



RESPONSE TO OPERATION PROSPECT REPORT

1. Introduction

- 1.1 On 20 December 2016 the Acting Ombudsman presented to both Houses of Parliament his Report on the investigation known as Operation Prospect, an investigation of allegations and complaints about the conduct of officers of the New South Wales Police Force ('NSWPF'), the New South Wales Crime Commission ('NSWCC') and the Police Integrity Commission ('PIC') when investigating criminal activities of police between 1999 and 2002 pursuant to the Mascot References. The Report was then made public and provided to the NSWCC.
- 1.2 The Report contains a total of 93 adverse findings and makes 38 recommendations, including making 19 written apologies to persons said to be affected by the misconduct identified.
- 1.3 The Prospect investigation has taken over 4 years and the Report occupies 882 pages. Notwithstanding the time and effort involved, the NSWCC considers that the Report carries limited weight. The procedures adopted in the publication of the Report have been flawed and many of the findings and recommendations are based upon errors of fact and/or law.
- 1.4 In all, 25 adverse findings were made against the NSWCC compared with 3 against the NSWPF, even though 49 adverse findings were made against police officers and only 13 findings against officers of the NSWCC. In relation to each matter for which adverse findings were made against police officers who were working on the Mascot task force, an adverse finding was made against the NSWCC for allowing that conduct to take place, but none was made against the NSWPF.
- 1.5 In that regard, the Report is fundamentally defective as it misconceives the operational and legal framework under which police carried out their investigations. Task force arrangements such as Mascot were, and still are, authorised and regulated by statute. Section 27A(2) of the *NSW Crime*

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Commission Act 1985 was specifically inserted into the Act to provide that the task force was under the direction and control of the Commissioner of Police. It was the intention of Parliament that police were **not** under the direction and control of the NSWCC. It is wrong to attribute blame to the NSWCC for the actions of police who were working under the direction of an Inspector, a Superintendent and an Assistant Commissioner of NSWPF on a daily basis, and find no fault on the part of the NSWPF.

- 1.6 The Report recommends that the NSWCC apologise to 15 persons for what is found to have been unreasonable conduct in the course of the Mascot investigation. The NSWCC is not intending to make such apologies. Firstly, the NSWCC has not had the opportunity to examine the evidence relating to the circumstances of the conduct for which it is said an apology should be made. Secondly, on nearly each occasion the conduct was perpetrated by police officers and it is not the NSWCC who should apologise for their actions. Thirdly, a number of the persons suggested to be requiring an apology were justifiably the subject of investigation in relation to allegations of serious criminal activity, and it would be nonsensical to apologise to them for suggested irregularities in the course of investigating them.
- 1.7 As the NSWCC has consistently pointed out, the processes applied during Operation Prospect lacked procedural fairness. The NSWCC did not have the opportunity to cross examine witnesses, peruse the totality of evidence given by witnesses, call witnesses or see the submissions of other parties. This was not merely a technical deficiency. It had the practical result that the NSWCC had no opportunity to question witnesses about factual circumstances which, as far as can be gleaned from the Report, were never canvassed but which had a significant bearing on the consistently adverse findings against the NSWCC.
- 1.8 A number of parties have made similar complaints and the NSWCC considered seeking an injunction to restrain the finalisation of the Report in conformity with the Premier's Memorandum regulating litigation between agencies, but received no Ministerial support. The former Deputy Commissioner, Nick Kaldas, made an unsuccessful last minute attempt to obtain an injunction to restrain the publication of the Report.
- 1.9 It is of concern that witnesses such as Mr Phillip Bradley, the Commissioner of the NSWCC at the time, were misled when attending for hearings at the Ombudsman by representations that they were not under investigation, but when the investigation was effectively complete, and after service of the first tranche of provisional findings, the Ombudsman belatedly met his statutory obligation under s 16 of the *Ombudsman Act 1974* to advise them that he had

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decided to make their conduct (and that of the Commission), the subject of an investigation under the Act. This obvious failure to meet statutory requirements reflects adversely on the credibility of the investigation.

- 1.10 The NSWCC considers that the findings and recommendations in the Report are technically invalid and of no legal effect. Despite objections, the Acting Ombudsman elected to make a special report to Parliament in accordance with the *Ombudsman Act*. However, his authority to make adverse findings and make recommendations is provided by s 26 of the Act which requires the report to be given to the Minister and to the head of the public authority whose conduct is the subject of the report. Section 25 of the Act provides that before publishing a report under s 26, the Ombudsman shall inform the responsible Minister of the proposal to publish a report and shall, on request by that Minister, consult the Minister. The deliberate action by the Acting Ombudsman to circumvent those requirements undermines the validity and also the credibility of the Report.
- 1.11 The NSWCC was periodically provided by the Ombudsman and the Acting Ombudsman with submissions of counsel assisting or provisional findings in relation to various segments in which issues had already been investigated, without any knowledge or involvement of the NSWCC. Despite repeated complaints the documents provided were redacted, particularly in places where proposed adverse findings against individuals were recorded. It was not until the completed Report was provided that a clearer picture emerged of the full breadth of the findings, the consequences of the deficiencies in affording procedural fairness, and the extent of factual and legal errors implicit in the findings.
- 1.12 The purpose of this response is to place on record the general views of the NSWCC of the adverse findings made against it, and to explain why most of the recommendations will not be followed. Recommendations have been made to review current practices, reporting structures and training based on findings on circumstances which existed 17 years ago, without any attempt to enquire as to current practices. Those recommendations are largely irrelevant.
- 1.13 It is not proposed in this response to canvass to the same level of detail each of the observations and findings in the Report. The NSWCC has already expended substantial resources in response to numerous requests for voluminous records of the activities of the NSWCC about 17 years earlier, and in making submissions in circumstances of disadvantage in response to provisional findings. It is not intended to expend further valuable resources in exposing in every detail what the NSWCC considers to be the fundamental

misconceptions and errors upon which many of the adverse findings appear to be based. The objective is to make some general observations and provide examples sufficient to expose inherent defects and bias in the Report which diminishes its credibility and which is the basis upon which the NSWCC will substantially disregard it.

- 1.14 Since Mascot, most of the staff of the NSWCC involved have been long gone. Consideration of the Report has been conducted by a new Commissioner and Executive Team operating under a new Act.
- 1.15 There is no doubt that Operation Prospect escalated into a complex and expensive investigation and it is regrettable that the outcome is devalued by errors. It has been the consistent requirement of the NSW Government that the heads of agencies vested with the function of carrying out investigations with the assistance of coercive examination powers have “special legal qualifications”¹. It was unfortunate that the same requirement was not imposed for this investigation, rather than having the investigation conducted by an agency which had not investigated matters of such magnitude and complexity previously. If a more conventional process had been adopted, many of the deficiencies and errors which plague the investigation and Report might have been avoided.
- 1.16 This response adopts the naming conventions applied in the Prospect Report including the use of the same pseudonyms and reference to individuals, after their first mention, by their family name only.

2. Denial of Procedural Fairness

- 2.1 On any view the investigation lacked procedural fairness, not only to the NSWCC, but also to the key players such as Bradley against whom adverse findings have been made.
- 2.2 The NSWCC did its best to ensure that it co-operated with requirements of the Ombudsman for the production of documentation. It volunteered to produce documents by agreement rather than in accordance with the formal process, and allowed staff of the Ombudsman to have access to its systems to search for material that was considered relevant.

¹ *Police Integrity Commission Act 1996* – Schedule 1 – Clause 1; *Crime Commission Act 2012* – Schedule 1 – Clause 1; *Law Enforcement Conduct Commission Act 2016* – Schedule 1 – Clause 1; *Independent Commission Against Corruption Act, 1988* – Schedule 1 – Clause 1

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- 2.3 The NSWCC was not permitted to be present at hearings and otherwise had no involvement in the investigation until it was virtually complete and the Ombudsman commenced to serve redacted sections of submissions of counsel assisting, although they were described as “provisional findings”.
- 2.4 The capacity of the NSWCC to meaningfully reply to the “provisional findings” was limited. None of the current officers of the NSWCC were directly involved in the Mascot investigations or were capable of providing instructions on the matters raised.
- 2.5 As the submissions of the NSWCC in reply indicated, in relation to many of the matters examined there were significant issues of fact and law, particularly with regard to responsibility for the direction and control of the officers of the NSWPF who carried out most of the investigations.
- 2.6 In almost every submission made on behalf of the NSWCC in relation to the issues identified in the provisional findings served by the Ombudsman, specific complaints were made particularising the unfairness of the procedures which were being adopted, but nothing was done to address the issues raised and the prejudice incurred. In particular, the NSWCC never had an opportunity to examine all the evidence on any particular topic, it has not been able to cross-examine witnesses and the repeated provision of submissions redacted to conceal recommendations about the individual officers involved precluded the NSWCC from meaningfully addressing the basis upon which recommendations have been made for adverse findings against it. The NSWCC was not provided with the submissions of other parties in reply (other than those provided to the NSWCC by Bradley), and the NSWCC is unaware of matters raised by those parties in their submissions.
- 2.7 The NSWCC first raised these issues at a meeting with the Ombudsman on 15 October 2014 when he advised that the NSWCC would not be permitted to be present during hearings conducted during the investigation but would be provided with copies of submissions from counsel assisting which would be “comprehensive” in setting out the evidence obtained. That did not happen. The submissions were consistently selective in “cherry-picking” the evidence which was obviously considered supportive of the propositions being advanced by counsel assisting, and none of the submissions purport to set out all the evidence or an objective and transparent summary of it on a particular issue. The difficulty was compounded when arrangements were made for both the NSWCC and Bradley to see the evidence and only the specific passages and documents chosen by counsel assisting to support their recommendations, were made available.

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- 2.8 The interests of the NSWCC and Bradley are essentially the same. The NSWCC was only the subject of adverse findings because of its vicarious liability for the actions of its officers and as the Commissioner at the relevant times, any findings against him had consequences for the NSWCC.
- 2.9 The NSWCC was provided with copies of all of the submissions made on behalf of Bradley and it is clear his Counsel had consistently been making the same complaints about lack of procedural fairness on his behalf, to the point where Ian Temby QC, a very senior and experienced practitioner in this area and someone who is normally moderate in his terminology, described the process as “a grotesque injustice”. His concern has been validated in the light of the outcome that Bradley has been the subject of adverse findings in relation to a range of issues which he claims were never put to him when he gave evidence, and relevant evidence and matters raised by him in reply appear to have been ignored.
- 2.10 To make matters worse, the NSWCC is informed that on two occasions when he gave evidence in 2014 and again in May 2016, he and his counsel were specifically informed prior to giving evidence that he was not under investigation, but subsequently the matters on which he was examined have been the subject of recommendations for findings that he acted unreasonably and/or otherwise wrongly. There is no basis upon which this process can be justified.
- 2.11 The fact that Bradley has not been able to see, apart from the specific passages selected by counsel assisting, the evidence given by important participants such as then Assistant Commissioner Brammer, Assistant Commissioner Scipione, Superintendent Dolan and Detective Inspector Burn is fundamentally unfair, as was denying Bradley copies of records and official police diaries in order to demonstrate the frequency with which Brammer and others attended the NSWCC’s offices.
- 2.12 The approach of excluding persons from hearings and limiting their access to the evidence, but informing them of potential adverse findings by way of service of submissions of counsel assisting placed the persons under investigation at a major disadvantage. The affected parties have only been able to advance explanations by way of submission, which clearly did not have the same status as the evidence obtained during hearings and appear to have been given little weight. In relation to one chapter of provisional findings served on the parties, the NSWCC cannot find one word that has been changed from the draft before its inclusion in the final Report notwithstanding the submissions in response that were made. On any view, the procedure was without justification.

- 2.13 In the Report an attempt is made to rationalise the procedure adopted and an assertion is made that the investigation had “no relation to an adversarial judicial proceeding that is conducted to resolve a dispute defined by opposing parties”². In that regard a fundamental error was made. The investigation was adversarial in nature in that in finalising the Report decisions had to be made between competing versions between on the one level a complainant and the officers under investigation, and at a different level between the officers and agencies involved in the investigation when it came to attributing responsibility and blame.
- 2.14 The Report clearly purports to resolve disputes between opposing parties. To seek to justify the procedures undertaken on the basis that access to all of the “adverse” material submitted by other persons would be unworkable³ and that to permit cross-examination⁴ would make the investigation protracted, exposes not only an error of law, but also a manifestation of the inadequacy and inaptitude of the investigation.

3. Statutory Non-Compliance

- 3.1 As the Report records, the Ombudsman formally commenced Operation Prospect on 15 October 2012 and notified the NSWCC of his decision under s 13 of the *Ombudsman Act* to conduct an investigation into the actions and inactions of NSWCC officers in relation to a number of specific matters. On 18 October 2012, the Ombudsman notified the Commissioner of Police of his decision under s 19 of the *Ombudsman Act* to hold an inquiry and take over the investigation of complaints before Strike Force Jooriland⁵.
- 3.2 Thereafter for the next 2½ years the Ombudsman investigated the relevant conduct by requiring the production of voluminous documentation and conducting numerous coercive hearings of the officers under investigation.
- 3.3 Section 16 of the *Ombudsman Act* is in the following terms:

16 *Notice of investigation*

- (1) *Upon the Ombudsman deciding to make the conduct or police conduct of a public authority the subject of an investigation under this Act, the Ombudsman shall give notice of the decision:*

² 2.5.1

³ 2.5.1

⁴ 2.5.2

⁵ 1.2.2

- (a) *where there is a complainant, to the complainant,*
 - (b) *to the head of the public authority and, if practicable, to the public authority, and*
 - (c) *as prescribed.*
- (2) *A notice under this section must be in writing, must describe the conduct or police conduct the subject of the investigation and must, so far as practicable, identify the public authority.*

It was not until 29 June 2015 that the Ombudsman served on the NSWCC s 16 notices addressed to the officers who had been investigated. Although several of the notices attached were dated in 2014, the majority, including those relating to officers of the NSWCC were dated 15 June 2015, the day before the first tranche of provisional findings were served.

- 3.4 The process reveals a blatant failure to meet statutory obligations and reflects adversely on the credibility of the procedures adopted, and the findings made.
- 3.5 The practical consequence is that there is a substantial issue concerning the validity of the use of the power provided in s 19 of the *Ombudsman Act* for the Ombudsman to hold inquiries, without having provided the obligatory notice under s 16 to witnesses beforehand. The concerns are exacerbated by the misrepresentations made to witnesses such as Bradley, who were clearly under investigation, but were told they were not.
- 3.6 Regardless of the statutory consequences of the process adopted, as a matter of procedural fairness, it was without justification. To have informed persons about to be examined that they were witnesses and not under investigation, but when the evidentiary phase was complete and provisional findings had been made against them, to then give those persons notices that it had been decided that they would be the subject of investigation, amounted to a gross breach of natural justice.

4. Invalid Findings And Recommendations

- 4.1 As indicated, the NSWCC considers that the findings and recommendations in the Report as a matter of law are invalid and are of no legal effect. The Acting Ombudsman indicated in a Progress Report to Parliament dated 15 June 2016 and in the Ombudsman's Annual Report for 2016 that it was his intention to report on the Prospect investigation pursuant to s 31 of the *Ombudsman Act*. In the Report it is claimed to be pursuant to both s 26 and s 31 of the

Act⁶. However, the Report was dealt with in accordance with s 31 and s 26 required the Ombudsman by s 25 to inform the responsible Minister that it was proposed to publish a Report, and on request, consult the Minister. That action was not taken and it affects the validity of the Report.

- 4.2 Section 31 authorises the Ombudsman to make a special report “on any matter arising in connection with the discharge of the Ombudsman’s functions”. By its terms it does not authorise a report on an investigation conducted pursuant to the Act, particularly where specific provisions are made elsewhere in the Act for such reports.
- 4.3 The power of the Ombudsman to make adverse findings comes from s 26(1) of the Act and s 26(3) requires the Ombudsman to give a report under the section to the Minister and to the head of the public authority whose conduct is the subject of the report. The only power of the Ombudsman to make recommendations is found in s 26(2), namely, in “a report under this section”.
- 4.4 Whatever the scope of a report provided pursuant to s 31, it does not authorise making recommendations. The only power to do so comes from s 26, which then requires specified processes to follow.
- 4.5 Section 26(5) provides that the person to whom a report is given under subsection (3)(b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken in consequence of a report under that section. Section 27 then provides that where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under s 26, the Ombudsman may report to Parliament and provide the responsible Minister with a copy of his report. The responsible Minister must make a statement to Parliament in response to the report not more than 12 sitting days after the report is made. Obviously, those provisions will have no application to the report under s 31.
- 4.6 The NSWCC complained about the proposed use of s 31 which had been indicated earlier, but no justification was given for persisting with the use of that section, which can only be explained on the basis of the desire to maximise publicity of the contents of the Report.
- 4.7 By doing so, the Acting Ombudsman seems to have intentionally sought to avoid the obligations under s 25 of the Act of informing the Minister of the proposal to publish a report and to be available to consult with that Minister. For whatever reason, the consequence is to cast severe doubt on the validity of the Report, its findings and recommendations, as well as its credibility.

⁶ 2.1.4

5. Apologies

- 5.1 The erroneous approach to identifying responsibility for the direction and control of police directly undermines the basis for the recommendations for apologies. Of 19 apologies recommended in the Report, 17 are to be made by the NSWCC, even though, with one exception, virtually all of the conduct for which the apology is recommended was that of the police.
- 5.2 Due to fundamental deficiencies in procedure and the overt errors which manifest the findings generally, the NSWCC has no intention to make apologies as recommended.
- 5.3 In relation to many of the apologies it may have been that irregularities have occurred in the investigations of those persons, but the facts available also reveal that there were reasonable grounds for investigating them for serious criminal offences, and it is illogical to apologise to them for not investigating them properly.
- 5.4 In relation to a number of other persons to whom apologies are recommended there were no such suspicions and the NSWCC is sympathetic that they were subject to electronic surveillance without justification, authority or properly procured authority. However, that was not the sole responsibility of the NSWCC, as suggested by the Report. In each of those cases the recording of their conversations was at the instigation of, and implemented by police, acting under the command of then superior officers, with no direction of the NSWCC. It is not the function of the NSWCC to apologise for the actions of those police.
- 5.5 There is conduct referred to in the Report by an officer of the NSWCC in the course of investigating the person referred to as Officer F which, if it was as described, was unacceptable and amounted to misconduct. This was not the subject of an adverse finding against the NSWCC or specified as a basis for a recommendation for apology. Despite this, if enquiries establish that the conduct was in fact as reported, consideration will be given to apologising to the person affected.

6. Recommendations

- 6.1 In addition to recommending apologies, the Report makes a number of further recommendations in relation to systemic and other issues. For example, it is recommended that the NSWCC and NSWPF review existing protocols for joint operations to ensure that there are clear and formalised reporting structures,

clear and unambiguous responsibility for supervision and appropriate training provided for new and junior officers.

- 6.2 However, the events upon which recommendations are based took place around 15-17 years ago. The Acting Ombudsman made no effort to ascertain the current practices of the NSWCC and NSWPF in relation to their current task force arrangements where the legislation has changed and a different squad works with the NSWCC. Now (as it was then) there are clear understandings as to reporting and supervision and the NSWCC has nothing to do with training police, nor is it expected to. The recommendation is gratuitous and indicative of the superficiality of the Report.
- 6.3 The Report makes various other recommendations primarily in relation to the introduction of a Public Interest Monitor with functions similar to those in Queensland and Victoria, and other changes to processes relating to warrants for listening devices and telephone interceptions.
- 6.4 Again, no attempt was made to ascertain the current practices of the NSWCC in relation to LD and TI warrants under legislation which is different to that which existed 16 years ago. The present procedure for issuing, particularly LD warrants, is rigorous and judges decline to issue warrants if it is considered that the application is defective in substance or form.
- 6.5 The processes of the NSWCC are subject to internal and external audit and are available for external scrutiny by the Inspector (and soon to be by the Law Enforcement Conduct Commission). In that regard the position is different to that in Queensland and Victoria and to add another layer of bureaucracy to the processes is unnecessary.
- 6.6 Furthermore, defence lawyers are quick to identify deficiencies in the issue of TI and LD warrants and if systemic problems now exist, they would have been identified long ago and rectified otherwise prosecutions would continually fail, but that has not happened.
- 6.7 The issues which have been identified by the Report are not likely to be repeated. They were the product of unusual circumstances of what was probably the biggest single investigation of criminal activity, let alone police corruption, apart from the Wood Royal Commission, in this State. The investigation effectively brought about the end of systemic police corruption in New South Wales. The NSWPF now has a high level of integrity and professionalism but that was not always the case. The Wood Royal Commission had made substantial progress in identifying and exposing the problem that existed but as Mascot demonstrated the problem had not gone

away and the message that such conduct would not be tolerated had not been received in some areas of the NSWPF.

6.8 As the Report notes, the Mascot/Florida investigation produced the following outcomes:

- 13 people were prosecuted for a range of criminal offences⁷;
- 27 officers were found by the PIC to have engaged in police misconduct⁸;
- At least 20 police officers who were named in the Mascot Schedule of Debrief resigned⁹;
- Following Mascot, Task Force Volta was set up by the NSWPF to deal with 199 medium to low risk allegations of events named in the Schedule of Debrief that had not been finally dealt with by Mascot¹⁰

6.9 However, the figures alone do not reflect the positive effect of the investigations. It was more the public exposure of the individual officers and their practices which provided the effective deterrence to police generally from the continuation of the corrupt practices identified. On any view, the Mascot/Florida operations made a major contribution to law and order in New South Wales. It is just a pity that the Report did not give the investigations appropriate recognition.

6.10 The investigation was all the more meritorious because it was carried out with a comparatively small task force who, as they apparently informed the Ombudsman, worked hard and under great pressure and stress, accentuated by the fact that they were investigating police, not criminals at arm's length. In addition, police assisting Mascot were involved in other investigations at the same time, some in partnership with the NSWCC and some independently¹¹.

6.11 The Schedule of Debrief which was maintained as a form of ledger of acts of criminality to be investigated increased from 91 items at the outset when the informant, Sea, was first debriefed, to 231 suspected incidents of criminal or corrupt conduct as the investigation progressed¹². The transcript of the original debrief of Sea occupied 498 pages itself¹³.

⁷ 3.4.2.8

⁸ 3.4.2.9

⁹ 3.4.2.10

¹⁰ 3.4.3

¹¹ 3.2.3.4

¹² 3.2.2

¹³ 3.2.2

- 6.12 The Report notes that Operation Prospect examined 107 affidavits sworn in support of 475 LD warrants and 111 affidavits sworn in support of applications for 246 TI warrants¹⁴. They were obviously examined in minute detail and the fact that a comparatively small number of defects were identified either in the process for the issue of the warrants, or in the operational activity in reliance of them, is not particularly surprising. The totality of the “misconduct” needs to be assessed in the context of the magnitude of the task and its successful outcome.
- 6.13 The NSWCC accepts that there may have been errors in the course of applications for warrants that could have been identified by the NSWCC legal staff who processed these applications, and by the solicitor who supervised them, but it is to be noted that LD warrants were granted by senior members of the judiciary who apparently did not detect the errors either.

7. Direction and Control of Mascot

- 7.1 There is a fundamental error which permeates almost the entire Report, and particularly the adverse findings against the NSWCC, in relation to the source of authority to direct and control the police officers in the Mascot Task Force, resulting from the failure to apply the applicable law.
- 7.2 The Report is inherently inconsistent in that when dealing with the repeated submissions of the NSWCC that as a matter of law and fact, the police officers participating in Mascot were at the direction and control of their superior officers and not the NSWCC, the Report concluded:

*...Operation Prospect also does not accept that the direction and control of Mascot was solely in the hands of the NSWPF. It is therefore appropriate that **some** findings and recommendations in this report apply to the NSWCC.” In those circumstances, systemic failings in Mascot processes are failures for which the NSWCC bears a **measure of responsibility**¹⁵. (emphasis added)*

- 7.3 The difficulty is that the Report then proceeds to attribute responsibility for every deficiency or irregularity in the investigation to the NSWCC with no responsibility at all attributed to the NSWPF. Only three adverse findings were made against the NSWPF and these were for non-investigation related, collateral issues. The conclusion quoted above was not altogether wrong. The problem was that it was ignored in its application to the particular factual

¹⁴ 2.3.6

¹⁵ 4.6.2.2

scenarios in which adverse findings were made against police officers and then blame for their actions always attributed to the NSWCC.

- 7.4 It is impossible to reconcile the finding that the NSWCC had “a measure of responsibility” with the fact that the Report then proceeds to blame the NSWCC for virtually every act of misconduct identified.
- 7.5 There are 40 adverse findings with regard to the conduct of police officers affecting 15 different persons in the course of Mascot investigations. There is not a single adverse finding against the NSWPF in relation to their conduct, but a finding against the NSWCC in each case. This is despite the conclusion that the senior NSWPF officers “performed the ‘day-to-day’ ‘on the ground’ supervision and management of Mascot investigations”¹⁶.
- 7.6 As the Report outlines¹⁷, Operation Mascot and Operation Mascot II were conducted pursuant to s 27A of the *NSW Crime Commission Act 1985*.

27A Police task forces to assist Commission

- (1) *The Management Committee may make arrangements with the Commissioner of Police for a police task force to assist the Commission to carry out an investigation into matters relating to a relevant criminal activity.*
 - (2) *In assisting the Commission to carry out such an investigation, the police task force is (subject to subsection (3)) under the control and direction of the Commissioner of Police.*
 - (3) *The Management Committee may give directions and furnish guidelines to the Commission and the Commissioner of Police for the purpose of co-ordinating such an investigation, and the Commission and the Commissioner shall comply with any such directions and guidelines.*
- 7.7 The Report¹⁸ also outlines how the Management Committee, acting pursuant to s 27A (3) of the Act, had issued the *Section 27A Task Forces – Directions and Guidelines* (‘Directions and Guidelines’), which included the following:
1. (a) *The Police Task Force (by whatever name) will assist the Commission to carry out the investigation into matters relating to a relevant criminal activity referred to the Commission by the Committee for investigation and carry out any police work arising out of related confiscation action.*

¹⁶ 4.7

¹⁷ Page 105

¹⁸ Ibid

- (b) *In assisting the Commission, the Police Task Force will ensure that the directions of the Commission relevant to the Commission's investigations are complied with.*

...

3. *Subject to these directions and guidelines, the Police Task Force will, in accordance with section 27A(2) be under the direction and control of the Commissioner of Police.*

- 7.8 The Report consistently overlooks the fact, spelt out in the Act and the Management Committee's Directions and Guidelines, that the Mascot task force police were, as a matter of law, under the control and the direction of the NSWPF.
- 7.9 Section 27A was inserted into the Act in 1988 specifically to resolve the pre-existing controversy over the fact that the NSWCC may have been able to control the actions of police officers, by expressly providing that they were to be at the direction and control of the Commissioner of Police.
- 7.10 In his submissions, Bradley drew the attention of the Ombudsman to the fact that after an earlier period when police had been seconded to the NSWCC, the position was deliberately changed to the task force arrangement in 1989, as evidenced by the following passage from the NSWCC Annual Report for that year:

In a major change to the operations of the Commission and subsequently the conduct of investigations, the Minister determined that, as from 1 April 1989, the Police contingent attached to the Commission (32 officers) would return to the control and direction of the Police Commissioner. Continuing and new investigations into Commission references would be by the assignment of task forces which would not operate under the direct control of the Commission.

That position remained as at the time of the Mascot investigation, and in fact continues until the present. Like virtually all matters raised in submissions, particularly as it was inconsistent with the pre-determined view, it was ignored in the Report.

- 7.11 Bradley also drew to the attention of the Ombudsman that police who were inducted as members of staff of the NSWCC were provided with a copy of a document entitled "General Induction Paper" which contains the following statement:

Although you are a member of the staff of the Commission, you are not under the direct supervision of the Commission or any of its officers. Normally you will report, subject to the legislation, to your supervisors in your parent agency.

If you are a NSW police officer your deployment is governed by s 27A of the New South Wales Crime Commission Act 1985 and the Directions and Guidelines issued by the Commission's Management Committee. In particular, those Directions and Guidelines provide that police in Task Forces assisting the Commission remain under the command and control of the Commissioner of Police ...

- 7.12 Even though Bradley offered the Ombudsman a copy of the document, because it apparently had not been located by the Ombudsman in the records of the NSWCC, it appears to have been disregarded.
- 7.13 In the circumstances where s 27A specified "*the police task force is ... under the control and direction of the Commissioner of Police*", backed up and emphasised by the Management Committee's Directions and Guidelines, and other evidence pointing to task force police officers being under the control and direction of the NSWPF, this absence of any reference to NSWPF responsibility is extraordinary and suggestive of inherent bias guiding the Report's preparation.
- 7.14 The Report makes the unwarranted and unsubstantiated leap from the obligation of the task force to comply with any directions the NSWCC cares to give, to the task force being under the complete control of the NSWCC. It states:

*It is clear from those directions and guidelines that police task force members were to assist the NSW Crime Commission in conducting its investigations and were subjected to the Commission's directions. As stated in direction 1(a) and (b), NSW Crime Commission investigations were conducted under the **direction and control** of the NSW Crime Commission and its senior officers (emphasis added)"¹⁹.*

The paragraph distorts the effect of the guidelines. The police were to ensure that directions of the NSWCC relevant to investigations were complied with, but not in the entire Report is there reference to any direction given by the NSWCC pursuant to that paragraph, and the situation never arose. Nowhere in the Report in relation to the 40 adverse findings against police officers is it

¹⁹ Ibid

suggested that the conduct was in conformity with, or a result of, any direction by the NSWCC.

- 7.15 The Report actually repeats evidence from police officers attached to the task force referring to the fact that they were under the daily direction of Dolan and Burn and the evidence of Bradley that he was aware that Dolan reported daily to Brammer to ensure that he was kept abreast of developments. This was a much higher level of involvement than Bradley who generally only attended weekly meetings in order to be given an update on the progress of the investigation.
- 7.16 The truth is that police task force investigations have never been conducted “*under the direction and control of the NSWCC*”. Bradley in his evidence, as quoted in the Report, accurately outlined the arrangements that existed between the agencies:

*My view was that the police should remain policemen and be governed by the Police Commissioner, and that they should assist us in a kind of partnership relationship. I did not want to be responsible because it would be a futile ambition to supervise the police, and I wanted them to be subject to their own disciplinary arrangements because I've seen lots of examples where it didn't work, and that was one of the reasons I got rid of the internal police team.*²⁰

- 7.17 This description of arrangements was consistent with s 27A. It was consistent with the Directions and Guidelines. It was consistent with the reality on the ground during the Mascot investigations. It is consistent with the relationship that exists between NSWPF and the NSWCC today. It bears out the many years of experience that Bradley had in this area. It also appears to have been generally ignored by those who prepared the Report.
- 7.18 One exception to this general approach within the Report is in Volume 1 of the Report where, in Chapter 3, the Report details the circumstances of the Special Crime Unit, the police unit responsible for the Mascot investigation, the Report records “*SCU was unique in that it worked in partnership with the NSWCC to help investigate organized crime that had been 'green lighted' by law enforcement officers*”.²¹
- 7.19 A partnership shares responsibility. However this concept of partnership and shared responsibility disappeared without trace in the Report as it repeatedly

²⁰ 4.6.1

²¹ 3.1.3

found that any agency responsibility for the erroneous conduct of task force police officers rested solely with the NSWCC.

8. Practical Examples of the Erroneous Attribution of Responsibility to Bradley and the NSWCC

8.1 The practical limitations upon the capacity of Bradley to control the police working on Mascot, the Report's disregard for this, and its misconceived attribution of all blame to Bradley and the NSWCC is vividly demonstrated in important parts of the Report dealing with the investigations into Officer F²² and the use by Mascot of integrity tests²³. In both instances, the Report reveals that Bradley was opposed to the operational activities but because they were matters outside his authority, he raised his concerns with the Commander of SCIA, who undertook to deal with the issues. However, no adverse finding is made against the NSWPF in relation to these matters but adverse findings are made against the NSWCC for failing to deal with the issues.²⁴

Officer F

8.2 The findings in the Report that Bradley and the NSWCC did not sufficiently evaluate the alleged bases for targeting Officer F²⁵ are completely without merit.

8.3 The Report records that Bradley gave evidence that after the investigation commenced, he did not think that the allegations recorded against Officer F justified pursuing him as part of the Mascot investigations, and that he had been misled²⁶. As a result he raised the matters with the Commander of SCIA at a meeting on 7 May 2001 along with his concerns about integrity testing generally. The Commander's own note of the meeting records that he indicated that he would raise the matter "asap" with Dolan and in fact informed the Commissioner of Police of the situation who agreed with Bradley and directed that Sea should not be tasked in any further activity of that character without the agreement of the "SCC/SCIA COMMANDERS". There is no evidence of any such agreement by Bradley or any other officer of the NSWCC.

²² 10.1

²³ 17.2

²⁴ Findings 41 and 79 - 17.2.13 and 10.8

²⁵ Finding 41

²⁶ 10.3.2

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- 8.4 Notwithstanding the clear evidence that the Commissioner of Police had directed that Sea should not be tasked without the agreement of the SCIA Commander, it is Bradley who is blamed in the Report for failing to intervene to stop the investigation or more closely consider and evaluate the reliability of the information.
- 8.5 Despite the instructions of the Commissioner of Police, the investigation of Officer F was escalated by the inclusion of a new allegation of leaking information, on the SOD on 2 July 2001, which became the basis for obtaining a telephone intercept warrant to intercept the telephone conversations of Officer F. Bradley then repeated his concerns to NSWCC Assistant Director Mark Standen about the inadequacy of the material available to justify the investigation of Officer F, and also told Dolan and Burn that they should “keep an open mind” about the evidence against Officer F.
- 8.6 The investigation was taken over by the PIC on 20 November 2001 which led to the unfortunate confrontation between Officer F and John Giorguitti, the Solicitor to the Commission and Director of Operations. Giorguitti was a NSWCC officer. His conduct on this occasion was unacceptable and the NSWCC accepts responsibility for that unreasonable conduct.
- 8.7 Throughout this period the investigation was primarily controlled and directed by task force police and there was no reference to any action being taken by the Commander of SCIA to exercise any control over the investigation, despite the agreement reached in May 2001.
- 8.8 Bradley’s submission to Prospect was that he did not supervise the NSWPF officers in Mascot nor influence the choice of investigation targets by the Task Force, and this is borne out by the fact that when he was concerned about the investigation into Officer F, he had to go to the Commander of SCIA to have the matter resolved. If he had the requisite “direction and control” authority he could have dealt with Dolan or Burn direct or bypassed them altogether.
- 8.9 A number of findings are made against individual police officers involved in the investigation of Officer F (as well as a finding against Giorguitti), but it is illogical that there is then a finding that the NSWCC failed to exercise the responsibility to sufficiently evaluate the alleged bases for targeting Officer F. That was precisely what Bradley had done within the authority available to him and he took appropriate action to bring the issues to the attention of those in the NSWPF who had the authority to deal with the matters.
- 8.10 The PIC signed a Memorandum of Understanding on 29 July 1999 agreeing to participate in the joint investigations being conducted under the Mascot reference, with a view to the PIC conducting hearings which it later did as part

of Operation Florida. From that time on, senior officers of the PIC attended the meetings at the NSWCC and were party to operational decisions in relation to the ongoing investigations, which included the continued investigation of Officer F. When the decision was made on 14 December 2001 to bring the investigation of Officer F to a head, the proposed interview was to be at the PIC offices by PIC staff, although Giorgiutti's intervention frustrated that plan.

- 8.11 An adverse finding is made against the then Commissioner of the PIC for allowing the interview of Officer F to take place in the manner it did, but there is no consequential finding against the PIC itself for failing to exercise the authority available to it to ensure that the investigation was discontinued. In actual fact, the PIC had no more authority over the continued investigation of Officer F than the NSWCC. It is bizarre that, not only in relation to this issue, but also in relation to every other issue investigated by Prospect, there is not a single adverse finding made against the PIC although it was an active participant in the investigation for nearly three years.
- 8.12 The Report examined an allegation that there was a conflict between Dolan and Officer F and ultimately found that this should have been better managed by the NSWCC. In its analysis it canvassed the role of Dolan's then supervisor, the Commander of SCIA, in relation to this perceived conflict and held there was insufficient evidence to suggest any failure on the Commander's part. The Report then states "By contrast, Bradley was put on notice about this conflict of interest". This was said to be in contrast to the Commander. It is true that Bradley was put on notice of the conflict. He was put on notice by the Commander. In the same meeting on 9 May 2001, where Bradley voiced his concerns to the Commander about the investigation of Officer F, the Commander brought to Bradley's attention the fact that there were suggestions of animosity between Dolan and Officer F which he undertook to discuss with Dolan.
- 8.13 The Report's ultimate conclusion that Bradley alone was at fault for failing to act on the allegation of conflict²⁷ was completely without merit. As canvassed above, during their conversation on 7 May 2001 the Commander alerted Bradley to the perceived conflict and as Dolan's Commander and supervisor he appropriately accepted responsibility for dealing with Dolan and supervising any ongoing investigation of F. It was not the responsibility of Bradley or NSWCC to deal with this issue.

²⁷ 10.5.3.4

Integrity Testing

- 8.14 Another part of the Report which provides an illustration of the inherent bias against the NSWCC is the adverse finding made against it for failing to resolve the problems of which it was aware concerning the appropriateness and use of integrity testing²⁸. It was not within capability of the NSWCC to control police integrity testing.
- 8.15 The Report notes that after some integrity testing in early 2000, by August 2000 Bradley was concerned about integrity tests being conducted as part of Mascot and pointed out to his staff that they were not to be involved in integrity testing as it was not a function of the NSWCC²⁹. However, police attached to Mascot continued to carry out integrity testing in the name of the Mascot investigation. On 9 April 2001 Bradley again raised at a meeting his disapproval of integrity tests being conducted as part of Mascot.
- 8.16 On 7 May 2001, at his meeting with the SCIA Commander, Bradley told him that Dolan had informed him that there would be no integrity test conducted on Officer F after he had learnt that an integrity test was conducted on Officer F on 2 May 2001. Because it was beyond his authority to control the tests by NSWPF officers, Bradley specifically raised with the Commander of SCIA, his view that there should be no more integrity testing. On the same day he sent a lengthy email to his staff re-iterating his concerns and reporting on his meeting with the Commander in relation to the issue³⁰. The Commander's own note of the meeting acknowledges the concern Bradley had in relation to integrity tests and the undertaking he gave to Bradley to "raise this matter asap with John Dolan & keep him advised"³¹.
- 8.17 In the end Bradley took the only action which was available to him and banned police from the Integrity Testing Unit from entering NSWCC premises³².
- 8.18 The Report notes that Dolan or Burn contacted Brammer to obtain approval for integrity tests conducted by police attached to Mascot and that Brammer gave prior approval for 9 of the 10 tests conducted by Mascot. The Report also found that "Mascot investigations were undertaken by NSWPF officers

²⁸ Finding 79, 17.2.13

²⁹ 17.2.7

³⁰ 10.3.2

³¹ Ibid

³² 17.2.10

and their use of integrity testing was approved in compliance with NSWPF procedures”³³.

- 8.19 Despite those conclusions, no adverse finding is made against the NSWPF in relation to this issue. The adverse finding against the NSWCC in relation to perceived problems concerning integrity testing, is not only ridiculous, but is a reflection of the bias against the NSWCC which becomes apparent throughout most of the Report.

9. Listening Device Warrants

- 9.1 Conduct that was routinely scrutinised by Prospect as it canvassed different stages of the Mascot investigations was the preparation of materials in support of LD and TI warrant applications and the subsequent use of issued warrants. The Report highlights what it regards as numerous irregularities. A common theme running through the Report is that, although errant conduct complained of was often that of police officers, all agency responsibility was attributed to the NSWCC. There are adverse findings made against individual police officers, but there are no adverse findings against the NSWPF arising from the performance of these police officers that it supervised, controlled and directed.
- 9.2 The Report focused on the conduct of the task force police officers who prepared the errant affidavits and ultimately found that their conduct was not unreasonable – but that it was in accordance with a NSWCC practice that was unreasonable³⁴. Accordingly, not only did the NSWPF have no responsibilities for the errors made by its officers, the perpetrators themselves were not even responsible. Only the NSWCC was responsible. This finding was remarkable, but consistent with the general unbalanced approach of the Report.
- 9.3 The reference to all the conduct complained of as being part of a “practice” is not explained and is inherently misconceived. When officers included inaccurate material in affidavits, or exaggerated evidence in affidavits, this was not a “practice”. This was a breach of the law and a breach of the direction provided by the relevant NSWCC manuals provided to assist police.
- 9.4 The contention that the “unreasonable” “practice” was a “NSWCC practice” was unexplained, unsustainable and rejected by the NSWCC. If there was a “practice” of including inaccurate or insufficient information in affidavits, the Report makes no reference to how this alleged practiced conduct was

³³ 17.2.12

³⁴ 9.8.1

fashioned by the NSWCC, and not by the NSWPF officers who engaged in the “practice”, or their NSWPF supervisors who at law and in fact controlled and directed their conduct.

- 9.5 One example of the Report taking this flawed approach related to warrants sought and obtained for the purpose of recording conversations of people attending at the retirement send-off of Detective Sergeant James King. This event was due to take place in April 2000 but was postponed and ultimately took place on 30 June 2000. This delay culminated in a series of warrants seeking authority to record expected attendees. Some of these warrants were obtained in circumstances where it was apparent that the send-off would not take place within the life of the warrant (21 days for LD warrants).
- 9.6 The Report ultimately finds that the NSWCC is responsible for the actions of the police officers in relation to the inappropriate naming, without proper explanation, of 30 people who were on the list of invitees to the King send-off³⁵. According to the Report, the NSWPF was not at all responsible for their actions. This finding was based on the flawed premise that the NSWCC was responsible for the control and direction of involved police.
- 9.7 It is apparent that the NSWCC bears a “measure of responsibility” for some of the problems associated with the errant documents. The NSWCC’s lawyers reviewed the documents prior to them being presented to Supreme Court justices for their consideration. The listing of invitees to the King send-off in circumstances where, on the face of the supporting affidavit, the send-off would not have taken place within the life of the sought after warrant, should have been identified as an error by the reviewing lawyer. It should have been identified by the issuing judge. It is not without significance that the perceived errors of substance and form in the material utilised to obtain LD warrants was not detected by over 10 senior judges of the Supreme Court of New South Wales who issued the warrants, however, no mention is made of that fact.

10. The Investigation of Mr A

- 10.1 The Report deals at length with the investigation of allegations raised by the police officer informant Sea that in 1994 police involved in the investigation of an armed robbery verbalised a suspect, and made a number of adverse findings against the NSWCC which not only display the same pre-disposition to blaming the NSWCC for all the regularities, but also highlights a lack of understanding of the criminal justice system.

³⁵ Finding 33

- 10.2 Prompted by the allegations made by Sea, task force police officers approached the suspect who corroborated Sea's allegations. This person was then registered as an informant of the NSWCC, known by the pseudonym Paddle, in April 1999. In May 1999 he was deployed by task force police officers to approach Mr A, one of the police officers involved in his arrest, wearing a listening device. Mr A had by then retired and was operating a shop in Coffs Harbour where he was approached. The operation was unsuccessful. It was also ill-conceived by the police officers as it involved Paddle breaching a condition of his bail that he not approach witnesses in the case against him, although there was no evidence that they were aware of the condition at the time.
- 10.3 Mr A was suspicious and complained to MSO 4, who was another officer involved in the arrest of Paddle and, at that time, the Crime Manager for the Coffs Harbour LAC. MSO 4 then vigorously pursued Paddle for the breach of his bail. Mr A also made a formal complaint in relation to the investigation of him and that Paddle had been deployed in breach of his bail conditions.
- 10.4 The Report findings again highlight the flawed nature of the Report and its ongoing bias against the NSWCC. The Report finds that the NSWCC was responsible for deploying Paddle to speak to A in breach of his bail condition. The action was planned and executed by police officers who acted under the supervision of their commanding officers³⁶.
- 10.5 The Report makes a further adverse finding against the NSWCC on the basis that it was responsible for relocating Paddle in breach of another bail condition that he was to live at a specified address. The action was taken to protect him from harassment by the police targets of the investigation³⁷. Officers of the NSWCC were involved in making arrangements for Paddle to be relocated. That arose at the commencement of direct dealings between NSWCC officers and Paddle in the context of his broader role of assisting in investigations other than Mascot. However, contemporaneously a controlled operation authority was issued pursuant to the *Law Enforcement (Controlled Operations) Act 1997* to authorise any illegality involved in the relocation action. The authority³⁸ is simply ignored when adverse findings are made in the Report that the NSWCC was responsible for Paddle breaching his bail condition.
- 10.6 The Report indicates that Paddle was eventually arrested and taken before a court for breaching his bail conditions. It is said that "Mascot investigators"

³⁶ Finding 50

³⁷ Finding 53

³⁸ 4.6.2.2

instructed him not to reveal to the court that he had been wearing an LD when he had approached Mr A in May 1999. The Report finds that NSWCC was responsible for police causing Paddle to give false evidence³⁹. There is no reference to any officer of the NSWCC having any involvement or knowledge of NSWPF officers instructing Paddle not to reveal his involvement in the Mascot investigations when appearing before the court in relation to his breach of bail. In the circumstances, the adverse finding against the NSWCC is completely unjustified.

- 10.7 The Report finds that NSWCC was also responsible for failing to deal with the complaints about Paddle's deployment⁴⁰. The NSWPF was responsible for dealing with allegations of misconduct in relation to the actions of its officers. Action was taken by the NSWPF. If this action was inadequate, this is a matter for the NSWPF. Responsibility did not fall back onto the NSWCC.
- 10.8 The Report considered in detail the circumstances in which the prosecution proceedings against Paddle were discontinued in order to facilitate him giving evidence against police suspects. The Report makes an adverse finding against Bradley and against the NSWCC for failing to ensure that the Director of Public Prosecutions was informed that Paddle had made admissions of his involvement in the offences for which he was verbaled in an interview on 7 December 1999. Adverse findings are also made against Burn, Dolan and Brammer for alleged failures by them to ensure that the DPP was informed of the admissions, although no adverse finding is made against the NSWPF.
- 10.9 On any basis, the findings were illogical. Firstly, the admissions in the interview on 7 December 1999 were pursuant to an express inducement that anything said during the interview would not be used against him. To have informed the DPP of his admissions in the context of deciding whether proceedings should be continued against him, would have directly breached the undertaken that he had been given. Secondly, the Deputy Solicitor Legal who participated in meetings with the Director and made submissions to him on the issue, is referred to in the Report as recording the fact that she was aware from the outset that Paddle admitted his involvement in the offence. Although noted in the Report, this fact is then conveniently ignored when analysing the relevant events even though it is clearly against the adverse finding that the DPP was in some way misled by not being told about admissions. Thirdly, the admissions were irrelevant to the decision to be made by the DPP in relation to the continuation of the proceedings. In making a decision whether or not the proceedings should continue, the Director was

³⁹ Finding 57

⁴⁰ Finding 61

concerned about the adequacy of the evidence available to support the prosecution, which consisted primarily of alleged admissions which were said to have been fabricated.

- 10.10 The findings are not only patently erroneous but are a good illustration of the practical disadvantage resulting from the procedural unfairness applied during the Prospect investigation. The NSWCC should have had an opportunity to raise issues directly with witnesses in order to ensure that they were given adequate opportunity to canvass alternative propositions to those being selectively put to them.

11. Responsibility for Training

- 11.1 Other glaring examples of fundamental misconceptions of the prevailing circumstances in which police officers were deployed as part of Operation Mascot, are the adverse findings⁴¹ that the NSWCC failed to provide police with adequate induction training and specialist training, particularly in relation to the use of telephone intercepts and listening devices. The NSWCC had no role in selecting, deploying, training and supervising task force police. The police officers who worked on Mascot were from the SCU which was party to a standing task force arrangement to assist investigations of the NSWCC while working from the premises of the NSWCC. Most of the police engaged on Mascot had been carrying out similar investigations at the NSWCC for some time and could be assumed to be familiar with its processes. In any event, some of them were of the rank of Sergeant and Detective Sergeant and were working under the supervision of an Inspector and Superintendent who were experienced investigators, and they would have been offended at the suggestion that they needed training in the use of electronic surveillance.
- 11.2 When new police officers were allocated to work on Mascot, they were selected by NSWPF and it was the responsibility of the NSWPF to ensure that they were adequately trained and sufficiently experienced to carry out the work involved. It was not the function of the NSWCC to subject them to tests in order to ascertain the extent of their experience and to then provide training if they were found to be wanting in certain areas.
- 11.3 To find that the conduct of the NSWCC was wrong in failing to provide police with adequate or specialist training on the legal requirements for the use of listening devices and telephone interceptions provides another illustration of a

⁴¹ 69 and 70

basic failure to understand the circumstances in which the Mascot investigation was conducted.

- 11.4 The error whereby the partnership arrangement between the NSWPF and the NSWCC was extrapolated into the NSWCC having direction and control of police activities permeates the majority of the Report, lays bare an inherent bias, and robs this lengthy inquiry of much of the positive influence it could have had.
- 11.5 There were errors made by police and others in the course of the Mascot investigations. It appears that these were not made with any malicious intent. Generally the errors arose as police officers were working with scant resources and within tight timeframes, on investigations of extraordinary breadth and complexity. It is important that there is appropriate accounting for what happened and meaningful guidance for the future. This Report fails in both respects.

12. Conclusion

- 12.1 The above are just a few examples of adverse findings against the NSWCC which are wrong in fact and/or law. In volumes 2-6 of the Report, detailed consideration is given to numerous issues in relation to which adverse findings are made against the NSWCC. The terms of the findings are formulaic and repetitiously express in the same erroneous phraseology the fundamental misconceptions of the role of the NSWCC and the bias against it, without any attempt in the preceding analysis to identify the basis in each particular case for concluding that the NSWCC was responsible.
- 12.2 However, the NSWCC will analyse the issues raised and independently assess the need for action to be taken. It is recognised that some particular aspects of the conduct of officers of the NSWCC on the facts presented in the Report may have been unacceptable, and that on some issues, the NSWCC does bear 'a measure of responsibility'. Consideration will be given to what action should follow although it is to be noted that the officers concerned have long left the NSWCC and are not amenable to administrative action. Furthermore, as stated earlier, in the 15 years since the Mascot investigation, practices have substantially changed.
- 12.3 It is regrettable that so much time and expense was incurred in the preparation of the Report which was marred and rendered largely ineffective by the unfair procedures adopted and the mistakes of law and fact contained in it. The unfairness has been aggravated by the fact that since the Report

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was published, the Office of the Ombudsman has written to witnesses, including those against whom adverse findings have been made, advising them that, although the Report has been made public, they are still subject to 'a section 19 direction which restricts you from publishing certain information relating to an inquiry conducted by the Ombudsman in *Operation Prospect*'.

- 12.4 The letters are a further reflection of the lack of expertise apparent throughout the investigation. Presumably the letters meant to refer to directions under s 19A, not s 19. In addition, s 19A only permits directions prohibiting the publication of evidence given before an Inquiry, the contents of documents produced to the Ombudsman or information concerning the identity of witnesses. It does not allow for the broad prohibition asserted in the letters.
- 12.5 The letters also exacerbate the lack of procedural fairness which has been prevalent throughout the investigation in that they effectively seek to prevent any person whose reputation has been damaged by the publication of the Report from responding by reference to information that was given in evidence but which is not selected for inclusion in the Report.
- 12.6 In preparing this response the NSWCC has been able to confine its comments to the evidence published and other circumstances which are directly within the knowledge of the NSWCC or have been communicated separately. The individuals who have suffered reputational damage from the publication of the Report may not be so fortunate in their ability to respond, which will only compound the injustice brought about by the manner in which the investigation was conducted.

Dated: 21 February 2017