems and then you go on to say that Emblems was prevented from conducting a proper inquiry. How did you learn about the frustration of Emblems?

Mr HARDING: Reading it in the media.

The Hon. ADAM SEARLE: Other than your interview by the strike force itself did you receive any further contact from the strike force?

Mr HARDING: No.

The Hon. ADAM SEARLE: Or any official contact from police about the matters?

Mr HARDING: No. After my interview in 2003 there was no further contact.

The Hon. TREVOR KHAN: Did they provide you with a copy of your record of interview?

Mr HARDING: No, they gave me the actual cassette tape of my interview. I did not get a transcript.

The Hon. TREVOR KHAN: Did your lawyers transcribe that at any stage?

Mr HARDING: No, but when I was at the Ombudsman they had a transcript, so it was definitely transcribed.

The Hon. TREVOR KHAN: I am sure but you do not have any form of transcription of it?

Mr HARDING: No, just the actual cassettes.

The Hon. TREVOR KHAN: You have still got those, have you?

Mr HARDING: My solicitor has, yes.

Mr DAVID SHOEBRIDGE: From your observations—you are a police officer of some 37 years standing—how would you describe the conduct of Strike Force Emblems?

Mr HARDING: I think they tried their best. They certainly from my external position seemed to be trying to get to the bottom of all of this. Apart from that—obviously I have read the Emblems report. I know they were stymied by elite secrecy provisions and it seemed as if the Crime Commission would just not cooperate. There were conflicting views that some said, "Yes, the secrecy provisions apply." I think—I am not quite sure, there was some senior counsel gave an advising—

Mr DAVID SHOEBRIDGE: Mr Temby?

Mr HARDING: No—I think it might have been actually. And that was not the case. There was a fair level of confusion but from my external point of view it seemed as if they had been deliberately blocked in getting to the finality of their investigation.

Mr DAVID SHOEBRIDGE: But the conduct of the officers who you were engaged with you would describe as professional, would you not?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: Again, you are an experienced police officer. You have read a lot of police reports. What is your view of the Strike Force Emblems report?

Mr HARDING: The reporting style had changed from the time that I had to put reports in of that nature and it was a little difficult to read but I put that down to the reporting style which was required of the police officer. But if you read it, you can follow it. There are some very serious allegations made there against senior police.

Mr DAVID SHOEBRIDGE: Would you describe it as a cogent report or a fair report on the basis of—

Mr HARDING: I would say, because of the reporting style, for an outsider it was difficult to read but once you got the hang of the reporting style, you could make sense of it, for sure.

The Hon. ADAM SEARLE: You could understand what it was saying.

Mr HARDING: No problem at all.

The Hon. ADAM SEARLE: He could understand the allegations that were being made.

Mr HARDING: Yes, I could.

The Hon. ADAM SEARLE: There is no mystery about this information.

Mr HARDING: Absolutely.

The Hon. ADAM SEARLE: It was not at all obscure.

Mr HARDING: No. Any fair-minded person would read it and understand what the issues were.

Mr DAVID SHOEBRIDGE: How do you feel about a Supreme Court judge issuing a listening device warrant against you on the basis of an affidavit which makes no adverse comment, or even comment regarding you, apart from the fact that you were on a previous listening device warrant?

Mr HARDING: I think it is inept. It is absolutely inept because, drawing on my experience in preparing such documents, in a former time we always had to deal with a chief inspector named Gordon Lever.

Gordon was a police officer but he was also a qualified solicitor. If you went to him with either an application for a listening device or a telephone intercept, he would absolutely put you through the hoops. He would want further inclusions like, "I want you to go away and do that job."; "I want you to inquire into that."; "I want an attachment here". In other words, any name that appeared on it, the justification would have to be there as to why the name was there.

I made the comment to the Emblems investigators that if the SCIA investigators did their job properly with 114 names on it, if they are doing their job with the requisite amount of rigour, they would nearly have had to wheel the affidavits and supporting documents into the Supreme Court judge in a wheelbarrow. But of course there was this document with our names with no justification.

The Hon. TREVOR KHAN: Can I just ask you a bit more in terms of the process? Can you just explain, if you are a detective undertaking investigation, the steps you go through to gain a listening device warrant? Is that possible for you?

Mr HARDING: Obviously, I can only talk about pre-'96.

The Hon. TREVOR KHAN: Yes, sure.

Mr HARDING: I will give you an example of a job that I did. I was in charge of a task force called Kappa. That was four murders, a couple of attempted murders and 200 kilos of heroin which was imported into Australia. We used telephone intercepts. We used listening devices. We always dealt with Gordon Lever.

The Hon. TREVOR KHAN: If I could just ask this: What position did you hold compared to Gordon Lever at the time of that?

Mr HARDING: He was senior to me.

The Hon. TREVOR KHAN: Right. I gathered that.

Mr DAVID SHOEBRIDGE: Was he on the task force, or did he have a separate position?

Mr HARDING: No. He worked out of police headquarters in College Street. I think they called themselves legal services, but they have had plenty of name changes.

Mr DAVID SHOEBRIDGE: That was the gatekeeper to getting your listening device warrant before the Supreme Court?

Mr HARDING: Yes. He was the designated person that you went to. Obviously, you would speak to your superior and say, "This is what I want to do." He would say, "Put it on paper", and it would go through the chain of command.

The Hon. TREVOR KHAN: When you put it on paper, you are not doing that in terms of putting it on paper in preparing the affidavit, are you?

Mr HARDING: No. This is an application to do it. What would happen is that as often as not he would agree with you. You would then go virtually cap in hand to Gordon Lever and say, "This is what we want to do." He would say, "What have you got?" You would show your statements or transcripts or any supporting documents you have got, and he would actually draft the affidavit.

The Hon. TREVOR KHAN: Sure.

Mr HARDING: You would have to supply the information and you would supply it. As often as not he would say, "I want this", "I want that". He was very thorough. In fact, he was frustrating. Sometimes you felt like kicking the door but with the benefit of hindsight, you look back now and you know that any document that he prepared would stand any test.

The Hon. TREVOR KHAN: He would come back to you in a sense or you would roll back up into his office and he would present you with an affidavit.

Mr HARDING: That is right, and he would present it to the Supreme Court judge.

The Hon. TREVOR KHAN: Before we get onto that, do I take it then that you, as the officer, if you are the officer who is going to swear the warrant, read it through, check it, and then swear it? Is that right?

Mr HARDING: I did not swear it. He did.

The Hon. TREVOR KHAN: Right.

Mr HARDING: He would go. His mantra was always, "If I am presenting this to a Supreme Court judge, I need to be able to answer every question he or she puts to me." That is why he was such an onerous taskmaster.

Mr DAVID SHOEBRIDGE: It is a pity he did not get a job on the Mascot.

Mr HARDING: Absolutely.

CHAIR: He did not get a job on Mascot.

The Hon. ADAM SEARLE: Too thorough?

CHAIR: No, Mr Treherne.

The Hon. TREVOR KHAN: In terms of this process, and if we talk in terms of Kappa, was that an exercise where you got more than one listening device warrant—that is, the 21 days went by and you had to get another?

Mr HARDING: No. They were specific warrants for specific jobs. For instance, there was a meeting at a restaurant and our informant went in wearing a device. There was another situation which took place, I think, in Annandale where he met this fellow in a TAB in Annandale. It was the Central Coast. They were specific jobs for a specific time.

The Hon. TREVOR KHAN: If you knew that somebody was meeting at a restaurant at a particular time, you would seek, with the cooperation of those in the legal branch, that an application be made to a Supreme Court justice covering a specified period of time to allow you to do that one particular job?

Mr HARDING: Correct. I did not have a situation where, you know, there were 100 suspects or anything like that, but I think we had about 40. They were all specific jobs.

The Hon. TREVOR KHAN: Have you ever been involved in an exercise where you have been rolling over listening device warrants—

Mr HARDING: No.

The Hon. TREVOR KHAN: —time and time again?

Mr HARDING: No. I have never done that.

The Hon. TREVOR KHAN: Had you ever seen that done?

Mr HARDING: No.

Mr DAVID SHOEBRIDGE: In your experience, how many people would you ordinarily see on a warrant? How many people's names would you normally see on a warrant as a target?

Mr HARDING: Certainly not 114.

Mr DAVID SHOEBRIDGE: What are we talking about?

Mr HARDING: In relation to that job?

Mr DAVID SHOEBRIDGE: Yes.

The Hon. TREVOR KHAN: "That job" being Kappa?

Mr HARDING: Kappa, yes.

Mr DAVID SHOEBRIDGE: Yes.

Mr HARDING: You are testing my memory here but, as a guess, I would say 20.

Mr DAVID SHOEBRIDGE: In the one application?

Mr HARDING: No. The names would appear. In other words, we had an informant and you would outline the background—that information has been received that Joe Blogs and Mary Smith had done this—then you would drill down to the specifics: reliable information has been received that at 10.00 p.m. on whatever date the informant is to meet with this person in Booth Street, Annandale, where it is believed that a conversation will take place in relation to the importation of heroin.

Mr DAVID SHOEBRIDGE: The warrant would include the name of the person—that person.

Mr HARDING: For that specific incident and you would do it again for any other jobs as well.

Mr DAVID SHOEBRIDGE: But you would not have more than one person's name on the warrant as a general rule—

Mr HARDING: As the target.

Mr DAVID SHOEBRIDGE: —as the target.

Mr HARDING: Unless that was the case.

Mr DAVID SHOEBRIDGE: There might be two or three people at the meeting.

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: But we have warrants here with 114 and 113 names on them. Have you ever seen anything like that in your policing career?

Mr HARDING: Never, never, and I said to the Ombudsman that it is an absolutely absurd logistical objective to achieve that in one meeting, or even the individual life of one warrant. It is absurd.

The Hon. ADAM SEARLE: Trying to record 113 people's conversations in a 21-day period?

Mr HARDING: What was M5 going to do? Run around? It was just ludicrous.

Mr DAVID SHOEBRIDGE: In your experience with references where a task force or a strike force is set up, there is normally a reasonably tight terms of reference for a strike force. Is that right?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: A certain number of named individuals or a certain known illegal activity.

Mr HARDING: It can develop, of course.

Mr DAVID SHOEBRIDGE: And then you can seek an amendment to your terms of reference.

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: In this case we are told from the Ombudsman that the original reference for Mascot would be serious drug offences as defined in section 3 of the now repealed New South Wales Crime Commission Act, money-laundering within the meaning of section 73 of the Confiscation of Proceeds of Crime Act 1989, and conspiracy to pervert the course of justice contrary to section 319. The reference named a total of 19 suspect persons who were associates of M5 or who were named by him as involved in or having knowledge of corruption. The original reference is a series of crimes and 19 named persons.

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: That would not be unusual?

Mr HARDING: No.

Mr DAVID SHOEBRIDGE: We are then told by the Ombudsman that in November 2000 a new Crime Commission reference was approved called Mascot II. The list of suspect persons was broadened significantly to "not be limited to the persons named in the original reference but extend to all police (former and serving) suspected of engaging in the offences the subject of the reference". Have you ever heard of such a broad terms of reference for a strike force?

Mr HARDING: That is like firing a shotgun. No, I have never heard of that before.

Mr DAVID SHOEBRIDGE: And when you say it is like firing a shotgun, it is just an indiscriminate blast, is it not?

Mr HARDING: Scatter, yes.

The Hon. ADAM SEARLE: Sir, can I ask you about your statement or submission in paragraph 10? You say that the inquiries and investigations into the matters complained of have been politically motivated. What do you mean by that phrase? Are you talking about contending forces within the Police Force?

Mr HARDING: No. I have maintained contact with Steve Barrett and others throughout this saga. He in fact told me of the conversations he had with Mr Gallacher. I think it is just such a hot potato. Like, originally we were promised an open and frank inquiry, transparency and all the rest of it, but I think that once people started looking into it—it is the Crime Commission, it is the Police Integrity Commission, it is SCIA, it is Supreme Court judges—there is a lot of sensitivities there.

The Hon. ADAM SEARLE: The whole framework of accountability and law enforcement is under a question mark.

Mr HARDING: It goes to the heart of law enforcement in this State. I think it just became such a hot potato that, "Whoops, I think we'd better do this behind closed doors."

The Hon. ADAM SEARLE: Do you think that is why the Ombudsman was given the job to do it in secret?

Mr HARDING: I do not know. I do not know, but it was disappointing that it was behind closed doors.

Mr DAVID SHOEBRIDGE: But there is a certain institutional consistency there, is there not, on behalf of the New South Wales Government where for a decade and a half—

Mr HARDING: In secret, yes.

Mr DAVID SHOEBRIDGE: —all of this has been done behind closed doors?

Mr HARDING: You only have to look at the publicity that is generated by the ICAC investigations and the various PIC investigations. All of a sudden there is this—which is a highly topical subject; as I say, it goes to the heart of law enforcement—and what happens? It goes behind closed doors.

The Hon. LYNDA VOLTZ: I wish to ask a question about that because there have been numerous governments that this has run across and it has been a long time. Certainly when you first saw the warrant that had your name on it and it had a large number of names on it—

Mr HARDING: Yes.

The Hon. LYNDA VOLTZ: I do not want you to form a view on this, but I suppose to some extent a lot of those names would have been recognisable and some of them have been subject to action from the police force.

Mr HARDING: The bulk of the names on the warrant I did not know. There are certainly people there that I have known for in excess of 40 years, but the bulk of the names I did not know. Again I make the point: Why would I go to a function with so many people I did not know?

The Hon. LYNDA VOLTZ: Yes. I understand that. You did not recognise a lot of the people on the warrant?

Mr HARDING: There were quite a few that I did know, but I will say again: the bulk I did not know.

The Hon. LYNDA VOLTZ: There is one name that pops up on the warrant—and this is only a personal view and I am not reflecting—but I suspect they have identified one person and it is actually another person they should have identified. Is there any chance that some people have turned up on that warrant because they may have got the wrong person when they have looked at the name? Like, a name comes forward in an affidavit from a special operations division and whoever is doing the affidavit and making it up assumes that it is a certain person, and it is not.

Mr DAVID SHOEBRIDGE: Well then, how can he answer that?

The Hon. LYNDA VOLTZ: Just as an example, would there be another Brian Harding in the police force?

Mr HARDING: There was. There were two and there was one in Victoria as well, but I do not think there is another Brian Harding here. I think they called me Brian Robert Harding. Well, that is me.

The Hon. ADAM SEARLE: You think that the only way to put this to rest once and for all is for an open judicial inquiry—

Mr HARDING: Absolutely.

The Hon. ADAM SEARLE: —by an interstate judicial officer?

Mr HARDING: Absolutely.

The Hon. ADAM SEARLE: Just to make sure that there is no appearance of any partiality.

Mr HARDING: Yes. That is the only way forward to put this completely to bed.

The Hon. LYNDA VOLTZ: If you had an independent officer undertake that investigation who still came out with similar findings—just say Levine—would people still be satisfied?

Mr HARDING: I think they would, to a certain point, but we are talking about a specific operation with a specific informant, M5. Again I return to myself: for the life of me, I do not know how he could say anything about me because I just did not know him—never worked with him, never socialised with him—so I do not think on that basis that there could be justification for my name being on the warrant.

The Hon. ADAM SEARLE: It is almost as if he just made it up.

Mr HARDING: I spoke to a former SCIA officer who told me that M5 regularly—his words, not mine—"value added". I read another document where he admits perjury before a chamber magistrate in obtaining a warrant. According to himself, he has had a lifelong history of perjury.

Mr DAVID SHOEBRIDGE: Mr Harding, is that the kind of evidence you think would have got past the solicitor that you approached for a listening device warrant? If you went to him and said, "I have got this admittedly corrupt police officer who is suffering with significant mental illness and who has admitted perjury, but I would like to rely upon his evidence for a warrant and putting 114 names on it." What you think the answer would have been?

Mr HARDING: I think you would have to go with corroboration set in cement. In other words, a tape recording or an independent witness or something like that. Going back to the way in which we had to handle these matters, and particularly knowing Gordon Lever, I think he would have put you through the hoops and just say, "I want more."

The Hon. LYNDA VOLTZ: Have you read the September affidavit?

Mr HARDING: Yes.

Mr DAVID SHOEBRIDGE: Mr Harding, you are no doubt mystified as to how it is you get on to these warrants.

The Hon. TREVOR KHAN: You have said that about four times so far.

Mr DAVID SHOEBRIDGE: I have read to you the amended terms of reference for Mascot II, which basically opened the doors to investigate all current and former police officers. Do you see some of the potential mischief being in that broad terms of reference?

Mr HARDING: Yes, it is a scattergun approach. A friend of mine once said to me that the warrant, with all of those names on it, is similar to saying, "I am going to get a search warrant for all premises on Parramatta Road"; it is that open.

Mr DAVID SHOEBRIDGE: This is effectively giving a blank cheque to whoever is on Mascot to have a go at anybody they choose in the NSW Police Force?

Mr HARDING: I would agree with that.

The Hon. ADAM SEARLE: Sir, you said you had read a copy of the Strike Force Emblems report. Did you receive a copy of that anonymously in the post?

Mr HARDING: Yes, I did.

The Hon. ADAM SEARLE: At about the same time you received all of the other documents?

Mr HARDING: There were two instalments. One was left on top of my letterbox and the other was left inside in plain white envelopes.

The Hon. ADAM SEARLE: Do you remember roughly when that was, what year?

Mr HARDING: About the middle of 2012.

The Hon. TREVOR KHAN: Sorry, the middle of 2012?

Mr HARDING: Twelve.

The Hon. TREVOR KHAN: But the first envelope was—

Mr HARDING: The warrants, which was used—

The Hon. TREVOR KHAN: —the warrants, which was 2002?

Mr HARDING: —which was used before, yes.

The Hon. TREVOR KHAN: Ten?

Mr HARDING: I think it was about 2002.

The Hon. NIALL BLAIR: Ten years.

Mr HARDING: Oh, 10 years before, yes.

The Hon. NIALL BLAIR: Yes, not 2010.

The Hon. ADAM SEARLE: Thank you, sir.

CHAIR: Thank you, Mr Harding. I remind you that the Committee has resolved that questions to answers on notice be returned within five calendar days following receipt of the transcript. The secretariat will be in contact with you in relation to questions you have taken on notice.

(The witness withdrew)

CHAIR: There has been a change to the schedule for today. The Committee has rescheduled Mr Brammer's appearance. Therefore, the public hearing is finished for today. We will resume at 9.00 a.m. tomorrow. I would like to also mention that the Committee published two documents on its website today. One, the submission from Mr Nick Kaldas, who is appearing tomorrow morning and, two, correspondence from the Ombudsman to the Chair, dated 28 January 2015. Thank you very much.

(The public hearing adjourned at 2.49 p.m.)