
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

MONDAY 23 MAY 2016 AT 10.12 AM

(1st day of examinations)

MR STEPHEN O'BRYAN, Commissioner
MR JACK RUSH QC, Counsel Assisting
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OPERATION ROSS INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT
BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

AUSCRIPT

UNCLASSIFIED

1 MR O'BRYAN: Good morning, Mr Rush.

2 MR RUSH: So, Commissioner, this investigation was initiated
3 as a result of information provided to the Independent
4 Broad-based Anti-Corruption Commission, IBAC concerning
5 the circumstances of the arrest by Ballarat Uniform
6 Police and the detention at Ballarat Police Station of a
7 51 year old woman who will be referred to as Person A on
8 14 January 2015.

9 Upon investigation IBAC identified the Ballarat
10 Uniform Police Service Area has been the subject of a
11 high number of complaints of police assault, a failure to
12 perform duty of behaviour over a significant period of
13 years. The investigation has prompted questions (a) as
14 to whether there a systemic issues of conduct concerning
15 member of the Uniform Ballarat Police Service Area, the
16 manner in which the police executive at this region has
17 responded to the high number of complaints, the nature of
18 the oversight of police professional services the body
19 within Victoria Police with the responsibility for
20 ensuring the ethical standards of Victoria Police once
21 potential police conduct issues have been identified.

22 The Ballarat Police Service Area is responsible for
23 the City of Ballarat and includes police response zones
24 of Ballarat and Buninyong. The police service area
25 consists of approximately 158 members, it is known as
26 Division 3 of the Western Region.

27 This investigation starts with the CompStat report of
28 November 2012. The CompStat process revolves around the

1 compilation of statistical data from the region under
2 review. It is in fact stated in the CompStat document
3 quote:

4 *The golden principle driving the inclusion of data in*
5 *a CompStat document is that it is performance data*
6 *which would be available to the person being held*
7 *accountable for their performance. The data*
8 *contained in the document applies those business and*
9 *counting rules that Victoria Police is obliged to use*
10 *in its performance reporting to both government and*
11 *the Australian Bureau of Statistics.*

12 In November 2012 the Western Region Division 3
13 CompStat Management Team reported a high incidence of
14 complaints of assaults by police in this region. It was
15 said this incidence of complaints was being driven by
16 inexperienced member at the Ballarat Watch-house. Then
17 Chief Commissioner of Police Mr Ken Lay made observations
18 that in fact a closer examination of complaints data
19 demonstrated the majority of complaints were in fact
20 being made against more experienced members of the
21 Ballarat Uniform Branch.

22 Commissioner, this is perhaps identified by figure 1
23 at 930 and there we see a breakdown of complaints and
24 allegations stemming from July 2010 to October 2012. And
25 one sees particular at the rank of senior constable a
26 total of 30 complaints, leading senior constable 49
27 complaints and importantly sergeant, the rank of sergeant
28 36 complaints. And so this was seen by the then chief

1 commissioner as being of some importance in relation to
2 the breakdown of the statistical data. And at 931 one
3 can see a breakdown of the complaints against years of
4 service.

5 So under five years is the top section with a total
6 of 48 complaints, but then at six to ten years we have
7 22, 11 to 15 years 23, 16 to 20 years 18 and 21 to 25
8 years a significant number of 23. What was drawn to the
9 attention at this stage was that the complaints involved
10 members of higher rank and members of more experience.

11 At June 2010 to October 2012 the statistics
12 demonstrate that out of a total of 157 allegations made
13 against Ballarat members 40 or 30.6 per cent related to
14 members of less than five years and 69.4 per cent were
15 recorded against members with six or more years' service.
16 And the most frequent complaint allegation type related
17 to duty failure which was 50 followed by assaults 36 and
18 police behaviour 29.

19 At the request of the responsible region inspector a
20 comparison was made of complaints as the complaints
21 concerned Ballarat members compared with complaints
22 against Frankston members over the same period, that
23 being thought by the inspector to provide a reasonable
24 basis of comparison. And a graph has been prepared
25 demonstrating the complaints between the two service
26 areas which is now on the screen.

27 Now, one has to take account in this graph to the
28 second column of numbers of members stationed, but by way

1 of looking at ratio if one looks at leading senior
2 constable, the fourth line, at Ballarat there are 49
3 allegations, 32 members stationed and the ratio is 1.53
4 complaint to each member. At Frankston there are only
5 six allegations, but only ten members, but the ratio is
6 0.060.

7 At sergeant level and this perhaps provides a closer
8 analysis at Ballarat 36 allegations, there are 24
9 sergeants at the relevant time stationed at Ballarat, a
10 ratio 1.50 allegations to each sergeant. At Frankston 16
11 allegations, 22 sergeants and 0.072, almost twice the
12 number of allegations by comparison between those two
13 ranks.

14 Commissioner, the inspector responsible for the
15 Ballarat Police Service Area put forward a 2012/2013
16 action plan for Western Region Division 3 which referred
17 to, "People issues," "Ethical Health," of the Ballarat
18 members and set out priorities. Those priorities
19 identified were (1) to prevent the opportunity for
20 ethical health risks to arise through early
21 identification of personnel potentially at risk, (2)
22 enhance and promote exemplary ethical behaviour
23 throughout the division.

24 It appears that people at risk were those who had
25 gathered complaints over and above what could be said to
26 be the norm. The action plan appears to have had the
27 effect of drawing a line under the conduct issues from a
28 police professional standards perspective there was none

1 or very little follow up, no monitoring of the manner in
2 which the division went about its processes of
3 identifying people at risk and the mitigation strategies
4 to be employed. It was left to local command to put into
5 place the promised early identification of personnel
6 potentially at risk and to establish mitigation
7 strategies.

8 Regrettably time has not seen an improvement in
9 ethical behaviour referred to by the action plan.
10 Complaint levels have remained constant and high, it is
11 unclear just what of any mitigation strategies were
12 adopted in Division 3 at Ballarat and some examples of
13 the continuing high levels of complaints suffice. For
14 the financial year to end 2015 (1)(c) depicts here,
15 Commissioner, the number of members complained against
16 within the Ballarat PSA.

17 And one goes back to the years that were the subject
18 of the action plan or produce the action plan 2011 and
19 2012 at Ballarat Uniform we see 27, I think it is 27 and
20 31 - I seem to have lost it, 933. Briefly, Commissioner,
21 as indicated 2000 - here are we, 2011/2012 27 and 31 and
22 so continuing until the end of financial 2015 we see 30,
23 29 and 27 they represent numbers that show very little
24 difference in the number of complaints received.

25 It's also exemplified at 935 which is a pie chart
26 which depicts the number of uniform members Ballarat with
27 assault complaints compared with other representative
28 police stations. So here, Commissioner, we see Ballarat

1 and what is identified there is that with comparable
2 stations from Bendigo to Warrnambool that Ballarat has by
3 far and away the most number of assault complaints made,
4 it's three times the average of comparable stations.

5 And complaint statistics provided by Victoria Police
6 to IBAC in June 2015 enable further comparison of the
7 complaint history of members of Ballarat against 14,643
8 sworn workforce of Victoria Police. And so here we have
9 that complaint distribution and what is shown,
10 Commissioner, for instance at the first line, number of
11 complaints zero, so 2867 sworn members have no complaints
12 and that's 19.6 of the sworn workplace.

13 Once complaint there are 3013 members with one
14 complaint which is 7.2 per cent, two complaints is the
15 next line, and that being 11.9 per cent. Three
16 complaints, 1858 at 13.4 per cent. And so by the time we
17 get to, for example, two complaints, what's indicated at
18 that number is that close to 20 per cent of the sworn
19 workforce at the N column, Commissioner. 19.1 per cent
20 of the sworn workforce have two or less complaints, and
21 57.1 have - I beg your pardon.

22 Approximately 50 per cent have nil and two
23 complaints, and if one goes to the bottom of those
24 complaint statistics, one can see that 12.7 per cent have
25 three complaints, and so it's approximately 70 per cent
26 of the sworn workforce have between nil and three
27 complaints. Putting it the other way, 30 per cent are
28 responsible for 66 per cent of the complaints.

1 At Ballarat, members - there are 52 members who have
2 four or more complaints, and this is a graph showing the
3 complaints as at 30 June 2015 as they concern Ballarat
4 Police. And one sees in the middle of that graph,
5 Commissioner, the state-wide average of complaints for
6 the sworn police force is 2.5 per cent. One sees that
7 one member has 18 complaints, one has 11 complaints, and
8 the 25 - the 18 complaints come in 25 years of service,
9 11 complaints in 14 years of service, eight complaints in
10 14 years of service, and one has seven complaints in
11 seven years.

12 This graph, Commissioner, is indicative of Ballarat
13 members who have more - who have three or more complaint
14 files in the last five years. And, again, it is
15 significant numbers. Commissioner, as of June 2015, the
16 three members of the Ballarat Uniform Branch with the
17 highest number of complaint files held the rank of
18 Sergeant. The senior and experienced members have the
19 highest number of complaints raises concerns as to
20 systemic and cultural issues.

21 The stated - what is demonstrated by the statistics
22 is that the number of assault complaints made against
23 Ballarat Uniform members is more than three times the
24 average of comparable stations. Ballarat Uniform members
25 are responsible for 4.56 per cent of all complaints
26 force-wide, yet with 158 members, Ballarat Uniform is
27 just 1.9 per cent of the total Victoria Police members.
28 Further, Ballarat Uniform members have submitted three

1 times the average number of WorkCover claims in the past
2 two years for injuries that have occurred during arrest
3 and restraint.

4 These figures suggest members of Ballarat Uniform are
5 more likely to be involved in physical confrontation and
6 may lack sufficient training in dealing with physical
7 incidents. And that graph is showing number and
8 causation of claims in the last two years and one sees
9 the first column, arrest and restraint, in the Ballarat
10 Station there are 15 incidents - WorkCover incidents
11 against the state-wide average of 5.1.

12 So the inquiry, Commissioner, will look at just what
13 has occurred at Ballarat Police since 2011 and 12, what
14 has been done to identify persons at risk, what has been
15 done to promote ethical standards, how is it that a
16 member with 16 complaints just eight months after the 16th
17 complaint could be promoted to sergeant, what is the
18 impact of more senior members having a high rate of
19 complaints on the culture and performance of Ballarat
20 Uniform Police.

21 Potentially relevant to the inquiry are other issues
22 such as time and tenure of more senior members and
23 management and promotion from within. The matters I have
24 referred to are highlighted by four incidents put forward
25 as case studies in this investigation. These are case
26 studies of conduct occurring at Ballarat Police Station
27 over a number of years. Each incident is to be
28 considered separately.

1 The similarity of matters under investigation, the
2 timeframe over which they occurred, again accentuates the
3 questions as to whether to a systemic culture has been
4 permitted to develop a culture which would be inimical to
5 the high standards demanded and met by the vast majority
6 of the members of Victoria Police. In examining these
7 incidents, it is to be said that the Victorian community
8 recognises that police in performing their duties are
9 often faced with difficult and demanding circumstances
10 and person that severely test resolve and resilience.

11 There is further the understanding that these demands
12 are placed on our police force on a daily basis. The
13 community and those responsible for oversight of police
14 are not demanding perfection. However, there is a
15 legitimate expectation that police will perform duties
16 with a professionalism and respect for all those with
17 whom they come into contact, and particularly in
18 circumstances where people are deprived of their liberty.

19 Those high standards are not always easy to maintain
20 in the face of dealing with persons who suffer from
21 psychological difficulties, who are drunk or drug
22 affected, who are disabled, or who wantonly ignore
23 authority or breach the law as a matter of choice.
24 The community recognition of the work of police and the
25 difficulties that are faced every day in policing is just
26 that - a recognition and admiration of that sometimes
27 very difficult and draining work that the vocation of
28 being a police officer entails.

1 But with that difficult work, there is an expectation
2 that in accord with police policies, standard operating
3 procedures, and acts of Parliament, police will treat
4 people with whom they come into contact with humanity,
5 dignity and respect. Each of the persons involved in the
6 incidents put forward as case studies will be described
7 by letters A to D to protect their identity. All four
8 are women.

9 It is not their conduct that is here being
10 investigated. It is the manner in which they were
11 treated by Victoria Police that will be called upon to be
12 explained. Now, deal, Commissioner, with the incident
13 involving person A. At approximately 11.00 pm on 14
14 January 2015, person A was arrested in Ballarat for being
15 drunk in a public place. Person was 51 years of age and
16 prior to being arrested by police had been taken into the
17 home of a concerned person who arranged for police to
18 attend.

19 Evidence indicates at the time person A was spoken to
20 by police, an ambulance was called and attempts were made
21 to admit her to the Ballarat Hospital for medical
22 examination. Person A refused. Ambulance officers
23 reported her mood as agitated. Her speech content, rate,
24 and volume were normal, and made the assessment she was
25 affected by alcohol. Police reported her behaviour as
26 aggressive, abusive, and continually resisting arrest.

27 Person A was eventually handcuffed and conveyed to
28 Ballarat Police Station, where she was registered and

1 placed in a cell. Commissioner, there is CCTV footage of
2 person A's arrival into Ballarat Police Station in what
3 is called the sally port. She is here brought in by -
4 there were, in fact, I think four police who attended,
5 and police brought her into the police station in the
6 divisional van.

7 The female custody sergeant, advised Person A - or
8 says in her statement that she advised Person A that if
9 she removed herself from the divisional van, that the
10 handcuffs she was wearing would be eventually removed,
11 that she'd been arrested for being drunk in a public
12 place, and that she would be released in about four
13 hours. The station records at the time record that
14 Person A was seen as being moderately affected by
15 alcohol, and she eventually, after what is the next piece
16 of CCTV footage, showing Person A at the custody area of
17 the Ballarat Police Station - she was placed in Cell 1,
18 but she was not released for 18 hours. This is the
19 custody area where she walks into from the sally port
20 area. The handcuffs have been removed. We can leave it
21 there, Commissioner.

22 The - from the custody area Person A was conveyed to
23 Cell 1, where she underwent a full search, which is
24 removal of clothing. Then sometime - I think I said she
25 was in custody for 18 - I think it's 16 hours,
26 Commissioner. The CCTV footage, which we will come to,
27 demonstrates that Person A was able to exit her cell on
28 two occasions. This was the first occasion, after

1 demanding attention from the senior officer on duty. She
2 exited the cell and was forced back into the cell by two
3 female police officers. And during the course of being
4 forced back into her cell, she removed the lanyard and
5 pass around the neck from the senior officer on duty, the
6 sergeant. On the second occasion, after the sergeant
7 came back into the cell to retrieve her pass, Person A
8 exited the cell and there was a further scuffle, and
9 Person A was sprayed during the course of a scuffle over
10 some time, by both female police officers with oleoresin
11 spray, or OC spray.

12 Just by way of background, Commissioner, OC spray is
13 known as pepper spray as it is a lachrymatory agent made
14 from extract of chili peppers, and contains the
15 neurotoxin capsaicin. The spray, when used, deploys a
16 foam which is rather like shaving cream. When it comes
17 into contact with the skin, eyes, mouth, throat and lung
18 it causes immediate sensation of intense pain, tearing in
19 the eyes, and inflames the respiratory tract, resulting
20 in uncontrollable fits of coughing and breathing
21 difficulties. Not all persons respond in the same way to
22 the applications of OC spray. Some are severely
23 affected. Some are not so severely affected.

24 And during the course of what we will now look at,
25 which I want to go to the second occasion, Commissioner,
26 when Person A came out of the cells. This is an occasion
27 when the sergeant and constable on duty entered the
28 cells, the sergeant with a can of OC spray, demanding her

1 lanyard back. And part of the investigation to take
2 place will just include police techniques in relation to
3 the entry of cell in such circumstances.

4 I think what's in fact - we will - this is the first
5 occasion when there is the demand for the officer-in-
6 charge to attend the cells. We will be looking at that
7 during the course of the inquiry, Commissioner. I just
8 felt for the purposes of opening, it may be better if we
9 just go directly to the second one.

10 MR O'BRYAN: So is this after the lanyard's been taken?

11 MR RUSH: This is after the lanyard had been taken. So there
12 are two officers - - -

13 MR O'BRYAN: (indistinct)

14 MR RUSH: - - - want it back. That's the sergeant who's on
15 the left of the screen now, talking to Person A. Person
16 A pointing to the camera.

17 MR O'BRYAN: Yes.

18 MR RUSH: Commissioner, I'm told we may need a two or three
19 minute adjournment, just to load this into proper order.

20 MR O'BRYAN: (indistinct) Adjourned.

21 MS MCCARTHY: All stand, please.

22 **ADJOURNED** [10.49 am]

23 **RESUMED** [10.58 am]

24 MR O'BRYAN: Sort out the order?

25 MR RUSH: I think so, Commissioner. What we are about to play
26 is the second entry by the sergeant on duty and a more
27 junior officer into cell 1, the sergeant carrying the can
28 of OC spray for the purposes retrieving the lanyard. I

1 should say just before we get underway there is a cup
2 there and again when this is being fully examined the cup
3 was provided for water to enable a drink; the drinking
4 fountain in that cell was not in working order.

5 And there's CCTV footage which I won't show in
6 opening of Person A looking up at the camera indicating
7 that the cup couldn't be filled and eventually having to
8 go the toilet to get water. So this is now - as I've
9 indicated there was a first entry when Person A demanded
10 to see the officer in charge of the police station during
11 the scuffle to put her back in her cell, she took the
12 lanyard from the senior sergeant and this follows very
13 shortly after that incident when the police officers come
14 into the cell to retrieve the lanyard.

15 **RECORDING PLAYED**

16 MR RUSH: That's the can of OC spray being kicked away.

17 MR RUSH: So, Commissioner, at this stage Person A has been -
18 the expression is foamed, and the secondary effects are
19 perhaps noticeable from the police officer there.

20 MR O'BRYAN: So the police member that's left has been
21 affected?

22 MR RUSH: Yes.

23 MR O'BRYAN: And the lanyard is still not retrieved, is it?

24 MR RUSH: The lanyard is not retrieved and eventually you will
25 see Person A turn around and go into a storage room. And
26 if we just stop it there. So just to encapsulate what we
27 have seen, as you have indicated, Commissioner, is the
28 spraying of with OC foam. The lanyard has not been

1 retrieved and so into the storage room an emergency call
2 was made from the police station by the two officers that
3 have been depicted.

4 Other police then attended to assist And it's after
5 their attendance at the police station that Person A was
6 located in that room, restrained, dragged back to her
7 cell and handcuffed with her hands behind her back, as we
8 will see, lying prostrate on her stomach and searched by
9 having her pants pulled down from her so that she was
10 left only wearing a T-shirt, bra and panties. Those
11 panties were at one stage positioned between her bottom
12 and her knees and all this occurring in the presence of
13 male officers, whilst lying prostrate on the ground
14 covered with OC spray around her facial area. She was
15 kicked, stomped and stood upon.

16 **RECORDING PLAYED**

17 And I think this is underway at the moment, so at
18 this stage Person A is handcuffed and being - this is in
19 the doorway to cell 1 and being made to lie prostrate on
20 the ground.

21 MR O'BRYAN: So her pants are down. Is that right?

22 MR RUSH: I think here they are removed with her socks. What
23 the evidence in the full investigation will disclose is
24 that the sergeant, during the course of the scuffle, felt
25 that she, on the pat down search, felt the lanyard and
26 pass in her pants. Now, this is the removal of the pants
27 by a female officer, socks, her panties here. So at this
28 stage obviously she has nothing on her legs and has an

1 officer in boots standing on her legs.

2 MR O'BRYAN: So do you know if the lanyard is retrieved at
3 this stage?

4 MR RUSH: The lanyard was subsequently Found in the storage
5 room. It certainly wasn't in the garments that were
6 removed. The guidelines in relation to spray which you
7 will be taken to, Commissioner, are that it is a danger
8 of affixation lying prostrate under the effects of OC
9 spray and being handcuffed at the back. So at this stage
10 there is OC all over Person As face and she is handcuffed
11 from behind.

12 So the full CCTV footage of the incident will
13 indicate that a number of police officers were affected
14 by the OC spray in a secondary way. The sergeant who
15 deployed the spray was attended by ambulance officers at
16 the Ballarat Police Station and later taken to the
17 Ballarat Base Hospital for medical treatment. The
18 ambulance officers who attended were not called upon to
19 examine Person A whilst they were at the police station.

20 Eventually Person A was taken to a shower by way of
21 aftercare. She was placed in the shower. She remained
22 handcuffed with her hands behind her back which obviously
23 meant she was unable to do anything with her hands to
24 alleviate the presence of the OC spray. Warm water in
25 combination with OC spray has the effect of magnifying
26 its effects. She was in the shower for approximately 20
27 minutes, then was wrapped in a large blanket or towel and
28 taken by police to Ballarat Base Hospital.

1 On arrival at the hospital she was recorded as being
2 aggressive, violent and agitated. The examination
3 carried out whilst Person A remained in the rear of the
4 van, there being a concern, apparently, she could escape.
5 On the examination she was reported as being handcuffed,
6 intoxicated and her eyes being slightly red and she was
7 cleared to return to the cells.

8 On that night in Ballarat it was approximately 11
9 degrees centigrade with a high humidity. It had been
10 raining. From approximately 2.40 am when Person A was
11 returned to the cells she was left without her pants or
12 any form of replacement garment. The clothes which she
13 was wearing have been the clothes she was wearing at the
14 time she was placed in the shower. She was left without
15 any blanket and it was not until 7.00 am that a blanket
16 was provided and replacement pants were provided later in
17 the day.

18 Police who were present and participated in the
19 events described will be each asked to explain the events
20 and why they happened in the way they did. Police
21 officers not involved in the events of the night and
22 morning of 14 and 15 January, but who subsequently had
23 the opportunity to ascertain what had occurred, will also
24 be asked to advise in this examination what they learned
25 and what actions were taken in response.

26 Person A has been charged with offences arising out
27 of the circumstances of 14 and 15 January, no charges
28 have been laid against police.

1 Incident B occurred on 8 December 2010. Person B had
2 attended at the front counter of the Ballarat Police
3 Station. She was there to lodge a complaint concerning
4 the arrest of her son and she wished her complaint to be
5 recorded. In brief, the evidence and CCTV footage
6 indicates that in response to the female's requests of
7 the male police officer to record her complaint she was
8 forcibly handled by the male police officer, who was
9 assisted by a female officer, arrested and detained at
10 the police station.

11 Allegations have been made as to the treatment of
12 Person B whilst in police custody and the male officer
13 will be asked to explain his actions in relation to her.

14 Incidents C and D involve the night and morning of 24
15 and 25 April 2009. Person C attended at the front
16 counter of the Ballarat Police Station to inquire about
17 her son who had been arrested earlier that night. A male
18 officer, the same officer involved in Incident B, and one
19 of the senior officers present at the time of Incident A,
20 ordered Person C to leave the police station.

21 When Person C refused to do so the male police
22 officer went to the front of the counter and placed
23 Person C in what can be best described as a chokehold.
24 That is from behind he had his right arm around Person Cs
25 neck as he pushed her through the front doors of the
26 police station. The male officer will be asked to
27 explain his actions in relation to Person C.

28 On exiting the police station the male officer

1 apparently formed the view that one of the friends of
2 Person C was wanted in relation to other matters. The
3 male police officer then placed that person, Person D, in
4 a similar hold and pushed her back into the police
5 station and detained her for a period of time while
6 inquiries were made. Again, the male officer will be
7 asked to explain his actions in relation to Person D, in
8 particular the use of the chokehold as an approved method
9 of containment by Victoria Police will be the subject of
10 questioning.

11 So in short, Commissioner, they are the case studies
12 that will be particularly under examination together with
13 the matters that I have earlier raised concerning the
14 issues or the historical issues of complaints and the way
15 in which they have been addressed by the executive of the
16 Ballarat PSA.

17 MR O'BRYAN: Thank you. Does that conclude the opening
18 address?

19 MR RUSH: That concludes the opening, Commissioner.

20 MR O'BRYAN: As I understand it there are some housekeeping
21 matters?

22 MR RUSH: There are, Commissioner, firstly - - -

23 MR O'BRYAN: Well, we might (indistinct) The media cameras
24 (indistinct).

25 MR RUSH: Yes, sir.

26 MR O'BRYAN: I will adjourn now and ask that the camera be
27 removed and then I will come back shortly.

28 **SHORT ADJOURNMENT**

[11.18 am]