

**INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION**

**OPERATION GLOUCESTER – PUBLIC HEARING**

**OPENING STATEMENT COUNSEL ASSISTING – MR JACK RUSH QC**

**4 FEBRUARY 2019**

**Introduction**

1. The public examinations to be conducted by the Independent Broadbased Anti-Corruption Commission (“IBAC”) will examine practices of Victoria Police in criminal investigations. The manner in which Police themselves provide statements and evidence in major crime cases is of critical importance to the administration of justice. Similarly the manner of taking statements and the content of statements taken from civilian witnesses to criminal behaviour is of fundamental importance.
2. IBAC has conducted a review of criminal investigations carried out by Victoria Police. IBAC has obtained evidence that indicates a pattern of systemic behaviour by Victoria Police in statement taking that is of such gravity that it has the potential to pervert the course of justice.

**Background**

3. Some brief background to this public examination by IBAC is necessary to understand the nature and focus of the Inquiry.
4. On 16 August 1998 Sgt. Gary Silk and Snr. Const. Rodney Miller were murdered. Bandali Debs in July and Jason Roberts in August 2000 were charged with their murders. On 31 December 2002 both were convicted of the murders and

subsequently Debs was sentenced to life imprisonment and Roberts to 35 years imprisonment before being eligible for parole.

5. In 2015 IBAC inquired into Victoria Police conduct concerning the investigation of the murders of Silk and Miller – Operation Lorimer. Statements of those police who were first responders to the murder scene, particularly those that comforted and spoke to Miller prior to him being conveyed to hospital, and his subsequent death were the focus of the Inquiry.
6. The IBAC Inquiry in 2015 found there was no conclusive evidence to substantiate allegations of improper conduct concerning the statement making practices in Operation Lorimer and in February 2016 the IBAC Inquiry concluded.
7. In November 2017 former Homicide Squad Detectives, Det. Snr. Sgt. Iddles and another Det. Snr. Sgt. Bezzina attended at IBAC and provided to IBAC a copy of a witness statement said to have been made by a first responder, police witness Snr. Const. Glenn Pullin. The statement provided to IBAC was a second statement of Pullin. Pullin had previously stated to IBAC he was unable to recall making a second statement.
8. The trial brief in the Debs and Roberts prosecution contained a statement of Pullin that was substantially different in its detail to that provided to IBAC by Iddles and Bezzina. IBAC subsequently re-opened its investigation into certain police statement practices utilised in Operation Lorimer.
9. To summarise the position with the two Pullin statements:
  - (a) There are two Pullin statements concerning his involvement at the murder scene on 16 August 1998;
  - (b) Both statements are signed by Pullin and both statements are signed and witnessed by Bezzina;
  - (c) Both statements are dated 16 August 1998 and have the time that the statement was signed as 4.25 am;

- (d) A comparison of the two Pullin statements reveals that further details of conversation with Miller about the offender or offenders has been included in the second statement;
- (e) There was no reference at all to the first statement in the second statement;
- (f) IBAC has evidence that Pullin was informed by a Homicide Squad Senior Detective responsible for the preparation of the trial brief prior to his giving evidence at the Committal hearing that he should not mention the existence of the first statement.
- (g) The defence was not provided with a copy of the first statement, and nor was its existence disclosed to the defence.

### **IBAC Further Investigation**

10. As a consequence of the provision of this further material, IBAC has undertaken further investigation which has resulted in the expansion of the scope of the initial investigation to examine systemic issues concerning statement taking practices in Victoria Police.
11. The practices identified by IBAC include:
  - (a) Instructions being given to witnesses, including Police first responders to the scene of the Silk/Miller murders, to remove or exclude relevant information, including the description of the offender or offenders provided by Miller prior to his death, from their statements. As a consequence of this direction, at least one Police member refused to make a statement on that morning. Later, at least one other member, provided another statement to add the excluded information. The replacement statement was dated the day it was made. The original statement and the fact of its replacement was not disclosed to prosecution or defence.

- (b) Creating a new version of a statement, that purports to be the original statement and still bears the date and time of the original statement but includes information not in the original statement, ie, the Pullin example;
  - (c) If it becomes apparent that a witness statement is deficient in some respect because it contains evidence which is incomplete, inconsistent or erroneous instead of a supplementary statement being taken which is disclosed in addition to the first statement, a replacement statement is taken from the witness. The replacement statement is normally dated the day it is made, the original is destroyed, and the fact of its replacement is not disclosed to prosecution or defence. Where police witness statements are inconsistent with each other the principal investigator speaks with the witnesses and fixes up the “inconsistency”. The fact of that intervention is not disclosed to prosecution or defence.
  - (d) Deliberately not recording a witness’s description of an offender in the witness statement. The description is recorded on a separate document. A supplementary statement is later taken from the witness to include the description.
12. The IBAC investigation has uncovered evidence that a number of these practices were used during the Lorimer task force investigations. It has been identified that in some instances replacement statements were not disclosed to the prosecution or defence so neither party was aware a witness added evidence to their account.
13. Significant evidence of recording offender descriptions on a separate document has been identified in Victoria Police armed robbery investigations.
14. IBAC now has evidence from a number of police concerning the existence of the practice of not including descriptions in statements. A witness has indicated the practices was taught at the Police Academy, another that it was discussed at Detective Training School. Another witness indicated the practise was taught ‘on the job’ by more experienced police members. No police witness has been able to suggest a proper reason for the practice. A number of witnesses have agreed that a

potential reason for the practice is to use the description of the offender later in the investigation if it matches a suspect and not use it at all if it does not.

15. The statement making practices identified have highly significant implications for the proper administration of justice. The conduct being investigated involves potentially very serious examples of police misconduct in the police investigation of serious crime.
16. The disclosure to the defence of all relevant material is fundamental to a fair trial. It is almost impossible for the defence to identify or become aware of such practices around evidence tampering. The use of such practices by police not only impacts on the integrity of the police investigation but has the very real potential in trial circumstances to amount to a perversion of the course of justice.
17. In these public IBAC examinations the statement taking practices across a range of police investigations will be the subject of further scrutiny. The matters I have highlighted in this brief opening have referred to police practices in Operation Lorimer, the Silk/Miller murder investigation. The practices are not confined to Operation Lorimer.
18. It needs to be appreciated that this IBAC investigation is not an investigation into the soundness of the conviction of Debs/Roberts. That is for a different legal forum. The investigation being undertaken by IBAC is into the use by police of the practices that have been identified. It is unclear to what extent police are still adopting such practices.
19. Finally, one of the objectives of the public examination is to raise public awareness around these issues. I emphasise in opening that anybody with information they think is relevant to the issues of this investigation, should provide such information to IBAC.