



LEGISLATIVE COUNCIL

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

5 December 2014

Mr Bruce Barbour
NSW Ombudsman
Office of the NSW Ombudsman
Level 24, 580 George St
SYDNEY NSW 2000

D14/30480

Dear Mr Barbour

**Inquiry into the conduct and progress of the Ombudsman's inquiry
"Operation Prospect"**

A NSW Legislative Council select committee is currently conducting an inquiry on the conduct and progress of the Ombudsman's inquiry "Operation Prospect".

The committee has resolved that I write to you to ascertain your advice regarding statutory secrecy provisions in the *Ombudsman Act 1974* (including the 2012 amendments) and their effects on NSW Police Force officers involved in our inquiry from seeking welfare support from mental health professionals. Namely, in your view, is it a breach of statutory secrecy provisions under the *Ombudsman Act 1974* to reveal information to a mental health professional when receiving welfare support or medical treatment? I note that this matter has also been raised by the Police Association of NSW in a letter dated 2 December 2014 to you, myself and other oversight agencies.

By way of background, last week during a discussion with the Police Association of NSW regarding establishing a mental health protocol for the inquiry, the committee secretariat was informed by the Association that it has been advising its members that statutory secrecy provisions in the *Ombudsman Act 1974*, the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996* preclude NSW Police Force officers involved in the committee's inquiry and your Operation Prospect inquiry (and similar inquiries by NSW Crime Commission and the Police Integrity Commission) from revealing information provided under statutory secrecy provisions to mental health professionals when receiving welfare support and that this has deterred many officers from receiving the appropriate help.

On behalf of the committee I seek your views on whether you consider that officers are precluded from discussing information covered by statutory secrecy provisions with a mental health professional? I also seek your advice on the most appropriate way to assist police officers in obtaining welfare support when required, particularly in light of the correspondence from the Police Association of NSW. Your advice on these matters will greatly assist the committee secretariat in developing a protocol for responding to inquiry participants at risk of self-harm.

For your information; I am writing separately to the NSW Police Commissioner, the NSW Crime Commission and the Police Integrity Commission about this matter.

The welfare of inquiry participants is of the utmost importance to me and my committee colleagues. I trust we will be able to find a way to ensure that those people who want to participate in our inquiry can do so freely, and without fear that any mental health support they require will be compromised by their participation.

If you would like to discuss this further please contact Ms Beverly Duffy, Clerk Assistant Committees on (02) 9230 3367.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Borsak', with a small flourish at the end.

Hon Robert Borsak MLC
Committee Chair



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

5 December 2014

Mr Scott Weber
President
Police Association of NSW
PO Box A1097
SYDNEY NSW 2000

D14/30710

Dear Mr Weber

**Inquiry into the conduct and progress of the Ombudsman's inquiry
"Operation Prospect" – Welfare considerations for inquiry participants**

I write in response to your letter of 2 December 2014 regarding welfare considerations for members of the Police Association of NSW involved in various inquiries, including that of the recently established Select Committee into the conduct and progress of the Ombudsman's inquiry: "Operation Prospect."

We share your serious concerns that Association members involved in such inquiries may be precluded or dissuaded from seeking mental health support due to concerns about the confidentiality of their discussions and the possibility they may be pursued for breaching statutory secrecy provisions or privilege. Indeed, prior to receiving your letter the committee had resolved to write to the NSW Police Force, NSW Ombudsman, NSW Crime Commission and the Police Integrity Commission, seeking clarification of their position regarding this very issue.

Please be assured that the welfare of inquiry participants is of the utmost concern to myself and my committee colleagues.

Our advice to potential inquiry participants will be that the committee has no intention or desire to stand in the way of officers receiving appropriate professional welfare or mental health support, even if it involves revealing to a health professional on a confidential basis matters they may have raised in submissions or evidence. We will of course need to advise officers that such discussions would not be protected by parliamentary privilege but if such discussions occur on a confidential basis I cannot at this time envisage that there would be any reason for the committee to take any action as a consequence.

Your letter asks us to outline our protocols for vulnerable officers, including officers at risk of self-harm. As the secretariat advised Association representatives at a recent meeting, the committee is eager to finalise these arrangements. Initially, we thought that we might refer inquiry participants to the NSW Police Force's Employee Assistance Program, however, your representatives advised that this is not a confidential counselling service, which in our view would preclude this as an option. We will follow this matter up with the Police Commissioner as well as initiate a discussion with the Ombudsman in order to establish an appropriate protocol and will advise you accordingly.

We take our responsibilities in relation to inquiry participants very seriously and we welcome the opportunity to work with your Association and the oversight agencies relevant to our inquiry, to ensure former and current NSW Police Officers can participate freely in the select committee inquiry while seeking professional welfare or mental health support if they so require.

If you would like to discuss this further please contact Ms Beverly Duffy, Clerk Assistant Committees on (02) 9230 3367.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Borsak', with a small flourish at the end.

Hon Robert Borsak MLC
Committee Chair

CC
Police Integrity Commissioner
NSW Crime Commissioner
NSW Ombudsman
NSW Police Commissioner