



**NSW Police Force**

**DEPUTY COMMISSIONER  
Field Operations**

Ms Vanessa Viaggio  
Principal Council Officer  
Select Committee on the Partial Defence of Provocation  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Ms Viaggio,

I refer to your correspondence dated 3 September 2012 regarding the inquiry into the partial defence of provocation.

Please find enclosed minor amendments to the draft transcript together with the completed witness feedback questionnaire.

The following information is provided in response to the supplementary questions from the committee.

- 1. Can you explain the role of the NSW Police Force in dealing with homicides, an in particular whether there are any investigative or procedural guidelines that guide police when they are investigating homicides and making decisions about appropriate charges where issues of provocation or self-defence arise.*

The role of the NSW Police Force is to respond to and investigate all homicide and Coronial investigations at all levels. The investigation of homicides is highly regulated in terms of legislation, policy and procedure and the NSW Police Force Homicide Squad provides a specialist investigative service in relation to this.

The NSW Police Force also provides members with education in homicide investigations, including possible criminal defences and approaches in rebuttal of defences such as provocation and self defence, through the Homicide Investigators Course and the Detective Education Program. The Homicide Squad provides statewide access for all police officers to a Detective Inspector and legal advisor who offer advice on case-specific matters where defence issues may arise during the investigation process.

As a general rule, where an issue of provocation or self-defence does or may arise, the advice would be to proceed to charge rather than not, as it is a matter for the courts to test the validity of any defence.



2. *In practice, how do the NSW Police work with the Office of the Director of Public Prosecutions (ODPP) in terms of briefing them on homicide matters?*

In general, homicide matters are allocated to a solicitor from the ODPP within a reasonable time of a charge being laid. There is a reasonably good level of consultation with the officer in charge of the matter at the instigation of the ODPP. During trials, however, the officer in charge has little real influence on the ODPP as to the direction that the trial may take, including when provocation or self defence are raised.

3. *Do the charges laid by the police ever change when the matter is taken up by the ODPP, and if so how?*

Charges laid by police may change or not proceed when the matter is taken up by the ODPP. The ODPP is expected to consult with the officer in charge and the victim/s when they intend to amend or not proceed with charges.

*Does your organisation have a view on whether the partial defence of provocation should be abolished, reformed in some way or retained in its current form?*

The NSW Police Force does have a view on the partial defence of provocation, which has been communicated to the Ministry for Police and Emergency Services and, I understand, conveyed to the Department of Premier & Cabinet (DPC). I understand however that the DPC has sought to develop a whole-of-government position on this issue through the formation of an interagency working party. The NSW Police Force will be represented on that working party and our position communicated in that forum.

Thank you for providing a copy of the Reform Options Paper. For the reason stated above, the NSW Police Force is unable to comment on the Paper at this time.

I trust this information will assist and thank you for including the NSW Police Force in this process.

Yours sincerely,

**N Kaldas APM**  
**Deputy Commissioner**

5/10/12.