

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 be 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.)

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

SCOTT WEBER, President, Police Association of NSW, sworn and examined:

CHAIR: Do you wish to make an opening statement?

Mr WEBER: Yes. I appear today having received a summons to attend. As the president of the Police Association of NSW, at all times my greatest concern is the interests and welfare of all of the membership. The desire to serve and protect is something that is engrained in me as a police officer and it is something that I carried with me when I assumed the position of vice-president of the association in 2004 and president in 2010. I note that this inquiry commenced with the invitation to provide a submission in December 2014. In this regard, I wish to thank the Committee for the invitation to provide a submission to the inquiry and for allowing the Police Association the opportunity to state our concerns.

The association strongly believes in procedural fairness for all individuals, including our members. We believe in fundamental rights for all, including the right to access medical treatment and independent legal advice. As members can see from our submission, we have serious concerns about the welfare of all of our members involved in Operation Prospect and this inquiry. We have also lost faith in the current oversight arrangement. We have been complaining for many years about the mistreatment of our members and the unsatisfactory state of police oversight in New South Wales. The current oversight arrangements—with multiple agencies oversighting police and each competing to maintain their budgets and justify their continued existence in an era of tight State Government budgets—are no longer fiscally responsible and have created the most unsatisfactory environment for our members and the community. Poor investigative practices, disregard for welfare, inappropriate use of the media and targeting of inquiries that have high media interest, lack of procedural fairness, delays, strong perceptions of bias and a lack of trust in terms of outcomes and differing outcomes have eroded trust in our current system. This is acutely evidenced by the fact that this parliamentary inquiry has been established.

Our concerns remain unaddressed and in some ways have been exacerbated in recent times. A single oversight agency would see a reduction in the costs and a return to stability. The police and the community need to trust oversight to be competent, balanced objective and fair. Importantly, we should be able to trust those providing oversight to produce sound recommendations that can be relied upon. Oversight should be brutally objective and independent and beyond politics and self-interest. Oversight should also be subject to review and scrutiny, not just token arrangements, for example, part-time inspectors who lack resources. Secrecy provisions designed to protect current investigations should not be used as a shield to prevent review, nor should they be used as an excuse to deny our members access to welfare support or medical treatment.

No agencies should be above the law or beyond review. The end should never be used to justify the means. Noble-cause corruption is still corruption and it should not be tolerated. Good professional investigators understand the value of approaching investigations without bias and in a balanced manner. They also understand the importance of gathering evidence lawfully and the results that this approach brings to prosecutorial outcomes and the serious damage to public confidence and our judicial system that occurs when fundamental rights are ignored or abused.

Mature organisations are able to make good policy decisions that demonstrate they can act objectively and are able to see beyond self-interest and self-promotion. They have healthy cultures that ensure they are able to discharge their functions in a balanced, objective and fair manner. These are the organisations which the community can rely upon to be professional and which it can trust. The association supports rigorous oversight of New South Wales police officers. We want to see improved oversight not less oversight, and believe the interests of the community are better served by a single police oversight agency.

As members can also see from our submission, we have serious concerns about the welfare of all of our members involved in Operation Prospect and this inquiry. Our concerns remain unaddressed. I must emphasise the huge impact that the lack of resolution of these complaints has had on the morale and health of our members and the functioning of the organisation at all levels. Trust and an ability to work as a team is imperative. Leaders of an organisation set the tone of that organisation by their behaviour. It is distressing for the entire organisation to be witness to what it has become. It is unacceptable that complaints of this nature have been allowed to languish for many years essentially unaddressed in any meaningful way. This has caused a breakdown in relationships and dysfunction within the organisation. It is also an embarrassment to the organisation.

The time has come for the Government to introduce structural change so that agencies in New South Wales have the capacity to investigate and resolve concerns wherever they come from in a timely and transparent manner. Secrecy provisions designed to manage risks to ongoing investigations should not be used as a shield to prevent review. No agency should be above the law, particularly agencies which have significant cohesive powers and which spend a significant amount of public resources. The history of attempts to resolve the complaints demonstrates that the current oversight structure does not work. Structural change is required. It is not only the delay and the lack of resolution that has caused our members unnecessary suffering. The fact that they have been bound by various secrecy provisions and non-publication restrictions while this matter is being investigated has exacerbated the stress of the situation and only served to further isolate our members.

During any oversight investigation, our members must be able to access medical treatment that allows full and frank conversations. Anything less than this standard is grossly inadequate. In relation to Operation Prospect, the Ombudsman has openly stated that it is unlikely that a disclosure made by a witness to a medical practitioner for the purpose of that witness's welfare would prejudice the investigation. However, he still refuses to make a general direction that any witness availing themselves of medical services, support or treatment will not be pursued for any potential breach of secrecy provisions, publication restrictions or privileges. I strongly recommend that the Committee make a recommendation in the strictest terms mandating that no agency should prevent any witness ever seeking access to appropriate medical treatment, nor should they attempt to do so.

I note that the members of the Committee all come from backgrounds where they held an enormous amount of responsibility, where they were held accountable for the welfare of a diverse range of individuals and where they were in positions of trust. Therefore, they will understand the difficult position that I am in today as the leader of a group of people who have different and competing interests in this inquiry and divergent expectations regarding the outcome. As I sit here today, I am mindful of my responsibilities towards all of our members and their rights. I am very concerned that further unnecessary damage not be done to the reputation of the NSW Police Force. I represent some of the finest men and women in law enforcement in the world who every day do amazing and heroic acts protecting and serving the community. I am proud of them and am often humbled by the sacrifices they make. They are professional and committed. They care very deeply for the community which they protect and in which they live.

If the Committee considers publishing any of my evidence, I would seek a reasonable opportunity to be heard first. In addition to my concerns about evidence affecting the reputation of the NSW Police Force generally, this request will be amplified if members seek information that may be injurious to the character of certain members, or if I am asked any questions about any person who I know is involved in legal proceedings. Thank you for the opportunity to provide an opening statement. I will now discuss any questions members may have about the contents of our written submission dated 12 January 2015.

The Hon. LYNDA VOLTZ: Your submission refers to police being more appropriately investigated by the Independent Commission Against Corruption [ICAC]. Is it a general view within the Police Force that ICAC would better oversight police services? I am more concerned about the nature of ICAC and the type of evidence that can be given to it, including hearsay evidence, as opposed to the Police Integrity Commission.

Mr WEBER: Most police officers would lean towards having a single oversight body that has the powers of ICAC. It is clear from our submission and the reason that the Committee is sitting today that the Police Integrity Commission and the Ombudsman have let us down with these investigations. We want a one-stop shop so that police officers are not dragged through multiple jurisdictions and subjected to multiple inquiries where their information and statements can be picked apart because they are going through three or four years of investigations. They may say "and" instead of "that" or "we" instead of "I", and all of a sudden they are accused of saying the wrong things.

The Hon. TREVOR KHAN: "Yes" instead of "no".

Mr WEBER: Yes, but I think that would be highly unlikely.

The Hon. LYNDA VOLTZ: There is a concern about public hearings. I acknowledge your comments about officers not having their reputation damaged. I think there are still question marks about the nature of some of the evidence that people have received anonymously and therefore not all of it is in the public domain. For example, we have the September affidavit but we do not have the April affidavit.

The Hon. ADAM SEARLE: But we have both warrants.

The Hon. LYNDA VOLTZ: Yes. I assume that you have never seen the April affidavit.

Mr WEBER: No, never.

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

Mr WEBER: No, never.

The Hon. LYNDA VOLTZ: I went through the September affidavit, which is about 70 pages long and has a 20-page annexure. It is quite detailed. I do not understand enough about the system. This is where it relates to ICAC as opposed to police officers who understand the system. I do not understand whether it was a rollover warrant and how such a warrant works. I also do not understand whether or not the previous warrants, which were attached as annexures and which were referred to by Ms Burn in her memorandum, were included. I think that becomes an issue because people are getting some information and not getting other information. How do you get information out into the public domain that is quite sensitive—because in the September affidavit there is information I would not release—and still retain people's confidence that the investigation has looked over everything and is satisfied?

Mr WEBER: I think you need to deal with it primarily when it actually occurs. The biggest problem here is the length of time and the ongoing rumour and scuttlebutt about this issue. Again, if it was dealt with by one single oversight body that actually came up with some resolutions and some tangible results I do not think we would be sitting right here today. I think it needs to be dealt with straightaway.

The Hon. LYNDA VOLTZ: The real problem in 2002 was that the warrants were released as part of possibly a process before the law courts and they were then sent out to all of the people that were named on them. None of the other public information was in the domain at that time and over time it has run as an issue. But if someone had oversighted it in 2002—if there was, say, an independent complaints place for the police to go to that could oversight whether these things had been done properly—it could have been resolved at that time, yes?

Mr WEBER: Look, what we are seeing is a complaint lodged by the Police Association back in 2003 and again I was not privy to that. I was only sitting on the executive and I was not—

The Hon. TREVOR KHAN: To whom was that complaint made?

Mr WEBER: That was lodged to the Commissioner of Police.

Mr DAVID SHOEBRIDGE: By Mr Remfrey?

Mr WEBER: Yes, that is correct.

The Hon. LYNDA VOLTZ: And that is what Operation Emblems came out of?

Mr WEBER: Yes.

The Hon. LYNDA VOLTZ: Can I go to one other thing, because I think we agreed to publish these statements. We have agreed to publish statements by Detective Inspector Galletta.

Mr DAVID SHOEBRIDGE: Records of interview.

The Hon. LYNDA VOLTZ: Records of interview with Catherine Burn.

The Hon. TREVOR KHAN: ERISPs, in fact.

Mr DAVID SHOEBRIDGE: Not technically. They are under the police reg.

The Hon. LYNDA VOLTZ: For example, a question was asked of her, "Because we have been informed that there was a relationship, a personal relationship between _____ and John Dolan." That

is talking about a promotion for . Does the release of that kind of information not—I do not know whether she is still a serving police officer—have the potential to further damage people?

Mr WEBER: Definitely so.

The Hon. LYNDA VOLTZ: This is going to be part of the complex problem that all these agencies have dealt with of how you release information without damaging more people.

Mr WEBER: I think it comes back to the original answer I said, which is that we need to deal with this in a timely manner. You need to actually validate the concerns of all parties involved and they need to have a voice.

Mr DAVID SHOEBRIDGE: We withheld that name. The resolution was to only allow a limited number of names but all other names were withheld.

The Hon. TREVOR KHAN: But that is all right. No damage is done because we are in camera.

Mr WEBER: I am a serving police officer and I will not mention those names.

The Hon. TREVOR KHAN: We all know that.

The Hon. LYNDA VOLTZ: I think that has always been part of the difficulty in how you oversight those original warrants and get the information out there to satisfy everybody without the damage that is caused. That was all.

Mr WEBER: Again, I think that is where a single oversight body that has the information and all the records, is not competing with others and not dealing with it over a long period of time after someone else has investigated it—I think if they can look at that and deal with that and then make the best informed decisions, which is sitting there, listening to everyone and looking at it in a holistic approach, because it has a piecemeal effect over a long period of time with different vested interests.

The Hon. LYNDA VOLTZ: That is what you hoped the Ombudsman inquiry would deliver.

Mr WEBER: I think we are sitting here today because it has not delivered.

The Hon. LYNDA VOLTZ: I know, but if you are talking about someone independent you may have assumed that would be the right way to go.

Mr WEBER: That is right, and it is extremely disappointing for myself and the membership that it has not been resolved in a timely manner. Any investigator would know that you would deal with the initial complaint first. That is the first thing you would do. You call people in who have been victims of the first complaint, actually glean evidence from them and build a relationship and then you would actually ask any further questions.

Mr DAVID SHOEBRIDGE: We have just published the correspondence from the Ombudsman today where he sets out what he has done in relation to his investigation. He makes it clear in that correspondence that it was the better part of a year after he got the reference before he realised that he actually had to speak to the complainants and talk to them directly. What do you make of that?

Mr WEBER: That boggles my mind. Again, whether it be a complex investigation like this or a break and enter the best course of action is actually to speak to the people involved, ascertain the evidence and build up an investigation plan. But in saying that, we are dealing with a matter, and the Ombudsman should be fully briefed in this, that has been outstanding for over a decade, where there have been heated conversations about it and it is quite clear it is in the public arena through the papers. Again, the first thing you would need to do is actually ascertain all that information but then speak to the people involved because the longer you leave it the more problems are going to occur.

Mr DAVID SHOEBRIDGE: I do not mean to verbal the Ombudsman but I will give you the words that the Ombudsman has said and I will see in your experience what you think about this in terms of it being a competent way of him going about his task. He got the referral from the Premier and others I think in October

and the legislation giving him the additional powers was passed in November 2012. He talks about setting up the computer systems and getting a whole lot of documents and then he says this:

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

It appears that up until that time the Ombudsman was intending to do a document review only and he only started talking with people in the second half of 2013.

Mr WEBER: Again, that is just sheer folly. In the time of my service in the police force and my positions on the Police Association I have not seen any of the information in regards to Prospect, i.e. the warrants or the affidavits, but I am aware of what has been reported in the media. Again, I am a serving police officer and I made sure that I had that isolation. But, in saying that, the Ombudsman runs an organisation that investigates police and he has been doing that for a long period of time. It boggles my mind for him to actually assume that he could do it on paperwork alone because he would know full well what has occurred over the previous decades. Even if he did not have access to any of the information, he would have heard it through rumours, innuendo or, at the very least, media. If he was of the belief he could do it on paperwork only then he should not be the Ombudsman.

The Hon. TREVOR KHAN: If we go back in time to 2003, in terms of this concept of a single one-stop-shop for an investigation do you say that essentially Emblems should have been done by such a body?

Mr WEBER: In hindsight now, yes. Back in 2003 we were not of that belief. But with the ongoing issues that we have had with oversight bodies and the lack of trust with PIC in regards to procedural fairness and natural justice—we only just saw that last year, horrific errors in judgement in regards to an investigation is in evidence—again why we are sitting here today, the lack of timeliness and also a proper investigation plan with the Ombudsman in my belief at the very least—again, yes, it should have been done by a single oversight body but in 2003 that was not our belief.

The Hon. TREVOR KHAN: I understand that but we are talking about, in a sense, you making a proposition that it should be done essentially by a new body. At what point in time does this new body pick up an investigation? Virtually right at the start, is that what you are saying?

Mr WEBER: I think it takes over the role of all. That would be my best solution because all of a sudden—again, when we are talking about police corruption and police integrity there are a lot of facets to it as you have read through these documents I am guessing. I think we need to actually make sure that that one body actually has access to all the information so it can make informed decisions from the start.

The Hon. TREVOR KHAN: So they get in there as soon as possible?

Mr WEBER: Yes.

The Hon. TREVOR KHAN: Then let me ask you this: If it is to get in there as soon as possible, what if there is a critical incident where a person has been shot by a police officer? Are you saying that this one-stop body undertakes, in a sense, the initial investigation in those circumstances?

Mr WEBER: No, I do not think that would be possible financially and also resource based.

The Hon. TREVOR KHAN: Putting aside resources, what is the point at which this oversight body takes over an investigation?

Mr WEBER: I think what occurs at the present moment is quite suitable in regards to obviously police. A prime example is what is happening at the present moment with the coroner's case that is being heard today. Obviously, the police are there in gathering evidence for the coroner and the coroner at any time can look at that investigation. If we are doing an internal investigation in regards to complaints the Ombudsman can investigate at any time as well.

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CORRECTED

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Mr DAVID SHOEBRIDGE: You make it clear in your opening that this issue about Emblems and resolving Emblems is a long-running sore and it absolutely should be resolved. Is that right?

Mr WEBER: Yes.

Mr DAVID SHOEBRIDGE: Surely one of the people with an obligation to resolve it would be the commissioner?

Mr WEBER: Yes.

Mr DAVID SHOEBRIDGE: What do you make of the assertions by the commissioner that despite him obviously having access to it he has not even read the Strike Force Emblems report?

The Hon. TREVOR KHAN: I know this is in camera but—

Mr DAVID SHOEBRIDGE: I press it.

The Hon. TREVOR KHAN: I will take a point of order. Really, where is this going to lead us?

Mr DAVID SHOEBRIDGE: This is about the police union's view as to the adequacy of the response to a complaint that is now 12 years outstanding.

The Hon. TREVOR KHAN: I will press my point of order. What value does this have?

CHAIR: It goes to the value of something that has been on the "public" and "private" record for the police. Why would the commissioner, especially when he was recommended in the Levine letter to read the Emblems report, credibly say he has not read it?

The Hon. TREVOR KHAN: Again it goes back to what I have said in another forum. That may well be an appropriate question to be put to the commissioner and we are entitled to draw some conclusions, but, with the greatest respect to Scott, whatever his reaction may be to it, it really has no probative weight. If you want to talk about kangaroo courts let us go into this exercise.

Mr DAVID SHOEBRIDGE: You have made your point. I have asked the question; I would like the witness to answer it.

Mr WEBER: The leader of our organisation, the NSW Police Force, should be well versed in everything that affects the NSW Police Force. If he receives a recommendation from an oversight to proceed down a path then he should at least take it into account and have justifiable reasons to go against it. In saying that, from my personal view—and it is my personal view—I could not see why you would not read it; it is something that has been outstanding for a period of time and it involves two of your most senior police officers and you need to manage those people and you need to have a functional management team and it is quite clear that we do not.

The Hon. ADAM SEARLE: Just following on from that, this issue has been running on for a long time. Parliament gave certain powers to the Ombudsman to look into it; we have received submissions and evidence that suggest that the Ombudsman himself seems to be more interested in who leaked the material rather than looking into the substantive matter; and some of the submissions that we have received have said that the only way to adequately now address this matter—and, I guess, the points you have raised about managing the two most senior police officers beneath the police commissioner—is to have an open judicial inquiry into the substantive matters, conducted by a judicial officer from outside the State of New South Wales. Does your organisation have a view about that proposal?

Mr WEBER: Again, I will probably take that question on notice. We would like to sit down and go through and obviously read all the submissions. I note the Ombudsman's submission has only come out today.

The Hon. ADAM SEARLE: In relation to your proposal about a single police oversight body I can see why your organisation reaches that view and, for what it is worth, I share each and every one of the criticisms you make of the PIC, but as a matter of practicality how do you have a single body that does what you say without running the risk that it becomes captured, I guess? Is there not some sort of protection in having multiple bodies, maybe with an uneasy tension between them that sort of keeps them all on their toes?

Mr WEBER: I have not seen that perception.

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The Hon. ADAM SEARLE: That could be a function of the PIC not doing its job. But if the PIC was doing the job that you and I at least think it ought to be doing, would that not, in fact, resolve the problem that your organisation has identified?

Mr WEBER: We are talking obviously in what-ifs, because that has not occurred. What we are seeing is different oversight bodies competing with each other non-stop and causing more issues not only to the police officers involved but the victims' families and the process itself and the law. Again, that is why we wanted to head down a single oversight body; it does occur in Singapore and numerous other jurisdictions and it works extremely well. No, PIC has not been functional for a long period of time.

Mr DAVID SHOEBRIDGE: As Mr Khan raises it, what about the English model, the Independent Police Complaints Commission?

Mr WEBER: Again, I would have to take that on notice because I am not well briefed on that.

Mr DAVID SHOEBRIDGE: In terms of a common law jurisdiction, it is the one that is closest to it; it is well established. Can you tell us your views about that as a model?

Mr WEBER: Again, I am not well briefed on that.

Mr DAVID SHOEBRIDGE: Can you take it on notice?

Mr WEBER: Yes.

CHAIR: You are very scathing of PIC in your submission. You also talk in detail about a lack of due diligence and care by the Ombudsman—in fact, you talk at length about it: a duty of care to your members. How would you see that being put into that sort of overriding structure, because you are talking about a pretty big wide spread of responsibility, not just for the care of members that are being investigated but also at the other end applying the sanctions of law against them?

Mr WEBER: What we actually want is procedural fairness and natural justice and it has not occurred for a long period of time.

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The Hon. TREVOR KHAN: That may be right but that can exist whether you have PIC there or a single oversight body—it is two different questions.

Mr WEBER: I totally agree.

CHAIR: Where I was going was that the PIC, and to a large degree the Crime Commission, are occupied or inhabited by the same creatures, and I use that term very loosely, from the police environment, whereas what I was getting at was if you are talking about the British role model it is really a separate organisation—it may be inhabited by police who do the investigative work but it is a quasi-judicial body at the top, for example. I do not know what form it would take but it just seems to be that there is not enough—and I think that might be part of the point you are making and certainly coming out from what I have seen—differentiation or separation of time and space or professional duty between the PIC organisation and its inhabitants and perhaps even now the Ombudsman's extended duties; he is overlapping now with the duties of what PIC and perhaps even the Crime Commission are getting at what their duties may well be. Does that characterise it in layman's terms?

Mr WEBER: Yes. With a single oversight body I think there needs to be proper review, and that means a proper—and I will use the PIC example—review of the inspector of PIC or an inspector of the single oversight body who has adequate resources and can cut through all the secrecy provisions. As we have seen with this, the secrecy provisions should not be a shield that you hide behind. If these people are utilising these extremely powerful, coercive techniques they need to be transparent in another environment where they can be properly reviewed. I am not saying that it should be out there. The warrants and the affidavits should not be

given to the general public because that damages people's careers and it damages people's health. But in saying that, there has to be a proper review which is adequately resourced.

The Hon. LYNDA VOLTZ: That was part of the problem, was it not, with the PIC and the PIC inspector? When the PIC inspector wanted to get the information for the warrants PIC refused to provide them. So it may more be an issue of giving an inspector greater powers to be able to oversight them and, when he makes an adverse finding, actually directing the PIC to fix the problem.

CHAIR: Does the commissioner have a role in this or is he one of the ones that are inspected?

The Hon. LYNDA VOLTZ: No, they are separate.

CHAIR: I understand that, but I am talking about if you set up a new body to review the actions of the police it would be the top down, including the commissioner.

Mr WEBER: Yes.

CHAIR: Whereas the way it is structured at the moment, if I am not wrong, is that the commissioner— does he sit on the board of PIC?

Mr DAVID SHOEBRIDGE: No. He is on the management committee of the Crime Commission but he is not on PIC.

The Hon. ADAM SEARLE: Which is understandable because both the police and the Crime Commission are law enforcement bodies.

Mr WEBER: And they would utilise the powers of the Crime Commission. I think the best analogy for us is that police officers just want a level playing field. If I do something wrong I am bound by the police Act; I can be coerced to answer questions. At times I can utilise the right to silence, but in saying that, there are some measures in place to stop me from doing that and also some ramifications in regards to that. What we are saying is that these oversight bodies should not be a law unto themselves; they should have proper review mechanisms and should be answerable to the actions that they take and the powers they use.

Mr DAVID SHOEBRIDGE: The Ombudsman in his letter to us yesterday talking about oversight of the Ombudsman and oversight of the PIC says in paragraph 12 of his letter, "The Joint Parliamentary Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, which is appointed pursuant to section 31A of the Ombudsman Act, is expressly precluded from investigating a matter relating to particular conduct and from reconsidering the findings, recommendations, determinations or other decisions of the Ombudsman or of any other person in relation to a particular investigation or complaint. That statutory carve-out recognises the writs of the public that attends the asking of questions by Parliament about issues on which I may have taken evidence", et cetera.

The Ombudsman is suggesting that that statutory carve-out is a protective measure. Some might suggest that that statutory carve-out is protective of the Ombudsman from proper scrutiny by the parliamentary committee whose job it is to scrutinise the Ombudsman and, absent that committee having the power, I ask you who else does have the power to oversight the Ombudsman?

Mr WEBER: I think that is where it comes to an inspector. If we do amalgamate all the oversight bodies and there is an inspector they do have that power, but I think that is what you are actually doing here today: you are asking these questions and I think the Ombudsman is probably highlighting that perhaps you do not have the power to do that, but in saying that, you are. I am not a lawyer.

Mr DAVID SHOEBRIDGE: That statutory provision only relates to that committee; it does not go beyond that.

CHAIR: We have got the power to question him.

Mr DAVID SHOEBRIDGE: We have got the power. But what the Ombudsman spells out there in the broadest possible terms is the extraordinary limitations that that committee has on any oversight of him. What is your view about those limitations?

Mr WEBER: If it is a joint parliamentary committee that is meant to review the actions of oversights then they should have some legitimate power to ask questions and obtain information. Again, that should not be for political gain or certain focus groups or going in one pointed direction, but there should be an opportunity for proper review by that parliamentary committee and not have the people that you entrust that power to to use it against you—I think that is a scary proposition. The best reflection would be myself as a police officer saying that I run my own race, that I do my own investigations and I have no form of review by senior officers. That is what you are telling me.

Mr DAVID SHOEBRIDGE: That is not what I am telling you; I am just repeating what is in the Ombudsman's—

Mr WEBER: Sorry, that is what I am gleaning from the information here, and that does not happen in NSW Police and nor would we want it to be. There have to be proper reviews and there have to be questions asked.

Just a question to the Chair: In regards to our submission, am I entitled to give that to any of my members or is it still owned and publicly—

Mr DAVID SHOEBRIDGE: You have asked for it to be confidential. We have made it confidential.

Mr WEBER: Sorry, my submission is on the website.

CHAIR: Your submission has been published. You can provide a link to it.

Mr WEBER: I can provide a link to the members?

The Hon. TREVOR KHAN: For what it is worth, you have to make a determination as to whether—and I do not think there is—anything defamatory in it because if you provide it then you are not covered by parliamentary privilege.

Mr DAVID SHOEBRIDGE: You can tell them where to find it.

Mr WEBER: So we can do the link. I just wanted to clarify that.

Mr DAVID SHOEBRIDGE: When we look at your submission and we hear your evidence today, I note that you said in a more polite way than I did competing interests amongst your membership. Would that be a fair summary of what you said in relation to your matter?

Mr WEBER: Yes.

Mr DAVID SHOEBRIDGE: You are very critical of the role of the PIC, you are critical of the role of the Crime Commission, you are critical of the role of the Ombudsman, but there has been a fourth leg in this. A number of police officers and SCIA and the internal what would now probably fall under the professional standards command of the police at the time, you are silent on that in large part. Is that because it is difficult for you as the union with those competing interests to make a clear position on that?

The Hon. LYNDA VOLTZ: Point of order: I do not think you can ask that.

The Hon. TREVOR KHAN: It is a cheap shot.

The Hon. LYNDA VOLTZ: Mr Weber has made it clear that he has not read either of the affidavits and has not looked over the information.

Mr DAVID SHOEBRIDGE: No problem being critical of the PIC. No problem being critical of the Ombudsman.

CHAIR: I think that question goes to the heart of that. Mr Weber can decide whether to answer it or not. PIC, the Crime Commission, the Ombudsman—they cop a shellacking, but there are other players in this game. What Mr David Shoebidge is getting to is this: Why did you leave them out? Was it because you were

worried about some conflict of interest in your membership or did you genuinely believe that they had no involvement?

Mr DAVID SHOEBRIDGE: That is all I am trying to work out. Is it something you have not gone to in your submission, or is it something that you have had a look and said no, it was all sweet?

The Hon. ADAM SEARLE: I do not see how this assists us.

The Hon. LYNDA VOLTZ: It is not relevant. He represents all police members.

CHAIR: Let him answer the question, or not.

Mr WEBER: Just because it is not in there, I think you are making an assumption—

Mr DAVID SHOEBRIDGE: I am not making any assumption. I am asking you about it.

Mr WEBER: Our submission is evidence based and it always will be. I do not have that evidence. I know the innuendo and I have seen the paper reports, but I do not have the warrants or the affidavits to make that determination. We had members come to us and raise their general concern, and we put in a complaint to the Commissioner of Police which we interpreted would be properly investigated, but we are still sitting here today. In regard to those issues with those police officers, there are separate silos at the Police Association to deal with those separate members, but in regard to their individual issues and what evidence they can give, I am not aware of that and I have deliberately isolated myself from that.

Mr DAVID SHOEBRIDGE: So at this stage you would say that it is still in the nature of a complaint from the Police Association which has not been resolved, and that is what you would like to say about that?

Mr WEBER: That is correct. Again, I would like to thank the Chair for the letter of 29 January with regard to welfare. That was of great assistance, and thank you for sending it to the other oversight bodies. It is a major concern for us.

CHAIR: I think you have taken a very sensitive approach to it, as you obviously have to with your members. I think all of that was taken on board by the Committee. We will send you a copy of the transcript of your evidence. If you would like us to publish any of it, please come back to us on it; otherwise we will assume that you do not want anything published.

Mr DAVID SHOEBRIDGE: Would it be more accurate for Mr Weber to say what he does not want published?

CHAIR: Either way, through redaction or omission.

Mr DAVID SHOEBRIDGE: I do not think we should be inviting silence from Mr Weber on this. Tell us your thoughts and how long he has to do it is what I would put.

CHAIR: Within five days. We will have something back to you hopefully in the next couple of days. You have taken a couple of questions on notice.

Mr WEBER: So you will send that altogether?

CHAIR: Yes, but because of our tight deadlines we will need them returned within five days. The secretariat will get back to you within at least a couple of days.

Mr WEBER: Could you paraphrase the questions on notice?

CHAIR: No, you will get them.

Mr WEBER: Okay.

The Hon. LYNDA VOLTZ: Do you think that publishing the list of the names on the warrants hurts people or helps people to know whether they were on the warrants or not?

RESOLVED TO BE PUBLISHED BY THE COMMITTEE ON 17 FEBRUARY 2015
CORRECTED

CHAIR: I think Mr Weber answered that. I think he said it does, and also the affidavit. We resolved today not to publish the affidavit.

Mr WEBER: Thank you. I think the problem is that there are still officers out there who do not even know they are on the affidavits or the warrants. I do not know the response you have got and obviously the tight time frames but what we would be looking for is if you were going to publish that every individual to be spoken to before that occurs. The last thing we want is the horrible scenario that occurred during the police royal commission where we had 12 officers take their lives. That is a major concern for us.

CHAIR: We have not made a final decision on the warrants.

The Hon. TREVOR KHAN: I suspect we have now.

(The witness withdrew)

REPORT OF PROCEEDINGS BEFORE

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

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

At Sydney on Thursday 29 January 2015

—

The Committee met in camera at 11.15 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

MARK AUBREY GALLETTA, Former NSW Police Force officer, officer in charge of Strike Forces Emblems, Sibutu and Tumen, sworn and examined:

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

Mr GALLETTA: I would. I performed operational policing for 33 years as a detective crime manager and local area commander and I finished as the commander of the Metropolitan Robbery Unit investigating armed robberies. I was the officer in charge of Strike Forces Sibutu, Tumen and Emblems and of Strike Force Bransdon, which was the Paul Gibson-Sandra Nori investigation. I have received commissioner's commendations and citations for both Strike Forces Sibutu and Tumen and for the Cronulla riots. I also received the Australian Police Medal, the APM, in 2009. I was medically discharged from the police service on 18 July last year as a result of some events during my police career, of which Emblems and Operation Prospect were contributing factors.

It is clear from the events from 2001 to present that I have been made the scapegoat and collateral damage of what has occurred. There are allegations that I have leaked documents to the media, and the investigations of myself have been discredited. On that note, I totally reject the comments of Mr Levine, Ms Burn, Mr Gallacher and others in terms of Mr Levine's report. The Emblems investigation was made and the findings of that investigation were made with an open mind and with a high degree of objectivity with a disclaimer based on the limited material that we received during the tenure of the investigation. My question is how did Mr Levine come to his findings on 27 November 2012 when as of 20 September 2012 he had only just received 30 boxes of information and three disks containing over 20,000 documents and, more importantly, how did he come to his findings without myself or other investigators being given the opportunity to address these issues, denying us of some procedural fairness?

What you need to know is the Emblems report was read by Commissioner Moroney, the Executive Complaints Management Team, which comprised Deputy Commissioner Madden at the time, Assistant Commissioners Dobson and Waites and a number of other high-ranking police, who accepted the report to the fact on 14 April 2004 it was reviewed by the Professional Standards Manager of the Executive Complaints Management Team who says that he has comprehensively reviewed the document and agrees with the findings and recommendations, and that is signed on 15 April by Deputy Commissioner Madden, he agreeing with those findings. The report was also read by Les Tree of the Police Ministry and it was read by the director of Legal Services at the time, Michael Holmes, who is now a magistrate, along with the fact that the commissioner was provided with monthly sitreps, briefings and more frequently, if a significant issue arose, updated sitreps. Throughout the tenure of the whole matter no adverse comments were made about the Emblems report whatsoever.

It should be noted that Emblems followed the procedure and structure of Sibutu and Tumen in terms of the way it was structured and the way it was set out. Sibutu and Tumen were reviewed by Lionel Robberds, QC, and another barrister, who gave comments that are a total antithesis of what Mr Levine has said. It should also be noted that after approaches by myself to the Ombudsman, PIC and to the police Minister's office to have Emblems oversighted they rejected our approaches. We wanted to be accountable and we wanted to be measured and, as a result, this is where we are today. All we ever wanted from the Emblems investigation was the truth, whether the warrant was justified or not. Myself and the other investigators have always remained independent and at the end of the day we just want to be vindicated along with the investigation.

CHAIR: I just acknowledge that Mr Stephen Wilkinson—I assume he is your legal adviser—is with you here.

Mr DAVID SHOEBRIDGE: When did you do the investigations, which I think were Strike Force Tumen and Sibutu?

Mr GALLETTA: Sibutu I started on 18 May 2001 and Tumen—I will go back and give you an overall picture, if that is all right; it probably gives you a better picture of what happened. Sibutu was born from Operation Banks and Banks was born as a result of allegations of false information in a search warrant, which was clearly identified because that matter was reviewed by Peter Hastings, QC, and it was clear there was false information in a search warrant but there were no charges laid by that investigating person because it was statute barred.

Mr DAVID SHOEBRIDGE: Who had issued the warrant in that case? Was it a police warrant?

Mr GALLETTA: It was from the Integrity Testing Unit, which came under Special Crime and Internal Affairs [SCIA]. Sibutu was born as a result of that in May 2001 where we analysed over 70 affidavits comprising TIs, LDs and search warrants.

Mr DAVID SHOEBRIDGE: TIs are telephone intercepts and LDs are listening device warrants?

Mr GALLETTA: Yes. We analysed over 70 and, as a result, of that 70 we found 11 affidavits contained false information.

Mr DAVID SHOEBRIDGE: Who had crafted those affidavits?

Mr GALLETTA: The Integrity Testing Unit.

Mr DAVID SHOEBRIDGE: Within SCIA?

Mr GALLETTA: Within SCIA, yes. Then Tumen evolved as a result of it appeared to be a swell of complaints of SCIA. Tumen centrally was based on two undercover operatives that were working for SCIA and we identified 31 issues that were agreed upon by the Ombudsman in the infancy of Tumen and things such as management, inappropriate targeting, inappropriate integrity tests, lack of quality control, which was a theme that we identified in Strike Force Sibutu as well. We finished that early 2003, I think, by the time we went through everything.

Mr DAVID SHOEBRIDGE: Again, were these informants that were run by SCIA?

Mr GALLETTA: The two undercover operatives?

Mr DAVID SHOEBRIDGE: The two undercover operatives.

Mr GALLETTA: They were police officers and they were part of a covert operations unit, which had those two and a supervising officer, which came under the umbrella of Special Crime Unit, which came under the umbrella of SCIA.

The Hon. ADAM SEARLE: Who was the commander of SCIA?

Mr GALLETTA: At the time?

The Hon. ADAM SEARLE: At the time of your investigation?

Mr GALLETTA: Mr Brammer.

The Hon. ADAM SEARLE: The whole time?

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: He says he left in 2001.

Mr GALLETTA: It was 2002, because I, with Superintendent Reith, interviewed him early 2002.

The Hon. ADAM SEARLE: Who was the commander after him?

Mr GALLETTA: That is a good question, to be honest. I think it was Brian Reith—he became the commander.

Mr DAVID SHOEBRIDGE: Did you have any dealings with either now Deputy Commissioner Cath Burn or Commissioner Scipione in your investigations?

Mr GALLETTA: In Tumen I did, yes.

Mr DAVID SHOEBRIDGE: What was that?

Mr GALLETTA: I interviewed her. Tumen, as I said, looked at a lot of management issues and inappropriate targeting in integrity testing so we needed to interview all the staff and I interviewed Cath Burn.

Mr DAVID SHOEBRIDGE: And the conclusions of Tumen and Sibutu, did they go through the hierarchy and get the sign-off all the way to the commissioner?

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: What was the response to your reports in Tumen and Sibutu?

Mr GALLETTA: I know there was a lot of conjecture over the findings we found against Mr Brammer—untruthfulness and providing lack of supervision, lack of management.

Mr DAVID SHOEBRIDGE: Can you give a summary of what those findings were?

Mr GALLETTA: We identified, through interviewing people part of Special Crime Unit at the time, his lack of quality control, his lack of providing training and education and the utilising of those two undercover operatives outside the guidelines of what were in place at the time.

Mr DAVID SHOEBRIDGE: What about his record keeping?

Mr GALLETTA: A word would be "poor". In terms of internal complaints within SCIA itself, the recording of that was ad hoc; there were no systems in place whatsoever. The goalposts seemed to change all the time. I have not seen his interview that we did with him for a while but I do recall there was a guideline called Dresden, which was enacted to ensure there was independence of investigations. However, SCIA were investigating their own complaints.

Mr DAVID SHOEBRIDGE: In terms of the institution's response, the institution of the Police Force, its response to your two reports, did they applaud your reports? Did they reject your reports? You said the commissioner signed it off.

Mr GALLETTA: Primarily they were accepted. As I said before, I received a commissioner's commendation for both of those strike forces.

Mr DAVID SHOEBRIDGE: That was a formal commendation for the work you did on both the strike forces?

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: So with that knowledge about the problems with the undercover operatives and the telephone intercepts and the listening device warrants and the like, you had that knowledge when you kicked off Strike Force Emblems. Is that right?

Mr GALLETTA: I was contacted once the warrant issue had come to the fore to meet with Mr Dobson who had the complaint from the association to him, and it only made sense, to be quite honest.

Mr DAVID SHOEBRIDGE: What was Mr Dobson's role at the time?

Mr GALLETTA: At the time he was acting deputy commissioner, so the complaint came across his desk. It was only common sense really that he would approach me because of the background and this history I had had with SCIA over the preceding two years.

Mr DAVID SHOEBRIDGE: Can you talk about how you went about undertaking Strike Force Emblems—who you spoke to, what your avenues of getting information were?

The Hon. ADAM SEARLE: Just before you start on that can I just ask this question: When you did the previous two strike forces who or which body oversighted your work?

Mr GALLETTA: Sibutu, Mr Reith oversighted it.

The Hon. ADAM SEARLE: Why was that? What role was he in that?

Mr GALLETTA: Again, he got the complaint initially and his role at the time was superintendent at State crime command or crime agencies. So it was allocated to him, and they wanted someone independent to do it. I was just approached with other officers. Tumen became Mr Moroney but not as the commissioner. He was either the deputy commissioner, because it was restructured there for a while. He was either senior assistant commissioner or the deputy commissioner, but I briefed him at that time.

The Hon. ADAM SEARLE: When Strike Force Emblems was established and you were given the task of conducting that strike force, who then was to oversight you at the outset?

Mr GALLETTA: Police, Mr Dobson oversighted us.

The Hon. ADAM SEARLE: And his role then was assistant commissioner, was it?

Mr GALLETTA: Yes, it was.

The Hon. ADAM SEARLE: And the genesis of Emblems is set out in a letter that you sent to Mr Remfrey on 18 May 2004. I think it is a letter you sent to Mr Remfrey—

Mr GALLETTA: I have not seen that document for such a long time. I would have to read it.

Mr DAVID SHOEBRIDGE: I was asking you about the establishment of Emblems and you said the then acting Deputy Commissioner Dobson called you in and said—did he give you the reference?

Mr GALLETTA: He said we need to discuss this. It is getting a lot of attention and there has been a complaint made.

Mr DAVID SHOEBRIDGE: That was the Police Association's complaint.

Mr GALLETTA: Yes, that is right.

Mr DAVID SHOEBRIDGE: For the benefit of the Committee, how is a strike force established? What is the formal legal?

Mr GALLETTA: Because there had been a written complaint, it follows the criteria of a complaint under section 8A of the Police Services Act.

Mr DAVID SHOEBRIDGE: Part 8A.

Mr GALLETTA: Part 8A, sorry. So that kicked it off basically. Then the seven issues from memory that the association identified, being the warrants, lack of internal investigation via SCIA, lack of quality control, inappropriate use of M5, who is—well, that is an issue in itself—an informant, became our terms of reference or part of our investigation plan, so to speak. I was then asked to recruit staff for the strike force and I went about that, gaining a couple of people who were from Sibutu and Tumen and some others that I knew had a great wealth of experience and knowledge and a lot more than me. Then we embarked upon trying—we were given a copy of two warrants. The obvious thing to do was to try to get a copy of the affidavits, any source material that would support the information in the affidavits.

Mr DAVID SHOEBRIDGE: With the Committee's indulgence, and I know we have not published this but I was going to show the witness this document, which is the Strike Force Emblems report, and see if he recognises that as the report. You drafted the report in the end, is that right?

Mr GALLETTA: I am the author, yes.

The Hon. ADAM SEARLE: I do not have any objection to that.

Mr DAVID SHOEBRIDGE: So we can establish the authenticity or otherwise of the report.

The Hon. ADAM SEARLE: I think we need to do that.

Mr DAVID SHOEBRIDGE: Can you skim through the document and say whether it is or is not, as best as you can see, the final version of the Strike Force Emblems report? It does not carry any signatures.

The Hon. ADAM SEARLE: For the assistance of the witness, on the second last page is a list with a heading "certification" at page 42 and there is a series of names, including your own.

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: Mr David Shoebridge has invited you to have a brief look at the document to see whether or not this is the report that you recognise as your report.

Mr DAVID SHOEBRIDGE: Albeit unsigned because I assume the final one that was signed off—

Mr GALLETTA: I will say it is a report. I will not say it is the original one I signed.

The Hon. ADAM SEARLE: Fair enough. It looks like your report.

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: Does it look like the final version of the report?

Mr GALLETTA: Yes, it does.

Mr DAVID SHOEBRIDGE: If you had a little time with it could you look at it and confirm whether or not—I am not asking you to do that now. If perhaps we gave it to you over lunch time and you could in confidence look at it, you might be able to return the copy of the report and respond to us in writing if it was the final version or not.

The Hon. ADAM SEARLE: As best he can recall.

Mr GALLETTA: Yes. I have not had access to this document since under summons I had to give it to Prospect.

Mr DAVID SHOEBRIDGE: That is why I am showing it to you now. But it looks like your final report.

Mr GALLETTA: Yes, it does.

CHAIR: I think that is good enough.

The Hon. NIALL BLAIR: We are trying to determine whether the final, final version would have been the one that you signed.

Mr GALLETTA: Correct.

The Hon. NIALL BLAIR: We have one here that is unsigned, so we are trying to distinguish whether there is any material missing—

Mr DAVID SHOEBRIDGE: Whether there is any material difference between this and the signed one.

The Hon. NIALL BLAIR: —because there is no version control on the document other than page numbers.

Mr DAVID SHOEBRIDGE: That is why I was thinking; if the witness had a little time with it—

The Hon. NIALL BLAIR: I am not objecting. I am actually agreeing and think it is a worthy exercise.

Mr DAVID SHOEBRIDGE: If you would like a little time with it after your evidence.

Mr GALLETTA: I have had a quick look and the main issues that were in the original are certainly here.

Mr DAVID SHOEBRIDGE: If it is not the absolute final it is very close to it.

Mr GALLETTA: It is very close. I do not need to go through it.

Mr DAVID SHOEBRIDGE: When you began the investigation you obviously realised at an early stage that the affidavits that were being put forward would be crucial to your report, is that right?

Mr GALLETTA: That would be the first document any basic investigation would look at.

Mr DAVID SHOEBRIDGE: What did you do in order to get them?

Mr GALLETTA: It could be best described by a document that I put together, a chronology of approaches to the Crime Commission, but obviously that is not here because it is part of our investigation management system on e@gle.i. Just briefly, on 24 July 2003 myself and Mr Dobson went to see Mr Bradley from the Crime Commission and Mr Giorgiutti.

The Hon. ADAM SEARLE: Sorry, who is the second gentleman?

Mr GALLETTA: Myself and Mr Dobson.

The Hon. ADAM SEARLE: No. You mentioned Mr Bradley.

Mr GALLETTA: Mr Giorgiutti and Mr Bradley.

The Hon. ADAM SEARLE: Yes.

Mr GALLETTA: And they were present at the meeting.

Mr DAVID SHOEBRIDGE: Giorgiutti is the solicitor?

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: Bradley was the commissioner of the Crime Commission.

Mr GALLETTA: Correct. I think. Giorgiutti's role at the time was a director of operations or something like that. We asked whether we could get access to it or what was the best form of approach to get the affidavits. The comments that were made were they were concerned that it would "open up a Pandora's box" by going behind a warrant. I will go off on a tangent and I will come back to it because it is crucial. We then sought legal advice through our court and legal systems and I spoke to Ian Dixon. Then we got referred to Mr Bartley, Senior Counsel, to see whether there was any legislation prohibiting us getting the affidavit, and basically they agreed that there was not so on the back of that advice we continued to pursue correspondence and communication with the Crime Commission over a number of occasions, trying to get the affidavits, trying to get source material. It was mooted that we be provided all the documentation in a room at the Crime Commission which we could access. That did not eventuate. Then it basically came to a head where Mr Temby was asked to represent Emblems, to approach the Crime Commission.

Mr DAVID SHOEBRIDGE: He was a Queen's Counsel.

Mr GALLETTA: Queen's Counsel, and on 9 September 2003 we met and there was myself, Mr Dobson, Mr Madden and his staff officer Giorgiutti and Bradley. Basically, it was agreed that through—I will go back because Bradley at that stage was saying that they could not release any information because of section 29 of the secrecy provisions of the Crime Commission Act. However, Temby looked at it, at the fact that we were investigating a complaint under 8A of the Police Services Act and the commissioner was trying to investigate his officers, that there was power because the commissioner was on the management committee of

the Crime Commission, that they could through section 7 of the Crime Commission Act disseminate the material to one of their officers, who would disseminate it to us under the same section.

Mr DAVID SHOEBRIDGE: So they could give it to the commissioner who was on the management committee who could then disseminate it?

Mr GALLETTA: Yes, and come down to us, basically. That was agreed upon, and within 24 hours it was withdrawn.

Mr DAVID SHOEBRIDGE: Who withdrew it?

Mr GALLETTA: Bradley.

Mr DAVID SHOEBRIDGE: Did he give an explanation?

Mr GALLETTA: It became apparent that there appeared to be, and the information got to him, I do not know how, that—whether this is in the same time frame or not but it is quite close; if it is not then it is early the following year—there had been some articles in the paper and Bradley believed that there were leaks coming from Emblems to the paper, which was completely false. We tried to do certain other things. We wanted to interview the involved officers that are identified in the Emblems report. However, again, the section 29 curtain was pulled down and we were unable to interview those people. We sought legal advice to see whether, if we went outside 29 and interviewed them, was there an issue, and there was a response back from Bradley that if we tried to interview anyone we would be charged with a breach of the Crime Commission Act.

Mr DAVID SHOEBRIDGE: How did you get that response from Bradley?

Mr GALLETTA: Through Commissioner Moroney to Dobson.

Mr DAVID SHOEBRIDGE: Who then informed you that Bradley had said that if you persist—

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: What material did you have to hand when you finalised your report on Strike Force Emblems?

Mr GALLETTA: We got a copy. We got seven interviews between M5 and Catherine Burn, and a document called the Schedule of Debrief, which basically in a nutshell is a summary of all the allegations arising from those seven interviews, which identified the allegation, the involved officer. I had access, through Tumen and Sibutu, of accessing people's police service complaints history, so along with that a number of the files from these other investigations that were in Emblems. We analysed all that, and the 35 statements that we took from some of the people on the warrant—that is another point that I will get to in a minute. With that, and as I said, in the disclaimer repeatedly in the investigation report that we came to our conclusions based on all of that material, which, with the interviews and the schedule of debrief, was quite voluminous.

The Hon. LYNDA VOLTZ: Going to the information that you had in regard to Emblems, you did not have the affidavits but you had the statements of debrief. Did that cover both the April affidavit and the September affidavit?

The Hon. ADAM SEARLE: He did not have the affidavits. You mean the warrants.

The Hon. LYNDA VOLTZ: No, he did not have the affidavits.

Mr GALLETTA: We had the warrants.

The Hon. LYNDA VOLTZ: But you did not have the affidavits.

Mr GALLETTA: No, that is correct. We had the statements from M5.

The Hon. LYNDA VOLTZ: The interviews you had, the seven statements from M5, did they cover the April affidavit period and the September period? The question is: Did you have all the information, given he went back to 1998?

Mr GALLETTA: From memory—and I have not seen both of those documents for quite a long time—the interviews outlined a history of his corruption and the people he met, and the schedule of debriefs were a précis of that, so to speak. I cannot recall. That would have all been previous to 2000 because he was interviewed in late 1999.

The Hon. LYNDA VOLTZ: That is right. From 1998 on he was working for them.

Mr GALLETTA: I cannot tell you. They obviously would not have, because the dates would not have covered the warrant.

The Hon. LYNDA VOLTZ: I am trying to ascertain that the information you had in lieu of the affidavits, it possibly would not have been the whole breadth of the information that SCIA had access to.

Mr GALLETTA: Correct, and that is intimated in the report.

The Hon. LYNDA VOLTZ: That is quite clear. I think the big problem for Emblems was that it did not get access to the information.

Mr GALLETTA: Correct.

The Hon. LYNDA VOLTZ: Have you seen the affidavits subsequently to Emblems?

Mr GALLETTA: I have. It was handed to me from another detective. On 20 August 2012 an envelope was received by _____ who was on Emblems. He rang me straight away because I had been the face, the officer in charge of Emblems since it has happened, for the last 15 years. So it was given to me. I immediately took it back and put it on our e@gle.i system. I rang the commander of professional standards. I then went in and saw deputy commissioner Hudson and provided him all of the documents.

The Hon. NIALL BLAIR: What were those documents?

Mr GALLETTA: The affidavit.

The Hon. LYNDA VOLTZ: Which affidavit?

Mr GALLETTA: To be honest, I only had a quick—

The Hon. LYNDA VOLTZ: Only September?

Mr GALLETTA: I could not tell you because I only had a quick flick through because this is at the height of when it was all in the press and I was concerned about a lot of things. At this stage it was being alleged that I was leaking information. I wanted control of what was happening so I just got it together and transported it in. Even though I was the officer in charge, it was not my responsibility to do anything at that stage. I just handed it up the chain of command.

The Hon. LYNDA VOLTZ: I have gone through the September affidavit and I have married up the names of the people who are mentioned in the September affidavit. I have written out a list of those people and I had a list of about 80 people who were mentioned.

Mr GALLETTA: Who are in the affidavit or on the warrant?

The Hon. LYNDA VOLTZ: Who are in the affidavit. Not all of them end up on the warrant but a lot of them do. You may or may not be able to answer how this works. I then had a list of names that did not appear in the affidavits, based on the lists I have made out. I went back and checked the affidavit. At point 11 in the affidavit the person taking it out states, "Previous warrants have been sought or granted under part 4 of the Act in connection with the offences. Every such warrant has been granted. Particulars of all previous warrants are set out in the document amended hereto marked 'A'".

So that is to the affidavit that went before for the warrant. When I start looking at the names that were not in the affidavits, they start appearing in those lists of warrants that have previously been issued. When you go back to look at what Cath Burn said, she said they are not mentioned in September but they are mentioned in the April affidavits, which cover from April to July of that period.

Mr GALLETTA: Yes.

The Hon. LYNDA VOLTZ: I have asked a couple of people about the issuing of warrants but I am not clear about it. I need to understand it. When you want to do a rollover warrant is it good enough to put what this person has done at number 11—that previous warrants have been sought and granted—and include that as an annexure? Does that capture the previous affidavits and their evidence or should they have provided that information because I suspect that—going on what I can see from Cath Burns—if you are not in the September affidavit you are either in the April affidavit or as an SOD or whatever? Would that be normal procedure to do it that way for a warrant?

Mr GALLETTA: No.

The Hon. LYNDA VOLTZ: Or would they normally have to provide the affidavit for the previous warrants?

Mr GALLETTA: You would provide new information on that particular person if they are going to be nominated on a warrant.

The Hon. LYNDA VOLTZ: So why would they attach the previous warrants that had been sought to the September affidavits?

Mr GALLETTA: I cannot answer that question. As I said, I was the commander of the Metropolitan Robbery Unit. We took out numerous telephone intercepts and listening device warrants.

The Hon. LYNDA VOLTZ: This is a listening device warrant. I understand telephone intercepts have a different onus because it is Commonwealth.

Mr GALLETTA: No, but the same process applies. If you are going to rollover a warrant you must have new information on a particular person who is going to be nominated. That is quite clear in the Act.

Mr DAVID SHOEBRIDGE: There is no different test on a rollover warrant to the original warrant?

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: You need to establish in the evidence before that judge proper basis to have a listening device warrant named against each of those individuals?

Mr GALLETTA: Correct. Because you have just had 21 days to identify whether that person has been acting in accordance with the application of your warrant in relation to the offences that you are stipulating they have committed.

Mr DAVID SHOEBRIDGE: The term "rollover warrant" is a police term, is it not? It is not a legal term?

Mr GALLETTA: No.

The Hon. LYNDA VOLTZ: Sorry, can I finish my questions before we get this? You have got one list of names on the April warrants?

Mr GALLETTA: Yes.

The Hon. LYNDA VOLTZ: You have got an identical list of names bar one name that is added at the end on the September warrant?

Mr GALLETTA: Yes.

The Hon. LYNDA VOLTZ: You still need to provide new information on everybody who goes onto that warrant?

Mr GALLETTA: Correct.

The Hon. LYNDA VOLTZ: Thank you. That was the question I needed to ask.

The Hon. ADAM SEARLE: Just flowing on from that, if you are going to do a listening device warrant every person whose name is listed on the warrant and presumably the supporting evidence, the affidavit, is it reasonable to assume they must all be alleged suspects of wrongdoing—

Mr GALLETTA: They have to take on—

The Hon. ADAM SEARLE: —or is it simply that you include everybody that your target may come into contact with?

Mr GALLETTA: Not at all. Those people who you nominate on the warrant under the Act have to meet a certain criteria of offences.

The Hon. ADAM SEARLE: What are the criteria? It's in the Act?

Mr GALLETTA: Yes. You know, serious or it comes down—there is a blanket one of corruption or public mismanagement.

The Hon. NIALL BLAIR: Just to clarify. If Adam and I share an office and you want to take a warrant out on Adam—

The Hon. ADAM SEARLE: Because I am an alleged suspect.

The Hon. NIALL BLAIR: —because he is a suspect, even though we share an office and you know that I will be—

The Hon. ADAM SEARLE: Recorded.

The Hon. NIALL BLAIR: —recorded, you do not put my name on the warrant?

Mr GALLETTA: If it is corroborated that you could be there—

The Hon. NIALL BLAIR: Yes, keep going.

Mr GALLETTA: —we would nominate that you are likely to be there. But that would also be a third party independent warrant because it is going to capture your conversation.

The Hon. ADAM SEARLE: Would that be on the same warrant or a different warrant?

Mr GALLETTA: It is a different type of warrant.

The Hon. ADAM SEARLE: Just to be very clear—

Mr GALLETTA: No, that is right.

The Hon. ADAM SEARLE: So when we look at the warrants that we are talking about in this inquiry, the two warrants and presumably the two affidavits, the implication is that everybody listed is a suspect of alleged wrongdoing?

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: We have material and reasons advanced, for example, I think by Cath Burn in documents, that say, "No. That is not right. We listed everybody because some of them are targets and some of them are just people who might be recorded incidentally as we are intercepting the targets."

Mr DAVID SHOEBRIDGE: That was the commissioner's explanation.

The Hon. ADAM SEARLE: It was the commissioner's explanation but it was also an explanation given in writing by Cath Burn. Is that correct or wrong?

Mr GALLETTA: It is wrong because, one, it is not in the spirit of the legislation and if you refer to the paragraph here I have got by Justice O'Keefe, it talks about, you know, you need to be a target and that is what Bradley says. Bradley says at the meeting on 9 September with Temby that everyone on the warrant was a target.

The Hon. ADAM SEARLE: So anybody who might have come into contact with a target whom you might incidentally also record you might include them on a separate kind of warrant application?

Mr GALLETTA: It would be a different type of warrant, yes.

The Hon. ADAM SEARLE: I want to show you some documents and ask you to identify them. They are transcripts of interviews. They are not dated but I think one of them is an interview between yourself and Cath Burn on 2 December 2000 and the other is an interview between yourself and Cath Burn dated 30 June 2003.

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: Do those documents—I am not going to hold you to every word—seem familiar to you?

Mr GALLETTA: Yes, they are.

The Hon. ADAM SEARLE: Can you tell us how you came to conduct the two interviews or be involved in the two interviews?

The Hon. NIALL BLAIR: Just for my indulgence, can you document numbers?

The Hon. ADAM SEARLE: They are attachments F and G to submission 18.

Mr GALLETTA: The first one pertains to Strike Force Tumen. You will see on the front page the allegations that we were looking at there. The second one is obviously Emblems, which is by me and Mr Dobson. That was conducted probably in the infancy of Emblems.

The Hon. ADAM SEARLE: Why did you interview Ms Burn?

Mr GALLETTA: Well in terms of Tumen because of the command position she was holding at the time at the Special Crime Unit. Obviously the issues that arose would be things that she would be aware of or at least have some sort of knowledge of in terms of the inappropriate targeting and integrity testing, you know, the management structure, the environment that existed at the Special Crime Unit at that stage. In Emblems it was basically because we wanted to get a structure and a clear understanding, which probably was not iterated properly in Tumen, of how Mascot was conducted. Who was part of the decision-making? What the structure was. Who reported to whom? Some basic questions. We did not specifically go into the allegations; it was more about getting an understanding of how we could promulgate the investigation.

The Hon. ADAM SEARLE: Could you describe the structure?

Mr GALLETTA: At the time?

The Hon. ADAM SEARLE: At the time—

Mr DAVID SHOEBRIDGE: —of Mascot.

Mr GALLETTA: I will preface it by saying there was an MOU between PIC, Crime Commission and the Police Service, which they all signed. I have personally seen that MOU and it is on our e@gle.i investigation. As Burn states in here PIC, which was Mr Sage at the time, Crime Commissioner Bradley, she says Brammer and Dolan were part of the decision-making process. The structure was, they worked out of the Crime Commission office—they had a reference there—and they supplied all the resources in terms of telephone intercepts and things like that.

Mr DAVID SHOEBRIDGE: And some analysts?

Mr GALLETTA: Yes, correct.

Mr DAVID SHOEBRIDGE: But it is headed up by police? Is that right?

Mr GALLETTA: I do not think there was an organisational structure as such. It would have been a flat structure.

The Hon. ADAM SEARLE: They were all just in the room together?

Mr GALLETTA: Correct, and all part of the decision-making process.

The Hon. ADAM SEARLE: What was Cath Burn's role in that Mascot situation?

Mr GALLETTA: My understanding was that she was an inspector at the time so she had the responsibility of allocating the investigation of the complaints from M5.

Mr DAVID SHOEBRIDGE: She says in the second interview, at the top of page four: "I was on the Mascot reference. I was the team leader on the Mascot reference. John Dolan was the commander of the unit. There was one other reference operating at the time." I think it was the Gynea reference. I think at a later point she describes how it changes slightly, that there were Crime Commission analysts—

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: —and then an influx of police as it became more resource intensive.

Mr GALLETTA: That is right, but she also says in one of the interviews that she was in charge of the tasking of the allegations made by M5 to be investigated.

The Hon. ADAM SEARLE: In terms of what then became the warrants and the affidavits and the decision to include the names on those documents, was Ms Burn one of the people who approved that course of action?

Mr GALLETTA: From memory, I do not know whether that was established or not. Based on the limited material we had and these two interviews—and I would have to go through these interviews to be honest—I cannot recall, but from my overall knowledge the position that she held—

The Hon. ADAM SEARLE: Team leader.

Mr GALLETTA: It was more than a team leader. I believe—she was an inspector; a team leader is a sergeant—she would have had knowledge because the warrants were being born as a result of those targets identified as a result of the allegations from M5.

The Hon. ADAM SEARLE: In relation to your investigation in Strike Force Tumen, Ms Burn was interviewed in that. Was she the subject of any adverse comment in that report?

Mr GALLETTA: No.

The Hon. ADAM SEARLE: So the imperfections that you identified in that strike force, she did not wear any of the blame for that?

Mr GALLETTA: No, from memory.

The Hon. ADAM SEARLE: Despite their role in SCIA?

Mr GALLETTA: That is right. And remember that the specific allegations or complaints of Tumen were vastly—well, not vastly different but were different and the only probable theme was some HR issues.

The Hon. NIALL BLAIR: Just for my information, are the transcripts in front of you drafts or the final transcripts? Do you correct those?

Mr GALLETTA: I certainly go through them, I read them and if there is a major difference I would sort of go back to the people who—

The Hon. NIALL BLAIR: So the one that starts with the time of 7.57 a.m.—

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: Would you have gone through that one and corrected the spelling of your name or is that something that is not—

Mr GALLETTA: In terms of what that is, from my perspective it is irrelevant. Like if there is a major issue where I believe she said it is white when in fact it is black, certainly I would go back and listen to the transcript again—sorry, listen to the tape or go back to the people who did the transcription, but I am not concerned by that.

The Hon. NIALL BLAIR: It just stands out that the spelling is obviously incorrect in that one but it is okay in the other one. I am just trying to work out whether we are looking at—

Mr GALLETTA: No, that is just obviously me talking sometimes and people interpreting me and the quality of the interpreter.

The Hon. ADAM SEARLE: Just getting back to the interview that you conducted with Ms Burn in relation to Emblems, I think you discussed with her the explanation given by Commissioner Ryan on *60 Minutes*?

Mr GALLETTA: That is right.

The Hon. ADAM SEARLE: And his explanation that he thought that all these names were on the warrant because they were all going to be at the same social function?

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: And she told you that she did not know why he gave that explanation? Do you recall that?

Mr GALLETTA: That is correct.

The Hon. ADAM SEARLE: You asked her whether that was a true statement of the reason why that came about and she said that it was not true.

Mr GALLETTA: That is right. She said there was no such function.

The Hon. ADAM SEARLE: I now show you exhibit E. It is a briefing note by Ms Burn of two pages and then there is the highly protected list of names and allegations, which I think is referred to in the statement of debrief.

Mr GALLETTA: That would not be the actual original statement of debrief.

The Hon. ADAM SEARLE: No, this is just a copy.

The Hon. LYNDA VOLTZ: No, this is her memorandum of understanding, not the SOD.

The Hon. ADAM SEARLE: This says SOD.

Mr GALLETTA: No, that is not—

The Hon. ADAM SEARLE: Perhaps you can have a look at it and tell us what the document is.

Mr GALLETTA: The schedule of debrief is volumes.

The Hon. LYNDA VOLTZ: Yes.

The Hon. ADAM SEARLE: Well this is an excerpt then?

Mr GALLETTA: Yes.

The Hon. LYNDA VOLTZ: She is referring to things in the SOD I think.

The Hon. ADAM SEARLE: So the first two pages are a briefing note, apparently authored by Ms Burn, and in the second paragraph at the top of the second page she gives the explanation about the social function. That is inconsistent with what she said to you in the record of interview, is it not?

Mr GALLETTA: Correct, correct.

The Hon. ADAM SEARLE: Had you seen that document before—

Mr GALLETTA: No.

The Hon. ADAM SEARLE: —the briefing note by her?

Mr GALLETTA: No. I know—when I earlier alluded to receiving some documents, I recall that was one of them, but—

The Hon. ADAM SEARLE: At the time you interviewed her—

Mr GALLETTA: I was not in possession of that, no.

The Hon. ADAM SEARLE: Okay.

The Hon. NIALL BLAIR: Can I ask if you recall that the document that you saw, which had that information, had a covering page on who that document was addressed to?

Mr DAVID SHOEBRIDGE: He said he did not see it.

The Hon. NIALL BLAIR: No, he said he had seen it. He said he recalls in that set of documents—

Mr GALLETTA: I recall seeing, from memory, just a two-page—I cannot recall seeing this annexure. I recall seeing a two-page document from Burn.

The Hon. NIALL BLAIR: Obviously, this is a document that is signed by Acting Commander Burn.

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: However, there is no information as to who it is addressed to or who it was prepared for.

Mr GALLETTA: Yes, yes. No, look, I cannot answer that question.

The Hon. NIALL BLAIR: You cannot recall a covering page or who it was—

Mr GALLETTA: No, I would not be able—I know where you are going with it, but I cannot answer that question, to cut it short, yes.

Mr DAVID SHOEBRIDGE: Mr Galletta, the attached list, which is also marked "highly protected", have you seen that before?

The Hon. ADAM SEARLE: How would you describe the document?

Mr DAVID SHOEBRIDGE: First of all, have you seen it before?

Mr GALLETTA: Not that I recall, no.

Mr DAVID SHOEBRIDGE: Then, to get to Mr Searle's question, how would you describe that?

Mr GALLETTA: I would say that is a précis of a précis of the schedule of debrief.

The Hon. ADAM SEARLE: Okay.

Mr DAVID SHOEBRIDGE: Yes.

Mr GALLETTA: It is very, very brief.

The Hon. ADAM SEARLE: So it is a derivative of the statement of debrief.

Mr GALLETTA: Yes. That is the word, yes.

Mr DAVID SHOEBRIDGE: Can I ask you to go to page 8 of it. Do you see that number at the top?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: If you go to the third-last name, it is . Do you see that?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: Do you see it has next to it, or under it, "King send-off list"?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: If you go to the next one, " —King send-off list"?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: The next one is "King send-off list". Turn over the page and you will just see that name after name has "King send-off list" attached to it—

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: —for page after page, including in relation, if you go to page 10, third from the bottom, Nick Kaldas. Do you see that? "Naguib Kaldas"?

Mr GALLETTA: Yes, yes.

Mr DAVID SHOEBRIDGE: Then on the last page, fourth from the bottom, "Steve Barrett"?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: The "King send-off"—what do you understand that to mean?

Mr GALLETTA: I will stand corrected, but I knew we knew it was a send-off and we knew it was in relation to someone from the north crime squad, but I am pretty confident that it was never identified as being Jim King.

The Hon. ADAM SEARLE: Okay, but leaving aside—

Mr DAVID SHOEBRIDGE: Do you know what the "King send-off" related to? Was there ever an explanation given to you about it?

Mr GALLETTA: No, no. All I understood was it was a send-off.

Mr DAVID SHOEBRIDGE: Okay.

Mr GALLETTA: We tried to make inquiries and the only information we had to us—and again it would be part of our investigation management system—

The Hon. ADAM SEARLE: But clearly that reference to a send-off—

Mr GALLETTA: Correct—that is right, yes.

The Hon. ADAM SEARLE: —for whomever, that is consistent with what Ms Burn put in that covering brief.

Mr GALLETTA: Yes, that is right.

The Hon. ADAM SEARLE: It is consistent also with what explanation former Commissioner Ryan gave on television.

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: That there was a function, an event, at which all these people were to be present.

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: How would you describe or how would you characterise, Ms Burn's answer to you in the interview when you put the issue about the commissioner's *60 Minutes* interview to her?

Mr GALLETTA: It is hard to answer why she said that other than—

Mr DAVID SHOEBRIDGE: I am not asking you that. I am just asking you for a substantive characterisation of that answer, or those answers.

Mr GALLETTA: An abrogation of responsibility.

Mr DAVID SHOEBRIDGE: Truthful?

Mr GALLETTA: There is nothing else in that second interview of her that would suggest anything else other than that what she told us was the truth.

Mr DAVID SHOEBRIDGE: She thought it was the truth, do you think?

Mr GALLETTA: I would believe so.

Mr DAVID SHOEBRIDGE: But yet it is directly contrary—

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: —to what it appears she put in a memorandum as it turns out on the very same day that the commissioner was interviewed by *60 Minutes*.

Mr GALLETTA: She also says in that second interview that she does not recall who provided the briefing.

The Hon. ADAM SEARLE: That is right.

The Hon. NIALL BLAIR: But we do not know who this went to.

The Hon. ADAM SEARLE: No, that is true. We can ask the witness.

CHAIR: But there is no question she is the author of it.

The Hon. NIALL BLAIR: You might be able to help me with the other issue with this by your knowledge of the way that the computer system works, particularly version control. If you look at the bottom of the second page—

The Hon. ADAM SEARLE: Of her memo?

The Hon. NIALL BLAIR: —of her memo, or this memo signed by Cath Burn—

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: —it is dated 13 April 2002 under her signature.

Mr GALLETTA: I know. It has got a 15/4.

The Hon. NIALL BLAIR: But the watermark or the footnote down the bottom on the right-hand side says "15/4/2002".

Mr GALLETTA: That is just—that is a macro part of it.

The Hon. NIALL BLAIR: Okay. Is that the date that this document would have been printed, do you know, because what we have got is—

Mr GALLETTA: No, that is the day it was saved.

The Hon. NIALL BLAIR: The date it was saved.

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: This particular version.

Mr GALLETTA: Because, do you see over on the left hand where it says "POC"?

The Hon. NIALL BLAIR: That is the document identification number?

Mr GALLETTA: Yes. That would have been when it was saved.

The Hon. NATASHA MACLAREN-JONES: Would it be normal practice to sign a document and then—

Mr DAVID SHOEBRIDGE: Is it a scanned hard copy? Is that the question?

The Hon. NATASHA MACLAREN-JONES: Yes, either that or is it—

Mr DAVID SHOEBRIDGE: Would they scan the hard copy the next day? Is that how it happens?

The Hon. NATASHA MACLAREN-JONES: Or is it possible that the date of the 13th could have been altered and then saved on the 15th?

Mr GALLETTA: It could have been done retrospectively but I cannot comment on that because I did not make the document.

Mr DAVID SHOEBRIDGE: But there would be nothing inherently unusual in signing a memorandum on one day and then scanning it into e@gle.i the following day.

Mr GALLETTA: Correct. That would be correct. That is right.

Mr DAVID SHOEBRIDGE: Okay.

Mr GALLETTA: I do not see—and that is another thing: two parts to this answer. We identified a lack of quality control from Sibitu, Tumen and Emblems in terms of their investigation management on the material we got. We did not get any material from the investigation management system to be able to answer questions such as that, or to see how their quality control system worked, or what. For example, and I am probably patting myself on the back here, but our Strike Force Emblems e@gle.i investigation was thorough to the point where Mr Barbour and senior counsel assisting said it was the best record-keeping of any investigation they had ever seen.

The Hon. ADAM SEARLE: Good one.

Mr DAVID SHOEBRIDGE: Could I just ask—

Mr GALLETTA: So that, if you went to our e@gle.i system and I said there was a document on that date, you will see—it is all auditable—on the fingerprints of the program all the dates and that is when it has been entered, altered, printed—all that sort of stuff.

The Hon. NIALL BLAIR: What we have is a series of dates: 13 April is the *Sydney Morning Herald* article. This document is signed, apparently, on 13 April. There is a recorded *60 Minutes* interview on 13 April that goes to air on 14 April, and now we have another date, 15 April, down here. We are just trying to map out in our minds—because we do not know where this went, we do not know who it went to and I am sure we will get to ask the name on the bottom of this who prepared it and where it went to—and marry up some of the dates.

Mr GALLETTA: Yes. I understand. Other than—yes, I cannot really answer that.

The Hon. ADAM SEARLE: But, sir, clearly in the briefing note that bears her name, there is an explanation that is directly inconsistent with what she told you in the record of interview. That is the case.

Mr GALLETTA: That is correct.

The Hon. ADAM SEARLE: We do not know why there is that inconsistency. You do not know.

Mr GALLETTA: No, and the obvious answer is that if we had obtained all the information and we had received this, assessed it and analysed it against the interview, we would have gone back to her.

The Hon. LYNDA VOLTZ: Mark, would it be fair to say, though, that that warrant from September—was that warrant from September about the function?

Mr GALLETTA: I cannot answer because I did not get the material to answer that question.

The Hon. ADAM SEARLE: At the time you did the investigation, you were not given that material?

The Hon. LYNDA VOLTZ: No, no, but what—

Mr GALLETTA: From interviewing the 35 people—and it is set out in the investigation report—a lot of people, one, did not know M5; a lot of people, two, were not going to any function or did not know of any function.

The Hon. LYNDA VOLTZ: You have 114 people on the September warrant, which is the one that Peter Ryan is being questioned about.

Mr GALLETTA: Yes.

The Hon. LYNDA VOLTZ: Was that warrant about members of the police force attending the function?

Mr GALLETTA: I do not know because we did not get all the material to identify that—

The Hon. LYNDA VOLTZ: Right.

Mr GALLETTA: —other than what is already in the investigation report.

The Hon. LYNDA VOLTZ: That is right. Cath Burn has put forward, or there is an affidavit attached to that, which we have now seen. I accept that you possibly have not read it. That affidavit has at least 68 people who have been identified at various stages by M5 and by independent things as being involved in corrupt behaviour and a whole range of very nasty things. Would it be fair for Cath Burn to think in her mind that that warrant did not have anything to do with the function—it had to do with a whole range of things—when you interviewed her?

Mr GALLETTA: You cannot have your cake and eat it too.

The Hon. LYNDA VOLTZ: What do you mean by "You cannot have your cake and eat it too"? Is there anyone—

Mr GALLETTA: It is that, as I have said, it is not in the spirit of the legislation.

The Hon. LYNDA VOLTZ: All right. Let us not have our cake.

Mr GALLETTA: Do you want me to answer the question?

The Hon. LYNDA VOLTZ: Let us go through Cath Burn's memorandum of understanding. Is there anyone who has identified—

The Hon. NIALL BLAIR: Point of order.

The Hon. LYNDA VOLTZ: No, let me finish the question. Is there anyone identified on that statement—

The Hon. NIALL BLAIR: Which one?

The Hon. LYNDA VOLTZ: Cath Burn's statement.

The Hon. NIALL BLAIR: Which question?

The Hon. LYNDA VOLTZ: Just let me finish it.

CHAIR: Order!

The Hon. NIALL BLAIR: Give the witness the opportunity to answer—

The Hon. LYNDA VOLTZ: Just let me ask—

The Hon. NIALL BLAIR: —or withdraw the first question because he is trying to start an answer.

The Hon. LYNDA VOLTZ: Okay. I will withdraw that. Is there anyone in Cath Burn's memorandum of understanding who is identified as only being on what you have just been through—the list of names with Mr David Shoebridge—who is identified only because they attended the King function?

Mr GALLETTA: Do you want to repeat the question?

CHAIR: I do not think the witness can answer who was at the King function because he does not know anything about the King function.

The Hon. LYNDA VOLTZ: You just went through a list of people's names.

Mr GALLETTA: I have looked at it. I have not analysed it.

The Hon. LYNDA VOLTZ: Yes.

Mr GALLETTA: There is a difference.

The Hon. LYNDA VOLTZ: Mr David Shoebridge has asked you to look at that in terms of their name being next to the King function.

Mr GALLETTA: Yes.

The Hon. LYNDA VOLTZ: Did any of those names you looked at only have attendance at the King function as the reason for being on the memorandum of understanding?

Mr GALLETTA: Give me a moment to have a look at it.

Mr DAVID SHOEBRIDGE: I object to that because I think the document speaks for itself.

The Hon. ADAM SEARLE: And he is not the author of the document.

Mr DAVID SHOEBRIDGE: And he is not the author of the document. This witness cannot add value.

The Hon. LYNDA VOLTZ: I know you object, and to what I assume to be a point of order: Mr Galletta interviewed Cath Burn in regards to a whole range of things. At one stage he asked her a question wherein he states the warrant related to a function. She says, "Okay", that all persons would be attending, "Uh-huh". "Have you any comment to make about that statement that he made?" "I have no idea why he said it. I'd say he wasn't briefed."

The Hon. ADAM SEARLE: Commissioner Ryan.

The Hon. LYNDA VOLTZ: You are therefore pulling in a question. He was asked about the warrant and he stated all persons would be attending. Clearly, in her memorandum of understanding that is not what she is saying, and she is saying, "I have no idea why he said that. I'd say he wasn't briefed."

The Hon. ADAM SEARLE: Yes, but it is on page two of her memo.

CHAIR: And the question is?

The Hon. LYNDA VOLTZ: My question goes back to the original point when Mr Galletta said to me that you cannot have your cake and eat it too. She cannot say that it was not about them attending the function. But the question I was putting to him was that the warrant was about more than people just attending the King function.

The Hon. ADAM SEARLE: The point is that he never saw the warrant.

The Hon. LYNDA VOLTZ: I understand that.

The Hon. ADAM SEARLE: He said that in his report. He cannot answer that question.

CHAIR: He cannot answer that question.

The Hon. ADAM SEARLE: He cannot answer that question.

CHAIR: The question is out of order.

The Hon. ADAM SEARLE: In relation to your Strike Force Emblems report, you ultimately did not get the affidavits.

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: You did not get the warrants.

The Hon. LYNDA VOLTZ: They got the warrants.

Mr GALLETTA: Yes, we got a copy of 95 and 226.

The Hon. ADAM SEARLE: But you did not get the supporting evidence.

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: You were not able to test it. The conclusions I think you drew were that it appeared from the little information you had, from speaking to the 35 persons, that possibly there was illegality involved in the affidavits—

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: —and in the obtaining of the warrants.

Mr GALLETTA: Inappropriate use of M5, yes.

The Hon. ADAM SEARLE: But, at the very least, there was maladministration in the internal processes of SCIA.

Mr GALLETTA: Yes, and we have made recommendations—how we reached that—clear in our report, yes.

The Hon. ADAM SEARLE: You say that the report went to the then Commissioner Moroney?

Mr GALLETTA: Mr Dobson was oversighting us. I signed off. He signed off. It went to Mr Moroney.

The Hon. ADAM SEARLE: When Mr Dobson signed off, that meant he agreed with it.

Mr GALLETTA: Yes. It went to the executive complaints management team. Are you aware of what that is?

The Hon. ADAM SEARLE: No. Tell me what that is.

Mr GALLETTA: Each police station has a team made up of senior officers who investigate internal complaints that come to that command to investigate and then a police station. This is the hierarchy for matters of a nature like this. It becomes a committee like this that looks at the direction, the people who have been interviewed and all that sort of stuff.

The Hon. ADAM SEARLE: Was Andrew Scipione on that body?

Mr GALLETTA: No.

The Hon. ADAM SEARLE: Okay. Who was on that body?

Mr GALLETTA: Deputy Commissioner Madden, Assistant Commissioner Dobson, assistant commissioner whatever—there were different assistant commissioners at various times—but a professional standards manager, Brad Howell, was a common person all the time.

The Hon. ADAM SEARLE: Okay. Did that group accept that, or did they just note it, or did they just bin it, or did they just shelve it?

Mr GALLETTA: As I explained earlier, Mr Madden, as the chair of that committee, signed off on that on 15 April 2004.

The Hon. NIALL BLAIR: Do you mean that by signing page 42, is that accepting where it says that—

Mr GALLETTA: Technically speaking, that should be signed by him but, like all the correspondence you receive, sometimes there is a covering page with, say, an executive summary of this, or a précis of it, that would have been done by the professional standards manager. He might have just signed that. I can tell you what the file number is.

The Hon. NIALL BLAIR: I guess the question should be somewhere there would be a copy of this report—

Mr GALLETTA: With everyone's signature on it.

The Hon. NIALL BLAIR: —that should have your signature?

Mr GALLETTA: Dobson's.

The Hon. NIALL BLAIR: Dobson's should have two signatures?

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: Howell's should have one signature?

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: And Madden should have one signature?

Mr GALLETTA: Correct.

The Hon. NIALL BLAIR: That would then provide the certification of investigation quality review?

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: The certification of the professional standards manager?

Mr GALLETTA: Yes.

The Hon. NIALL BLAIR: And the certification of the commander?

Mr GALLETTA: As I said in my opening address, the professional standards manager, Howell, who is on there, states, "I have conducted a comprehensive review of the file and agree with the findings and recommendation." That was on 14 April. Mr Madden agrees, and signs and dates the report 15 April 2004.

Mr DAVID SHOEBRIDGE: It looks like the Ombudsman has a signed copy of it because in his list of documents he says there is both an undated and unsigned copy of Emblems—

Mr GALLETTA: Well, I am unaware of that.

Mr DAVID SHOEBRIDGE: —final report, dated 22 March 2004.

The Hon. ADAM SEARLE: The Emblems report made a number of recommendations.

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: To your knowledge, were any of them implemented?

Mr GALLETTA: No.

The Hon. ADAM SEARLE: Do you know why?

Mr GALLETTA: I have an opinion, but that is not to—

The Hon. ADAM SEARLE: You were never given an official explanation?

Mr GALLETTA: No. I can tell you, going back to Sibutu, we made—to answer part of your question—recommendations in terms of quality control checking of telephone interception listening devices. There have been systems put in place as a result of that.

The Hon. ADAM SEARLE: Your findings about Emblems were pretty damning.

Mr GALLETTA: Of course it was.

The Hon. ADAM SEARLE: Either legality on the part of the police and how they obtained the warrant or improper or poor management, very poor management.

Mr GALLETTA: Correct, yes, and you will see there is a document, which is titled "Issue 4". We were not about being damning. We were about further education and improving the organisation, so we devised another document to show best practice.

The Hon. ADAM SEARLE: What you also found was that there were a number of names on the warrant that simply should not have been there.

Mr GALLETTA: Based on the limited material that we had.

The Hon. ADAM SEARLE: Sure, I understand that. All of your findings are based on the limited material.

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: The limited findings you were able to make were—I will put it this way. When I read it, I was shocked and I was astounded that the organisation did not then move to address those issues because that seems to be what happened. Is that a fair reading of your document?

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: I want to show the witness a last document, which is a letter apparently authored by him to Mr Remfrey of the Police Association. It is attachment K. Do you recognise that document? It appears to be a letter from you to Mr Remfrey outlining how Emblems came about. It gives an overview of the findings of Emblems and it ends with a list of recommendations that you made in the Emblems report—

Mr GALLETTA: Yes.

The Hon. ADAM SEARLE: —that are currently with the Commissioner of Police. At the time, that was Ken Moroney, was it? Mr Scipione only became Commissioner in 2007, did he not?

Mr GALLETTA: It would have been. Yes, it would have been.

The Hon. ADAM SEARLE: Okay. That is your document. You authored that document, as best you can recall?

Mr GALLETTA: Correct, yes.

The Hon. ADAM SEARLE: My last question is: The Ombudsman's investigation was given to it by Parliament. Were you questioned by the Ombudsman?

Mr GALLETTA: I have been interviewed five times.

The Hon. ADAM SEARLE: By the Ombudsman?

Mr GALLETTA: Four by his investigators and—sorry, one by the deputy, three by his investigators, comprehensively, for each of those first four over a day and then once last year by the Ombudsman. Plus they approached me and I went to them on four individual days to help them in the direction of the investigation by reading documents.

Mr DAVID SHOEBRIDGE: When was that? When did they invite you in to help them?

Mr GALLETTA: I think the first day would have been 17 June 2013—

CHAIR: It was 24 and 25 June 2013.

Mr GALLETTA: Yes, it was on that email.

CHAIR: And 11 July 2013.

The Hon. ADAM SEARLE: Were those questions of you by the Ombudsman personnel directed to the substance of the Emblems task force or was it focused more on the unauthorised release of the material, or both?

Mr GALLETTA: No, the four interviews were fair interviews. They were going through the substance of each of those investigations. Certainly there were some issues that came up about leaking documents, which I have an issue with.

The Hon. ADAM SEARLE: In what sense?

Mr GALLETTA: I will explain to you. You know the nature of what this is. When it all started to surface, I made three copies; one copy of each of the e@gle.i investigations of the strike forces for my safe keeping because I was concerned. On the system it becomes a hyperlink. I retained those documents in my safe the whole time and I did not leak any documents. I can vehemently say that. Someone has accessed it and leaked a document and says it was me. I have said—sorry, accessed e@gle.i and leaked a document and said it was me.

The Hon. ADAM SEARLE: So they used your access code, did they?

Mr GALLETTA: Good question, because I, on a number of occasions, said to the Ombudsman, "You need to get IT in and analyse"—when I was interviewed in August last year, the same thing came up again about the leaking of a document. I said, "You need to interrogate it." Whether they have or not, I do not know.

The Hon. NIALL BLAIR: To gain access to e@gle.i each time, you have to put in an access code?

Mr GALLETTA: You do, and there was only X amount of people that had access to those investigations.

Mr DAVID SHOEBRIDGE: A different code for a different investigation?

Mr GALLETTA: Correct, and the only people who would have had it—before it all finished I put a caveat on for the investigators in case—I wanted to protect them. So the only other people who had access were myself and the hierarchy.

Mr DAVID SHOEBRIDGE: You and people higher than you in the hierarchy?

Mr GALLETTA: Well, I am talking about the executive. They are the only people who have access and the people in the e@gle.i system itself.

The Hon. ADAM SEARLE: We have received some submissions that advance this proposition that these listening devices warrants included the names of a number of police improperly targeted by other police who were responsible for including their names in order to disadvantage their careers and to promote the careers

of the officers who included those people on the warrants. That is the allegation. You have heard that allegation, or something like it?

Mr GALLETTA: Yes, something like that.

The Hon. ADAM SEARLE: Do you have a view about the veracity of that proposition?

Mr GALLETTA: All I will say in relation to that is, as was identified in the report, there was clearly identifiable—and throughout the Tumen interviews, not so much Sibutu, there were issues of inappropriate targeting, integrity testing, the common knowledge that there was conflict between Mr Kaldas and John Dolan. Certainly it arose from some of the interviews that in Emblems there were conflicts with people and M5—from some of the people who are named on the warrant, personal conflicts, and I think that can all be summarised by M5's comments on his hurt-on-duty report that we received that he was settling old scores on behalf of his supervisors.

The Hon. ADAM SEARLE: He said he was being used as a tool to basically get square?

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: Mr Galletta, can I ask you about M5. He is also sometimes called "Sea"?

Mr GALLETTA: I think Sea is his Crime Commission reference.

Mr DAVID SHOEBRIDGE: Is what?

Mr GALLETTA: His Police Integrity Commission [PIC] reference.

Mr DAVID SHOEBRIDGE: Okay, but we will call him M5 for now.

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: How did M5 come to be at Mascot?

Mr GALLETTA: I have an opinion on how it all went down.

The Hon. ADAM SEARLE: Please tell us.

CHAIR: Tell us what you think.

Mr DAVID SHOEBRIDGE: Sorry, just quickly, Ms Burn, in her record of interview, says M5—

Mr GALLETTA: Approached—

Mr DAVID SHOEBRIDGE: —approached Standen because there was a previous relationship with Standen in the Crime Commission.

Mr GALLETTA: Yes, that is correct.

Mr DAVID SHOEBRIDGE: And then went from the Crime Commission back to the police, and M5 allegedly did that, on Burn's version, because M5 did not trust the police, or words to that effect?

Mr GALLETTA: Yes, that is correct.

Mr DAVID SHOEBRIDGE: What is your view?

Mr GALLETTA: I will stand corrected if there is information that negates it. My opinion is, and I have held this from day one, that M5 was in some trouble. He had been acting corruptly. He knew Standen. He saw who was at SCIA. He believed he could control it. He went there, wanted indemnity, so he gave up everybody. He continued to do what he did. They deployed him. He controlled all the deployments and it is highlighted in the Emblems report. There was no continuity of accepting exhibits from him. They would see him

the next day. Procedures are that if I am an informant wearing a listening device, as soon as the job is off—over—my handler comes to me and I hand it over, and there is the continuity of exhibits. This was not occurring for the next day. He was intoxicated when meeting other people who were being targeted and, in my opinion, he was controlling what was going on because his handlers were very—this is no disrespect to them; they were not detectives, they were investigators—sorry, they were just normal police, so they lacked experience. It goes back to some of the issues that we identified. They lacked experience and they lacked knowledge.

Mr DAVID SHOEBRIDGE: M5 goes to Standen, who is now in jail, is he not?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: M5 goes to Standen and Standen passes him back to the police, but only once the memorandum of understanding is in place, is that right?

Mr GALLETTA: Yes, that is about right.

Mr DAVID SHOEBRIDGE: M5 admitted he was corrupt.

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: He had a history of mental illness too, did he not?

Mr GALLETTA: That is right. He was on medication and spent some time in hospital.

The Hon. ADAM SEARLE: The Emblems report questions whether he was an appropriate vehicle, does it not?

Mr GALLETTA: That is right, and hence that other report that would suggest how you should be managing someone of that—

Mr DAVID SHOEBRIDGE: Can I ask you to put on record what you know about his mental illness and his state of mind at the time? There have been some suggestions that, indeed, some of the people associated with Mascot went and got him from a mental health facility and removed him from the mental health facility. Do you know anything about that?

Mr GALLETTA: I cannot answer that but I can say to you that it is evident from his hurt-on-duty file that we saw that he spent some time in hospital.

Mr DAVID SHOEBRIDGE: This is prior to him being—

Mr GALLETTA: Deployed.

Mr DAVID SHOEBRIDGE: —deployed?

Mr GALLETTA: You know, if he is on medication, notwithstanding any guidelines that exist, common sense would tell you that any evidence or things that he has done obviously puts people in danger, puts himself in danger, but how is evidence, one, going to be admissible and how is it going to be credible?

Mr DAVID SHOEBRIDGE: That is multiplied if he is on medication and also becoming intoxicated.

Mr GALLETTA: Correct.

The Hon. NATASHA MACLAREN-JONES: Are you aware of what medication or diagnosis he was—

Mr GALLETTA: Without seeing his document, I could not tell you that. We have—it is quite a voluminous file and that is uplifted on to—

The Hon. ADAM SEARLE: When he says he was used by his superintendent to get square or settle scores, who was his superintendent?

Mr GALLETTA: That was Dolan.

Mr DAVID SHOEBRIDGE: M5 has that extremely, you would say, questionable history, which would ring a whole lot of bells, you would think, for anyone who would be relying upon his evidence. When the affidavits are then being presented to the Supreme Court, it would be essential, would it not, for a judge to be able to assess the veracity or otherwise of the allegations from M5—if you were going to put a fair case forward?

Mr GALLETTA: Well, first of all, I would be reluctant to put together an affidavit based on the information of someone who has a mental issue who is—

The Hon. ADAM SEARLE: It is not his evidence; he was just the vehicle for the listening device.

Mr GALLETTA: That is right. This is a question we could not answer, whether it was intelligence, what they were doing was an integrity test, whether it was intelligence gathering, whether they were wearing a listening device. That was one thing we raised. What was it?

The Hon. ADAM SEARLE: You do not know?

Mr GALLETTA: That is right.

Mr DAVID SHOEBRIDGE: You asked Ms Burn about whether or not exculpatory as well as inculpatory material was included in the affidavits. Do you remember that line of inquiry?

Mr GALLETTA: I do not, but I am happy to believe what you are saying.

Mr DAVID SHOEBRIDGE: Could you explain to the Committee what the obligation is when you are appearing in an ex parte hearing before just a Supreme Court judge? You have done this before. You have to put the material in that both supports and detracts from your case, do you not?

Mr GALLETTA: Yes. I can give you a good example of that. We identified certainly with Sibutu and it appears to be with Emblems as well that, for example, if they said, "Mr Galletta"—on my complaints history that I had a matter of stealing and a matter of assault but they were not sustained, so I was found not guilty for those, they would say that I had a history of corruption, so they would not put that exculpatory material in.

Mr DAVID SHOEBRIDGE: They were not substantiated?

Mr GALLETTA: Exactly. They would just say a "history", regardless of the findings. That is probably the perfect example.

Mr DAVID SHOEBRIDGE: You found that. Was that—

Mr GALLETTA: In Sibutu and in some cases in Emblems. That is identified in the report.

Mr DAVID SHOEBRIDGE: I refer you to the second record of interview with Ms Burn and page 35. Please read from question 138 on that page to the end of the answer on the top of the next page. Does that refresh your memory?

Mr GALLETTA: Yes.

Mr DAVID SHOEBRIDGE: Do you have any observations to make?

Mr GALLETTA: It is exactly what I just said.

Mr DAVID SHOEBRIDGE: On your review of it and confirmed in evidence from Ms Burn there was a failure to do their duty before the Supreme Court and putting inculpatory and exculpatory together?

Mr GALLETTA: Exactly. It is either exculpatory or inculpatory. It is one or the other.

Mr DAVID SHOEBRIDGE: Or it is irrelevant.

Mr GALLETTA: That is right; there is no grey area.

Mr DAVID SHOEBRIDGE: And that was one of your findings in Strike Force Emblems; was it not?

Mr GALLETTA: Yes, it is at page 30.

The Hon. LYNDA VOLTZ: I asked you about listening devices and whether people who may be captured should be recorded. You said you would use a different warrant. I know you probably do not have the answer and perhaps you can take the question on notice, but which warrant would they use if they were attending somewhere where they thought they would capture people?

Mr GALLETTA: First you have to establish that those persons were committing an offence that is identified under the Listening Devices Act.

The Hon. LYNDA VOLTZ: Yes.

Mr GALLETTA: Unless those people are going to be committing an offence you would not take out the warrant at all.

The Hon. LYNDA VOLTZ: Let us imagine in good faith that what she says in her memorandum of understanding is what she truly believed, and that is why people were on the warrant. The function has been raised, there would have been a lot of people there, and that is why there was a large number of names on the warrant. You said that you would not use that kind of warrant if that were the case. What type of warrant should they have used instead of a section 16 warrant under the Listening Devices Act?

Mr GALLETTA: The only one I can think of is a third-party telephone intercept warrant. It is not a listening device; you cannot capture it under the Listening Devices Act.

The Hon. ADAM SEARLE: What if you have a target and a warrant covering that target? You have a person with a listening device recording their interactions. How do you safeguard the incidental recording of other parties who are not suspected of committing an offence? Do you need a warrant to cover those recordings?

The Hon. LYNDA VOLTZ: When you know they will be there?

Mr GALLETTA: To answer that question in the context of this, you cannot put people's names on a warrant just because they will be there. They have to meet the criteria of the offences identified in the Listening Devices Act.

The Hon. NIALL BLAIR: If you have no suspicions about me whatsoever—

Mr GALLETTA: If you are captured, you are captured.

The Hon. NIALL BLAIR: But I will not appear on the warrant. It will be just because I happened to share an office?

Mr GALLETTA: No, you will not appear on a warrant.

The Hon. NIALL BLAIR: There is no need to put me on the warrant even though you know that you will be hearing some of my conversations?

Mr GALLETTA: That is right.

The Hon. NIALL BLAIR: But I am not suspected.

Mr GALLETTA: But we are not targeting you; we are targeting this particular person over here.

The Hon. ADAM SEARLE: To be very clear, only the targets suspected of criminal wrongdoing of a kind mentioned in the Listening Devices Act are put on the warrants and the affidavits.

Mr GALLETTA: Correct. Again that is supported in the Strike Force Emblems inquiry—if it is not in the spirit of the legislation and O'Keefe's judgement.

Mr DAVID SHOEBRIDGE: If they have a conversation with a third party who is not mentioned in the warrant, that is captured already in your warrant because you have the target.

Mr GALLETTA: That is right. If that person is not committing a criminal offence he has nothing to worry about. But you cannot have 114 names. As I said, some of those people were not named in the interviews so they should not have been on the warrant.

The Hon. LYNDA VOLTZ: So where the Act states in section 4(b), "where practicable, the name of any person whose private conversation may be recorded or listened to by the use of a listening device pursuant to the warrant", that refers only to the target and it does not mean any person?

Mr GALLETTA: My understanding is that it is taken as the person being targeted and who you have the evidence against.

The Hon. LYNDA VOLTZ: It was "where practicable ... any person ... who may be recorded".

Mr GALLETTA: My understanding throughout my service before I was medically discharged was that you had to have the information that that person met the criteria and class of action in the Listening Devices Act.

Mr DAVID SHOEBRIDGE: Have you ever seen a warrant with anything like 114 names on it?

Mr GALLETTA: Never.

Mr DAVID SHOEBRIDGE: Apart from Operation Mascot, what would be the most names you have seen on a listening device warrant?

Mr GALLETTA: Three or four. If I go back to armed robbery investigations, it would be three or four.

Mr DAVID SHOEBRIDGE: So we are talking about a quantum leap.

Mr GALLETTA: That is right. Other people may have experienced more in their investigative history, but the most I have seen captured in general policing and armed robbery investigations would be three or four.

Mr DAVID SHOEBRIDGE: It would be almost impossible, would it not, to fairly ask a judge to work out in one hearing whether 114 people should properly have their privacy invaded like that? It would be almost impossible.

Mr GALLETTA: It is impossible logistically. If you are targeting people and you need to task officers to look after one specific person, to control that person, to gather the evidence, to ensure quality control and to identify what is occurring, it would be impossible.

The Hon. LYNDA VOLTZ: Why would a judge who gets a 100-page document go ahead with it?

Mr GALLETTA: I cannot answer that question.

The Hon. NIAL BLAIR: Mr Searle was talking about access to the e@gle.i. You said that you felt you had a pretty fair hearing.

Mr GALLETTA: From the investigators?

The Hon. NIAL BLAIR: Yes.

Mr GALLETTA: Yes, certainly.

The Hon. NIALL BLAIR: The majority of the questioning was about your investigation.

Mr GALLETTA: Most definitely.

The Hon. NIALL BLAIR: Did it seem as though the Ombudsman was interested in getting to the bottom of what happened rather than—

Mr GALLETTA: In the last interview I had with him there was nothing about the investigation; it was all about the allegation of me leaking a document. There was the one with Deputy Commissioner Waugh. The first two were certainly all about the investigation. The third one—

The Hon. NIALL BLAIR: And they were—

Mr GALLETTA: The first one was a general overview of everything with Ms Waugh. The first one was about Strike Force Sibutu, the second one was about Strike Force Tumen and the third one was about Strike Force Emblems.

The Hon. NIALL BLAIR: What type of meetings were these?

Mr GALLETTA: They were section 18 interviews with the investigators and me sitting in an environment like this. The third one did focus on some leaking of documents.

The Hon. NIALL BLAIR: Who was that one with?

Mr GALLETTA: That was with _____ and _____. They were very good and very thorough.

The Hon. ADAM SEARLE: You had the hearing with the Ombudsman. What was his focus?

The Hon. NIALL BLAIR: I am getting to that. I am trying to distinguish the difference between the meetings.

Mr GALLETTA: That was a section 19 hearing with the Ombudsman. That was nothing to do with any of the investigations; it was primarily about my associations with people and the leaking of this particular document.

The Hon. ADAM SEARLE: So the Ombudsman was only or mainly interested in the leaking?

Mr GALLETTA: He did not ask one question about the investigation or Strike Force Emblems, or any of the questions you have raised.

CHAIR: Are you aware of a letter written by David Levine on 23 November 2012?

Mr GALLETTA: Yes. I will clarify that by saying "predominantly".

Mr DAVID SHOEBRIDGE: You are not saying there were not some elements of the substantive issues, but the overwhelming thrust of it was about the leaks. Is that a fair summary?

Mr GALLETTA: Yes, and associations.

CHAIR: Are you aware of a letter written to Mike Gallacher on 23 November by David Levine?

Mr GALLETTA: Yes.

CHAIR: In the fourth paragraph down he says words to the effect of "those involved in the preparation of Strike Force Emblems reports ... it is severely wanting in sound reasoning and logical exposition of investigations said to be undertaken ... its findings and recommendations on my reading of the accompanying internal police communications do not enjoy support or confidence among police commentators of high rank". Do you have any comment to make about that?

Mr GALLETTA: I think I alluded to that in my opening address. I reject it and I am completely offended by it. You read the report. I am a big boy and I am happy to know your thoughts.

The Hon. ADAM SEARLE: But your understanding is that the police executive accepted your report.

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: And Mr Levine did not have the benefit of talking to you about it?

Mr GALLETTA: No, he did not. We did not have the opportunity to address it, which obviously denies procedural fairness. But my understanding from the information I have is that on 20 September he had only just received a copy of the three disks I was talking about. I am aware of conversations that I had with people from the Professional Standards Command. How did he analyse 30 boxes of information and make his findings and recommendations in one month? It took us three years and it took the Ombudsman 2½ years.

Mr DAVID SHOEBRIDGE: This is dated 23 November, so he had the better part of two months.

Mr GALLETTA: Okay.

Mr DAVID SHOEBRIDGE: It is still an impossible task.

Mr GALLETTA: There were more than 20,000 pages on those three disks.

Mr DAVID SHOEBRIDGE: He came to that conclusion without the benefit of guidance from the people who were doing the investigation when he navigated his way through those documents.

Mr GALLETTA: That is right. I certainly understand that if you read the Strike Force Emblems report on its own, and not knowing the structure and how it was completed and the processes that it had to follow, you could come to some of those conclusions. However, that would not happen if we had had the opportunity to explain those structures. Strike Forces Tumen and Sibutu followed exactly the same processes and procedures. Mr Robberds and Greg Hall made complimentary remarks. As I said, they were completely opposite to what Levine said.

Mr DAVID SHOEBRIDGE: Of course, when the Minister for Police wrote to Justice Levine on 11 May he said that, "Since becoming Minister for Police, I have reviewed these recommendations and am of the view that they cannot be released in their current form." He went on to say that, "Personally I am not confident that these recommendations concluded ... secondly, I am conscious of the need to ensure that no one person is denied natural justice." Justice Levine had already been given the Minister for Police's conclusion before he even wrote his report.

Mr GALLETTA: Exactly.

Mr DAVID SHOEBRIDGE: Do you know who else Justice Levine spoke to?

Mr GALLETTA: I can speculate, but I have no proof.

Mr DAVID SHOEBRIDGE: Did you know that Justice Levine had signed off on these types of warrants?

Mr GALLETTA: Not until what has transpired over the past six months and what has been made public.

Mr DAVID SHOEBRIDGE: In terms of your report having been criticised by this man and his report, how do you feel about the potential concern that he could not have brought an unbiased mind to the matter if he had been signing off on these types of warrants? What is your view?

The Hon. NIALL BLAIR: We can do without the commentary. The honourable member can ask him those questions himself.

Mr GALLETTA: I can say that I am no longer in the NSW Police Force as a result of Strike Force Emblems and things that have transpired. It has contributed to me no longer being a police officer.

Mr DAVID SHOEBRIDGE: People have said that being on Strike Force Emblems and doing a diligent job was career limiting. What do you have to say about that?

Mr GALLETTA: It was career ending.

CHAIR: For you?

Mr GALLETTA: Correct.

Mr DAVID SHOEBRIDGE: Can you explain that?

Mr GALLETTA: I will not go into my personal issues. However, I am no longer in the Police Force. That should say it all.

Mr DAVID SHOEBRIDGE: Did you enjoy being a police officer?

Mr GALLETTA: I was in the force for 33 years; it was my life. I was the commander of the Metropolitan Robbery Unit investigating serious armed robberies for six years. To be honest, it was the best job I ever had.

Mr DAVID SHOEBRIDGE: If you do not mind me asking, how old are you?

Mr GALLETTA: I am 52.

Mr DAVID SHOEBRIDGE: If you had stayed in the force, how much longer would we have had the benefit of your service?

Mr GALLETTA: A long time.

CHAIR: Another 13 years.

Mr GALLETTA: I suffered cancer in 2007 and through 12 months of chemotherapy I missed two days at work, so that shows my dedication to the cops.

Mr DAVID SHOEBRIDGE: What about your colleagues on Strike Force Emblems?

Mr GALLETTA: Yes, there are still a couple remaining in the police force. Maybe they are a bit stronger than me, but they are suffering. We have all suffered. I have been carrying this since 2001
No feedback in relation to any of our investigations. Not being accepted onto leadership programs as a direct result. It was not the best career move.

CHAIR: It was career limiting and then career ending?

Mr GALLETTA: Correct.

The Hon. ADAM SEARLE: You feel that is directly attributable to the fact that you did the work you did on Emblems.

Mr GALLETTA: There were other factors throughout my police career that contributed to my condition but it was a contributing factor.

Mr DAVID SHOEBRIDGE: On behalf of myself I would like to thank you for the work you have done.

Mr GALLETTA: Thank you.

CHAIR: I echo that, Mr Galletta. I think you have done an excellent job. I am sorry that you have left the New South Wales Police.

Mr GALLETTA: Thank you. So am I. Just to clarify that in response to Gallacher's comments and what transpired right throughout the end, I have never been approached by any person in the hierarchy or the executive that has made any comment about the Emblems report to say there was an issue with it.

The Hon. ADAM SEARLE: Any issues with it were not raised with you?

Mr GALLETTA: No, no-one has ever approached me about it all.

The Hon. ADAM SEARLE: You could have responded, defended it or changed your position in response to it?

Mr GALLETTA: Or changed it. That is why we went to the Ombudsman, PIC and the police Minister's office: to get accountability and to be oversighted.

Mr DAVID SHOEBRIDGE: We are going to have a number of other witnesses. It may lead to some questions on notice or potentially recalling you. I think on Wednesday of next week we have some spare time. Would that be possible? We have not formed a view about it as a Committee.

Mr GALLETTA: Yes, I am happy to come back.

CHAIR: We will be issuing a transcript within a day or so. We would be pleased if you would review it because we would like to publish it or parts of it that you would be happy to allow us to publish.

Mr GALLETTA: Okay. Thank you.

Mr DAVID SHOEBRIDGE: It is ultimately our decision, Mr Galletta, but your views are obviously central to it.

Mr GALLETTA: Thank you.

(The witness withdrew)

(Luncheon adjournment)