



POLICE ASSOCIATION OF NEW SOUTH WALES

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9 December 2014

Mr Bruce Barbour
Ombudsman
Ombudsman of New South Wales
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Email: nswombo@ombo.nsw.gov.au

Dear Sir

Welfare considerations for NSW Police Officers Medical Treatment

I refer to your letter dated 4 December 2014.

The purpose of your letter dated 4 December 2014 was it seems, in part, to alleviate the Police Association's (PANSW) concerns in relation to this matter. Unfortunately your letter has done nothing to alleviate our concerns.

While we note the information you have provided, your letter fails to engage in, or address, PANSW concerns and those of our members.

Our letter to you (and others) dated 2 December 2014 was an attempt to seek your cooperation by requesting the making of the public statement referred to therein. Not only did you fail to address that request, your letter and the process described therein, confirms Operation Prospect a greater risk than the PANSW initially thought.

The process you describe directly prevents witnesses from seeking medical treatment or support and is inconsistent with your statement that *"the welfare of all witnesses called in Operation Prospects is paramount."* It is incongruous to suggest, as you do, that the *"many steps"* you have outlined *"ensure that support is provided where needed..."*

Counselling and Davidson Trahaire Corpsych (DTC):

We note the arrangements that have been made by you with DTC.

Putting it bluntly, how can a counselling service engaged and paid for by your office be seen as independent medical assistance in the eyes of officers involved in Operation Prospect, or for that matter, the public.

To aggravate matters, your office appears to only pay for expenses related to an *"initial consultation"* rather than ongoing and appropriate medical treatment. This is not to intend disrespect to those counsellors from DTC, but there is no material to suggest they are equipped to provide satisfactory support to PANSW members involved with Operation Prospect, particularly

when that support is a mere *"initial consultation"* (which your office will pay for) and the cost of any further counselling must be borne by the involved officer.

The PANSW considers it unacceptable for any of its members involved in Operation Prospect, labouring under the intense stress and anxiety Operation Prospect is undoubtedly causing some, if not all, of them, to end contact with your office on the understanding the only counselling services available to them are those from DTC; a counselling service engaged by your office which is referred to in a covering letter which has sitting behind it a summons requiring their attendance to give evidence at Operation Prospect.

The PANSW assumes that the summons from your office contains a direction to the effect that the person named in it is not to talk to anyone about the matter or even the fact they are in receipt of a summons. We ask you Sir, what document or part thereof do you think a police officer, labouring under the intense stress and anxiety caused by Operation Prospect will focus their attention upon: your covering letter referring to counselling services available through a provider unknown to them and appointed by your office, or the summons requiring their attendance at the Operation Prospect hearing including the direction, a breach of which, constitutes a serious criminal offence?

Directions pursuant to s 19A(1) of the Ombudsman Act 1974:

In reference to your variation, upon request (only), to a direction given pursuant to s 19A(1) of the *Ombudsman Act 1974*, the PANSW also is deeply troubled by the matters you raise.

On the basis of your letter, it appears a witness is never put squarely on notice that they are able to seek a variation to a direction to enable them to *"speak openly and without restriction to their medical professional about giving evidence."*

The availability to seek a variation to your direction to enable a witness to speak with their doctor (on the basis of your letter at least) does not appear to be contained in your covering letter which accompanies the summons, and so it would appear all an involved officer has before them is your letter, and your summons, and also the accompanying real and genuine fear that if they speak to their own treating medical practitioner about Operation Prospect as part of seeking medical support they will be prosecuted for an offence under s 19A, fined 50 penalty units and/or go to gaol for 12 months.

This position is in our submission totally untenable and grossly negligent. As the NSW Ombudsman, an important public office, and with carriage of this extremely sensitive matter, and with, as you state, *"the welfare of all witnesses called in Operation Prospect"* being *"paramount,"* the PANSW finds this situation astonishing. The process you have adopted fails to have regard to the welfare of the involved officers.

What is of particular concern is that this process was adopted to deal with officers who are suffering from stress and anxiety as a result of Operation Prospect and could very well suffer from other underlying serious psychological conditions such as Post Traumatic Stress Disorder and the like, which might be impairing their judgment and decision making.

The fact that a variation to your direction can only be made upon request, and the ability to make that variation is not being made known to witnesses, is deeply concerning.

In that regard we seek particulars about the number of applications made by witnesses seeking a variation of a direction made under s 19A(1). The PANSW also seeks your response about the following matters:

- a. At what point in the process of dealing with witnesses does your office indicate to those witnesses they can access assistance by *any* medical professional (not only DTC) but only after seeking your permission to do so?
- b. Why is the right for a witness to speak with their treating medical practitioner not an automatic entitlement for all witnesses?
- c. Why is it your position that witnesses should have to apply to seek a variation to your direction under s 19A (1) to access medical and counselling services? The direction does not in any way serve to minimise a risk of collusion between witnesses and potential witnesses as a direction when originally made could easily exclude a witness' discussions with their treating medical practitioner.

The PANSW considers your broad direction to place our members and associate members involved in Operation Prospect at unnecessary and extreme risk. Your direction isolates them, places a hurdle in front of them by forcing them to seek *your* permission to access a fundamental human right: the right to access appropriate medical care.

One needs to only recall the Wood Royal Commission where 12 people involved took their own lives. Others were profoundly affected by the stress of the proceedings, so much so that supporters and family members of those people maintain it shortened their lives. The PANSW does not wish for a similar situation to occur and for officers summoned to appear at Operation Prospect to be prevented from seeking support from their own doctors and to make a fateful decision to end their own life or for their mental health to be further adversely affected.

Contacting an officers Commander:

The PANSW is also troubled by your statement that where *"we form a view there may be serious and/or immediate welfare concern for an individual who is a current serving police officer, we contact and speak directly to that officer's Commander to ensure the officer receives appropriate support"*.

First, it is not clear who *"we"* is. Could you please clarify? Would you also outline the process involved in this welfare assessment, advise who undertakes it, and what qualifications they possess to enable them to undertake that assessment.

Secondly, can you please provide an explanation of how a disclosure to an officer's Commander is made. For example the PANSW is keenly interested in how a disclosure is made without contravening s 19A (1)? One assumes (noting the absurdity of this) that you vary your own direction before disclosing any particulars to an officer's Commander. Can you please confirm.

Thirdly, what protocols exist where the officer's Commander is also involved in the Inquiry? In light of the wide scope of the matters under investigation as part of Operation Prospect such a situation is not inconceivable. Further, when making that disclosure to an officer's Commander, you might be unaware at that point, that the Commander is involved in Operation Prospect which might only become known as the more evidence is taken. So we ask what steps are being done to ensure no conflicts arise or inappropriate disclosures are made.

Fourthly, can you please advise what information is provided to an officer's Commander, and based upon that, how an officer's Commander is expected to attend to the officer's welfare needs without an intimate understanding of the officer and issues impacting upon them?

Crime Commission officers:

As you would be aware there are a number of officers involved in Operation Prospect who are subject to the secrecy provisions of the *Crime Commission Act 2012*. Can you please provide an explanation of how the welfare of those particular officers is being managed?

Legal Representation:

The PANSW also notes the extract referred to in your letter in relation to legal representation.

Can you please explain why witnesses are not also informed they are able to seek legal advice or representation from any suitably qualified legal representative not just the LRO.

Conclusion:

It appears the welfare of police officer witnesses to Operation Prospect is not "*paramount*" to your office in light of the process adopted and described in your letter.

The process you describe in your letter intentionally isolates officers from their normal support networks, including their treating medical practitioners; those who are better equipped and qualified than anyone to attend to their welfare.

I note that you have indicated that you share some of our concerns. It is not clear what those shared concerns are but nevertheless please demonstrate your concern by acting immediately to lift any direction that you have given which has the effect of isolating people from support and medical treatment and make a public statement that any witness availing themselves of medical services, support or treatment will not be pursued for any potential breach of your secrecy provisions, publication restrictions, or privileges.

This is an urgent issue made even more urgent with the pending Parliamentary Inquiry due to commence in January 2015.

Yours faithfully,



Scott Weber
President
Police Association of NSW

CC:

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