



NSW Police Force
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**DEPUTY COMMISSIONER
CORPORATE SERVICES**

D/2014/438805

The Hon Robert Borsak MLC
Chair, Select Committee on Conduct and Progress of the Ombudsman's Inquiry – 'Operation Prospect'
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Mr Borsak,

I refer to your correspondence to the Commissioner of Police, dated 5 December 2014. The Commissioner has asked that I respond to you on his behalf.

The operation of the secrecy provisions in the *Ombudsman Act 1974*, the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996* are not matters over which the NSW Police Force has any jurisdiction and, accordingly, we do not consider it appropriate for this agency to give legal advice to the Select Committee about the operation of those provisions.

Having said that, I understand that the NSW Crime Commission has indicated it does not support punitive action being brought against individuals who disclose information directly to their counsellors or medical practitioners for the purposes of obtaining medical assistance or mental health support. The NSW Police Force holds the same view.

I also understand that, for witnesses before the Select Committee who were also witnesses in the Ombudsman's inquiry, the Ombudsman has indicated that he will vary any direction given under section 19A(1) of the *Ombudsman Act 1974* for the purposes of those witnesses seeking medical treatment for a condition or illness arising out of their involvement in *Operation Prospect*.

It has not been the NSW Police Force's practice to take disciplinary action under the *Police Regulation 2009* (NSW) against individuals who disclose confidential information directly to their medical advisor for the purpose of obtaining medical treatment. The NSW Police Force intends to take the same position in respect to the Select Committee.

The NSW Police Force's Employee Assistance Program (EAP) is operated by an external service provider, Davidson Trahaire Corpsych (the EAP Service Provider). Under the terms



of the contract, the EAP Service Provider must not disclose confidential information without the prior written consent of the employee who is receiving the service (clause 17.2) and must take or cause to be taken all necessary precautions to maintain secrecy and confidentiality and prevent the disclosure of an employee's Confidential Information (clause 17.3).

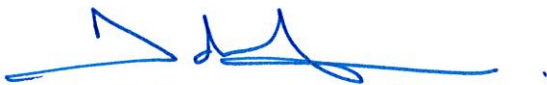
"Confidential Information" is broadly defined in the contract (clause 1.2) as including information which is by its nature confidential and information which relates to employees. This definition would extend to information an employee disclosed to medical practitioners during consultations with EAP.

Only in limited circumstances can the EAP provider disclose confidential information. These are where the EAP provider considers an employee poses a danger to themselves, their work colleagues or members of the public (the employee's firearm and appointments should be withdrawn for the duration of rehabilitation) or where such information can assist the NSW Police Force in developing/implementing workplace rehabilitation programs to benefit the employee.

The EAP provider is also obliged to report to the NSW Police Force whenever an employee has disclosed the use of illicit drugs.

The NSW Police Force acknowledges the impact the Select Committee may have on its employees and encourages them to seek access to the counselling and welfare services available to them, such as the EAP.

Yours sincerely,



D W Hudson APM 12/11
Deputy Commissioner
Corporate Services