Managing conflict of interest in Victoria Police
WARNING – Use of case studies

The case studies in this report are based on actual OPI investigations. In order to protect the identities of the individuals involved, certain non-critical details about each case have been altered.

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Letter of transmittal

To
The Honourable the President of the Legislative Council
And
The Honourable the Speaker of the Legislative Assembly

This report is presented to Parliament in accordance with section 28(2) of the Police Integrity Act 2008. It uses case studies based on recent OPI investigations to demonstrate the inadequacy of conflict of interest management in Victoria Police, despite the existence of specific policy on the subject. The report is intended to assist individual police, Victoria Police as an organisation and the community of Victoria to better understand how and when conflict of interest occurs for police and why it is important they manage it properly.

Michael Strong
DIRECTOR, POLICE INTEGRITY
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Executive summary

This report uses case studies based on OPI investigations to highlight a recurring theme underlying much of our work – a persistent failure by some within Victoria Police to properly identify and appropriately deal with conflict of interest.

Conflict of interest can arise in many ways for those in positions of power, especially police. Because of their broad powers and the variety of their work, it is likely that the work of many police will at times intersect with their personal interests. However, police must never allow personal interest to affect their police work. They must be impartial and must never be seen to act in a way that is motivated by personal interest rather than professional duty.

Compounding the challenge for police is the risk they will be perceived as being biased or unfair, even when they themselves feel sure of their own integrity. To maintain community confidence, police must not only act impartially; they must ensure that a reasonable observer would not be able to infer any improper influence.

OPI has investigated cases where failure to recognise and deal with conflict of interest caused police to make mistakes which they then lied about and covered up. Covering up a mistake arising out of a conflict of interest heightens the perception of deliberate wrongdoing, when the individual involved may simply have been struggling to manage a genuinely difficult situation.

Sometimes a conflict of interest cannot be avoided. The existence of a conflict is not in itself wrong. Rather than pretending a conflict doesn’t exist or, worse still, ignoring it and covering it up, police should focus on recognising, acknowledging and managing it.

The case studies in this report are provided as cautionary tales. These and other OPI investigations have shown that a number of police – even those who recognise conflict of interest – are not sufficiently equipped with strategies to deal with it. An improved understanding and application of Victoria Police values will benefit many who find themselves in difficult but sometimes unavoidable situations. Integrity, with its emphasis on fairness; professionalism, with its emphasis on transparency; leadership, which entails guidance for less experienced police; and support, which requires care for the well-being of colleagues – these values are at the heart of conflict of interest management.
Introduction

OPI investigations into Victoria Police reveal that some police have little understanding of conflict of interest and how to deal with it. This report is a collection of case studies that demonstrate how, in a variety of circumstances, failure to identify and deal with conflict of interest can lead to lies and cover-ups.

The case studies in this report are based on actual OPI investigations. In order to protect the identities of the individuals involved, certain non-critical details about each case have been altered. The Chief Commissioner of Victoria Police was provided with a copy of this report. Some of his comments have been incorporated into the body of the report. His response to the recommendations is included in full at Appendix One.

Context

In the broader public sector, the Victorian Ombudsman¹ and Public Sector Standards Commissioner² have expressed concern about conflict of interest undermining integrity and public trust. Fairness and impartiality are important for all those holding public office and thereby exercising powers on behalf of the community. Fairness and impartiality are particularly important for police, given their significant powers.

As holders of a unique and vitally important public office, police not only have extensive powers but also significant discretion in how they use those powers. While the rules and laws governing police behaviour are extensive, police as professionals will always be required to make discretionary decisions while applying those rules and laws in their day-to-day work. It is therefore essential the community can trust police to act impartially and exercise their discretion fairly in the public interest.

Conflict of interest in Victoria Police has been the subject of a number of previous reports. In 2009 OPI concluded the former Chief Commissioner put her own wishes ahead of her professional duty when she accepted free travel and accommodation worth several thousand dollars.³ The same year OPI reported a work unit in Victoria Police accepted donations from a body it was specifically required to regulate and that an Inspector inappropriately accepted regular corporate hospitality.⁴

In early 2010, Victoria Police introduced new Policy Rules on conflict of interest. In fact, the principles of conflict of interest management have been part of Victoria Police policy for some time. Despite this, investigations continue to show that some police do not adequately recognise and manage conflict of interest.

¹ Ombudsman Victoria, 2008, Conflict of Interest in the Public Sector
² Victorian Public Sector Standards Commissioner, 2009, Conflict of interest policy framework
³ OPI, 2009, Offers of gifts and benefits to Victoria Police employees
⁴ OPI, 2009, Annual Report
Understanding conflict of interest

What is an interest?
As the Victorian Ombudsman wrote, an interest can take many different forms. It may be a want, preference, loyalty, relationship or connection. It can be a hobby, an investment, a personal ambition, personal property or a desire to help friends and family members. It is not wrong for a person, police member or otherwise, to have interests. Having personal relationships, connections, loyalties, ambitions and preferences is a natural part of being a social creature.

Identifying a conflict of interest
A personal interest comes into conflict with the professional interests of police when the personal interest could influence a policing decision. *Vice versa*, a professional interest comes into conflict with a personal interest when a policing decision could affect a personal interest of the decision maker. Either way, when personal interest is involved, there is a risk and a perception that the policing decision will not be made in a fair and impartial way.

Types of conflict of interest
Conflict of interest can be categorised in various ways. For example, particular types of activity are known to create conflict of interest for police. The Victoria Police Policy Rules identify the following areas of activity as potential sources of conflict: use of police authority; receipt of gifts and benefits; secondary employment; declarable associations; providing references; and police clubs and functions.

The Policy Rules also recognise three types of conflict of interest typically identified in academic and public sector literature:

- **An actual conflict of interest** is where there is a real conflict between an employee’s public duties and responsibilities and existing private interests.

- **A perceived conflict of interest** can exist where a third party could form the view that an employee’s private interest appears to influence the performance of their duties, now or in the future, whether or not that influence actually exists.

- **A potential conflict of interest** arises where a member or employee has private interests that could conflict with their public duties.

Perceived and potential conflicts of interest are important. Conflict of interest occurs not only when it is proven that personal interests affected a professional decision. Conflict of interest occurs even if someone merely thinks there has been improper influence or if there is an opportunity for improper influence to occur.

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5 Ombudsman Victoria, 2008, *Conflict of Interest in the Public Sector*
In 2007, the Queensland Integrity Commissioner stated:

“The test as to whether an unacceptable conflict of interest exists is the view of a reasonable member of the public, properly informed.

This is an objective test and means that self-righteousness in the mind of the person having the potential conflict is not to the point. Perception is reality.

The person involved in the potential conflict of interest is not in the best position to judge what action should be taken to manage or avoid it. This is because of the obvious interest which he or she has in the matter.”

Using the above test, police should ask themselves: “How would this look to a reasonable observer?” If they feel a reasonable member of the public might be uncomfortable or sceptical, then there is a perceived conflict of interest.

In practice, determining whether a conflict of interest is actual or just perceived or potential is difficult – maybe impossible. It is hard for police themselves, let alone an observer, to know whether a police decision was actually affected by another interest or only looks as though it might have been. As the Queensland Integrity Commissioner said, the person involved is “not in the best position to judge”. For the purpose of maintaining public trust, whether a conflict of interest is ‘actual’, ‘potential’ or ‘perceived’ is not important – all three undermine public confidence, so all three must be acknowledged and dealt with.

**Managing conflict of interest**

The first and most crucial step in dealing with conflict of interest is recognising it. The second step is declaring it. Recognising and declaring a conflict of interest may be all that is required in some circumstances. Other circumstances may require active intervention, such as removing the person with a conflict of interest from the decision-making process.

Various tools are available to assist with the management of conflict of interest. For example, OPI developed a decision-making ‘wheel’ which prompts police to question perceptions around their personal interests and how those interests interact with their police duty.

Another tool, known as the six Rs, was developed by the New South Wales Independent Commission against Corruption and Queensland’s Crime and Misconduct Commission and adopted by Western Australia’s Corruption and Crime Commission. The six Rs are:

- **Register** – The register is where details of the existence of possible or potential conflicts of interest are formally registered
- **Restrict** – Where restrictions are placed on the public employee’s involvement in the matter

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6 Gary Crooke QC, *The Queensland Integrity Commissioner Role and functions: Conflicts of Interest matters and examples*, presented at the Australian Public Sector Anti-Corruption Conference, 24 October 2007

7 Available at www.opi.vic.gov.au
• **Recruit** – Where a disinterested third party is used to oversee part or all of the process that deals with the matter

• **Remove** – Where a public employee chooses to be removed from the matter

• **Relinquish** – Where the public employee relinquishes the private interest that is creating the conflict

• **Resign** – Where the public employee resigns from their position in the agency.

This report will identify how tools such as the six Rs and the conflict of interest wheel might be used to manage particular cases of conflict of interest in Victoria Police. They are used as examples only. They are not rules to be followed, certainly not in any sequential or other formulaic way. They are simply a demonstration of some practical ways in which conflict of interest can be managed – or, at the very least, risks associated with conflict of interest can be lessened.

**The importance of values**

Although it can be useful to identify potential areas of risk, it is dangerous to create a detailed inventory of police activities that are susceptible to conflict of interest. In reality, conflict of interest could occur in any area of police work in a myriad of ways. The range of situations police encounter is too broad and unpredictable to be itemised in a list. This report suggests that a commitment to the broader values that underpin conflict of interest rules will be more effective than specific rules for particular situations.

The Victoria Police values are:

• Integrity

• Leadership

• Flexibility

• Respect

• Support

• Professionalism

The values are designed to be guiding principles for Victorian police in all their work, but they are particularly useful for recognising and managing conflict of interest. This report will demonstrate how the values may be applied in particular cases of conflict of interest.

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8 NSW Independent Commission Against Corruption and Crime and Misconduct Commission (Queensland), 2004, *Managing conflicts of interest in the public sector - Toolkit*
Case study: ‘A mate at the cop shop’

A Sergeant of Victoria Police compromises his own professionalism on behalf of an acquaintance. The Sergeant allows a personal connection to interfere with the impartial conduct of his police duty.

The accident

In the outer east of Melbourne, a taxi collided with the rear of a car. The driver of the car suffered minor injuries and the taxi driver was charged with two traffic-related offences.

Charges contested and withdrawn

The taxi driver, who had a history of infringements, contested the offences with which he was charged. Before the charges were heard, he produced a statutory declaration in the name of his friend, who had seen the accident from a distance. The statutory declaration was witnessed by a Sergeant of Victoria Police. The evidence in the statutory declaration directly contradicted the evidence of a second witness, but the second witness did not appear at court. The police prosecutor agreed to have the charges against the taxi driver withdrawn.

Victoria Police enquiries

The Victoria Police Constable who had attended the accident suspected the authenticity of the statutory declaration and made enquiries. The taxi driver’s friend told the Constable that the Sergeant who witnessed the declaration had also handwritten it for him.

The Sergeant told the Constable he did not remember the statutory declaration and he asked for a copy. Later he told the Constable the document was not in his handwriting.

The Constable again asked the taxi driver’s friend whether the document was in his handwriting. This time he said his wife had written it.

OPI investigation

In private OPI examinations, the Sergeant admitted he knew the taxi driver but denied any arrangement to collaborate on the statutory declaration. It was established that the taxi driver wrote the statutory declaration, without input from the friend in whose name it was written, and that the taxi driver, by prior arrangement, had it witnessed by his acquaintance the Sergeant.
It was revealed that once the Constable made enquiries about who had written the declaration, the taxi driver then attempted to persuade the Sergeant to cooperate in giving a false account of the circumstances in which the statutory declaration was produced.

OPI also discovered the taxi driver and the Sergeant broke OPI confidentiality requirements and were in close communication throughout the investigation.

The taxi driver’s friend, in whose name the statutory declaration was written, told OPI he had agreed under some pressure to act as a witness. He said he expressed concern about the statutory declaration and the taxi driver:

“… said he had a mate down at the … cop shop and that everything would be all right.”

What went wrong

The Sergeant witnessed a statutory declaration in the absence of the person purportedly making the declaration and at the request of someone who stood to directly benefit from it. When the Constable enquired about the authenticity of the statutory declaration, the Sergeant failed to tell her that the taxi driver attempted to persuade him to support a false account.

Consequences

The victim and the community

By improperly witnessing a statutory declaration, the Sergeant gave credibility to what was otherwise false evidence. The false evidence became fundamental in the decision to drop charges against the taxi driver. This in turn meant the driver of the car was denied justice. The community was also denied justice; a taxi driver with a history of infringements was not held to account for alleged careless driving.

The Sergeant

When the taxi driver sought help from his ‘mate’ the Sergeant to defend criminal charges, the Sergeant was put in the position of having to choose between helping his acquaintance and complying with his police duty.

After succeeding in getting the Sergeant to commit the first impropriety, namely falsely witnessing a document, the taxi driver could be said to ‘have one over’ the Sergeant. The Sergeant would have found it difficult to extract himself from such a situation. As a result, the taxi driver was allowed to influence the Sergeant’s ongoing interactions with his Victoria Police colleagues and with OPI.

Although the Sergeant did not cooperate with the taxi driver’s instructions to give a false account, he did not alert Victoria Police or OPI to the taxi driver’s efforts to persuade him
to do so. The Sergeant’s silence amounted to a cover-up. Engaging in a cover-up made the Sergeant less likely to convince a reasonable observer that he made a mistake or suffered a temporary lack of judgment when he witnessed the false statutory declaration.

**Victoria Police**

This case has potential consequences for all members of Victoria Police. The taxi driver exploited both his friend who witnessed the accident and his ‘mate’ the Sergeant. By passively cooperating with the taxi driver, the Sergeant let himself be exploited.

If members of Victoria Police allow their professional conduct to be compromised, having a ‘mate at the cop shop’ will continue to be seen as a means to evade justice. Putting a stop to such expectations and demands in the first place protects other police from situations that expose them to being compromised, challenge their professional integrity and diminish public confidence.

**What should have happened**

The Sergeant had a responsibility to ensure any statutory declaration he witnessed was signed in his presence by the maker of the declaration. He also had a responsibility to tell Victoria Police and OPI what he knew about the authenticity of the statutory declaration. The Sergeant should have recognised the conflict of interest and told the taxi driver he was unable to witness the statutory declaration, irrespective of the impact the refusal would have on his relationship with the taxi driver.

**Show integrity, professionalism and support**

According to the Victoria Police Professional and Ethical Standards, the value of integrity means ‘act with honesty, respecting the right of fair process for all’, as well as ‘demonstrate moral strength and courage’. Refusing to break rules for the benefit of friends and family in the face of a direct request requires ethical strength. It requires genuine commitment to serve Victoria Police and the public above personal interests or the interests of friends and family.

Professionalism, meaning ‘communicate openly, honestly and consistently’, be ‘transparent’ and ‘strive for excellence’, would have produced better outcomes in this case. If he had acted professionally, the Sergeant would have openly told the Constable what he knew about the authenticity of the statutory declaration.

The value of support includes ‘care for the well-being of colleagues’. In this case, support entails protecting colleagues from being taken advantage of as ‘a mate at the cop shop’. All police can support each other in this way by shutting down the culture of doing favours for mates.
Case study: A police suspect (part 1)

Acceptable and natural personal connections can at times be seen to undermine police duty, especially where police work and live in small communities.

Assault reported

One evening in a small town in northern Victoria, a woman telephoned police from a deserted supermarket car park. She said she had been attacked while out jogging and had fought off her attacker and run to the car park. She said she had only minor injuries and could not provide much detail about the attack.

A Sergeant attends

A Sergeant in the area on another matter was the first to arrive in the car park. He knew the woman socially. She was an old school friend and also the wife of a senior officer at his station.

The woman was in tears and highly agitated. She embraced the Sergeant and he could smell alcohol on her breath. She told him she had argued with her husband and decided to go for a run to clear her head, at which point she was attacked. A divisional van crew arrived and the Sergeant directed them to search the area.

The mention of an argument at home set off ‘alarm bells’ for the Sergeant. He had worked on domestic violence matters where the people involved ‘covered up’ for each other. He asked the woman whether her husband had assaulted her. She said he had not. The Sergeant was not sure what to believe.

The Sergeant drove the woman home. Inside, her husband told the Sergeant it was unlikely his wife had been assaulted – she had been drinking and was simply upset because they had argued. The Sergeant asked him whether he had assaulted her. The husband seemed taken aback. He said he never had and never would.

The Sergeant examined the woman’s face under strong light and did not see any signs of injury. He told the husband that if an injury or any other evidence emerged then the matter would be treated as an assault.

The divisional van crew that had searched the area of the supermarket car park found no evidence. The matter was not recorded on the police crime database.

Assault reported again

Two days later, a friend of the woman – a Victoria Police Constable – happened to pay the woman a social visit. The woman now had a black eye and other facial
bruising. The woman gave the Probationary Constable the same account of events she had given earlier and again rejected the suggestion her husband had assaulted her.

The woman said she feared her assault might impact on her husband because he was rumoured to be up for promotion and was not well-liked by some local detectives. She worried the detectives would try to show her husband had assaulted her.

The Probationary Constable took a statement and filed the appropriate reports.

What went wrong
An assault was reported to police. Despite some concerns, the Sergeant came to the conclusion no assault had taken place and did not enter the alleged assault in the crime database.

Consequences

The ‘reasonable observer’
Regardless of what the Sergeant’s actual feelings or motivations were, an observer might view his decision not to record the alleged assault as a case of personal relationships interfering with police duty. An observer might reasonably think the Sergeant chose not to make a report to spare the woman's husband any inference that he was a perpetrator of domestic violence. The actions of the Sergeant suggest police are treated differently from other suspects.

Victim and suspect
Not reporting the matter had the opposite effect from protecting either the woman or her husband. It denied the woman her right to have the matter addressed. She did, after all, report an assault to the local station and to the Sergeant. Not reporting the matter also denied the woman’s husband the opportunity to have it proven he did not assault the woman. If the Probationary Constable had not happened to visit the woman socially, the alleged assault might never have been recorded by Victoria Police.
What should have happened

**Recognise a lack of objectivity**

When he concluded there had been no assault, the Sergeant failed to see that he was too close, too involved in the matter to make a fair judgment. OPI's conflict of interest wheel prompts police to ask themselves the question. “Even if I act impartially, how will others perceive my actions?” Such questioning might have helped the Sergeant realise that being personally involved in a police matter will not inspire confidence in the ‘reasonable observer’.

The Sergeant said he understood the personal motivations that can cause a person to cover up domestic violence. The Sergeant was aware that in domestic violence cases, the victim’s interest in reporting violence to police may conflict with a desire to protect the offender, perhaps through love or fear. Had the Sergeant applied this understanding to his own situation, he might have better understood his own motives or at least how his actions would be viewed by a ‘reasonable observer’.

**Acknowledge conflict of interest**

The Sergeant’s personal connection to those involved in the alleged assault made it all the more important for him to record his actions and observations. While recording details of the allegation, he could have registered his conflict of interest. As well as allowing the allegation to be investigated, a record would serve as a demonstration that proper processes were followed, that relevant facts were taken into account, that there was nothing to hide. It would show that a potential conflict of interest – which was nobody’s fault – was recognised and managed. Instead, the Sergeant’s failure to act looks like a cover-up. A cover-up carries an aura of guilt; transparency builds confidence and trust.

**Get help and step aside**

When the woman called the police station to report the assault, the Sergeant was in the area already and a quick response was desirable – there might have been witnesses, evidence and an offender in the vicinity. Also, the woman was distressed and vulnerable, alone in the supermarket car park at night. It was therefore reasonable to expect the Sergeant to attend.

However, the Sergeant had a friendship with the victim and a working relationship with a potential suspect. His personal connection to the people involved was likely to affect his impartiality. Once he had ensured the immediate safety of the woman and was satisfied there were other police with less personal connection to the matter brought in (or recruited) to deal with it, it would have been appropriate for the Sergeant to step aside (or remove) himself and have no further involvement.
Show integrity, support and professionalism

Managing the conflict of interest in this way would have demonstrated the Sergeant’s commitment to the Victoria Police values of integrity, support and professionalism.

Recording an alleged assault and *registering* a conflict of interest is consistent with the value of professionalism which requires Victoria Police to be ‘accountable to … internal and external stakeholders’ and ‘transparent in … service delivery’.

Integrity for Victoria Police entails ‘respecting the right of fair process for all’. Fair process in this case means allowing the woman who reported the assault to have her allegation handled impartially, not dismissed informally because her husband happened to be a police officer. Fair process also would have meant sparing the woman’s husband, a senior police officer, the potentially unjustified suspicion that would linger around him if the matter was not investigated.

The Victoria Police value of support encourages police to ‘care for the wellbeing of colleagues’. Ultimately the wellbeing of the senior police officer in this case is best served by a fair and open evaluation of the evidence, rather than any sort of cover-up.
Crime investigation unit investigates

After the Probationary Constable’s report, an investigation was begun by the local crime investigation unit. The investigating Detective Sergeant told the woman and her husband he did not believe the woman’s account of events and he considered it possible the woman’s husband had assaulted her. The woman defended her husband’s character. The husband and the Detective Sergeant had a number of verbal altercations.

Detective Sergeant raises concerns

The investigating Detective Sergeant told his manager he was uncomfortable investigating an alleged assault involving a senior police officer in his local area. He said he suspected the senior police officer had committed the assault.

In response, the manager spoke to the woman’s husband herself. The husband was a long-time colleague of hers and the pair had a sociable conversation without directly addressing the alleged assault. Afterwards, the manager said there was no need to refer the investigation elsewhere.

The manager then directed the officer in charge of the crime investigation unit to assign the investigation to a different detective and told the unit not to investigate domestic violence or anything else not suggested by the woman herself.

The officer-in-charge was uncomfortable with his manager’s instructions and took immediate leave. Failing to find evidence to support the woman’s account of events, the remaining detectives felt they had no further avenues of investigation.

Superintendent takes action

Some days later, a Detective Senior Constable met with his Superintendent and expressed concern about the investigation. He said it was affecting morale at the crime investigation unit. The Superintendent requested a review from a separate unit. The review recommended further investigation by independent investigators with no previous knowledge of the victim or her husband.
What went wrong

The local detectives were not sufficiently independent to conduct an investigation that would satisfy a ‘reasonable observer’. The detectives and the woman’s husband did not have a straightforward investigator-suspect relationship. The husband was a fellow member of Victoria Police, of senior rank, in their local area. No matter how noble their intentions, those detectives could not investigate the domestic arrangements of a senior officer in their local area without a conflict of interest.

The fact some of the detectives were said to dislike the senior officer did not mean there was no conflict of interest. Personal animosity towards a potential suspect is just as likely to prejudice an investigation as a friendship with a suspect. Both undermine independence and impartiality.

When the Detective Sergeant quite rightly acknowledged a conflict of interest and reported it to a manager, the manager failed to acknowledge and manage the problem. Furthermore, she appeared to direct the course of the investigation based on her connections to the woman’s husband.

Consequences

The ‘reasonable observer’ loses confidence

A reasonable member of the public, properly informed, is unlikely to be confident this matter was properly handled by Victoria Police. There was a perception of favourable treatment towards the senior officer. To an observer, it could appear as though the woman’s husband used his police authority and his friendship with senior police to avoid being investigated as a potential suspect. The impartial observer would expect that in similar circumstances, involving ordinary civilians, investigators would consider domestic violence a possibility.

Police morale lowered

Having to continue what they knew was not a proper or fair investigation damaged the morale of the detectives. The detectives recognised a conflict of interest that their manager refused to acknowledge. This must have undermined the detectives’ respect for their manager.

The unit also suffered reduced capacity after its officer-in-charge took leave to avoid a situation that disturbed him ethically. Losing senior members in such a way must also damage police morale.

Justice not served

Once again, the woman who alleged the assault was denied justice. She reported being assaulted by a stranger. Some police suspected her husband had assaulted her. Perhaps
there was another explanation for her injuries. The possibilities were not properly explored by the local crime investigation unit.

The lack of a full investigation would leave a ‘reasonable observer’ wondering what there was to hide. The reluctance to investigate implied guilt on the part of the husband, which was not fair to him, if indeed he was innocent.

What should have happened

Acknowledge, get help, step aside

The Detective Sergeant acted appropriately when he acknowledged (or registered) a conflict of interest with his manager. However, the manager was able, informally, to dismiss the Detective Sergeant’s concerns.

A more appropriate response from the manager would have been to remove not just the Detective Sergeant but the entire local crime investigation unit from the case and seek help from (or recruit) an independent unit to conduct the investigation. This was the action eventually taken by the Superintendent.

Working closely with the community is important for rural police. Police in rural areas should not feel they have to distance themselves entirely from their local communities for fear of being involved in conflict of interest issues. A better outcome would be for police in small communities to refine their understanding of conflict of interest, how it occurs and what effect it has. That would help them strike an appropriate balance between maintaining positive relationships with the community and knowing when and how to step aside from matters in which they have too much personal involvement.

Show leadership

Leaders in Victoria Police are encouraged to:

- be approachable and consistent when dealing with colleagues, partners and the community
- apply fair process
- guide, trust, develop and empower colleagues
- make timely decisions that are guided by both values and evidence
- inspire participation and commitment through a shared vision

Leadership by the Superintendent in this case eventually relieved the detectives of a difficult situation, but not until they had ‘shopped around’ and found someone who was approachable, fair, trusting, decisive and inspiring. Had the initial manager shown the leadership displayed by the Superintendent, the alleged assault might have been investigated fairly and transparently from the outset and the morale of the crime investigation unit might not have suffered.
Case study: Mistakes, lies and cover-ups

A Sergeant of Victoria Police allows his personal connections to come before his police duty. The pressure of the Sergeant’s personal obligations also affects two of his junior colleagues, who compromise their integrity and become embroiled in a cover-up.

Routine patrol work

Late one night, a Constable and Probationary Constable of Victoria Police were on patrol outside a suburban hotel in western Melbourne. When a vehicle pulled out of the hotel car park and onto a main road, they intercepted it for a routine check.

The Constable conducted a preliminary breath test on the driver. The result was a blood alcohol content of 0.054 per cent, in excess of the legally-permitted 0.05. The Constable informed the Probationary Constable of the positive reading and told the driver he was required to accompany him to the police station for an evidentiary breath test. The Probationary Constable contacted the police communications centre to ask where to take the driver. He was directed to a particular station.

The mistake

By this time the passenger of the car had made a call on his mobile phone. He proffered the phone to the Probationary Constable, saying: “Here, talk”. The Probationary Constable refused the phone. The passenger then proffered it to the Constable, repeating: “Here, talk”. The Constable took the phone.

On the phone was a Sergeant from the Constable’s station. The Sergeant was at home, off duty. After talking to the Sergeant, the Constable seized the driver’s keys and allowed him and his passengers to leave on foot, without an evidentiary breath test being conducted.

The lie

The Constable informed the police communications centre he had conducted a second preliminary breath test and the driver “ended up being under”. The Probationary Constable entered a negative result on the patrol duty sheet for the preliminary breath test.

The cover-up

As part of a separate OPI investigation, the call from the passenger’s phone to the Sergeant’s phone was recorded. On the basis of the recorded conversation, OPI inquired into the incident.
In cooperation with OPI, an Inspector of Victoria Police questioned the Constable about the breath test. The Constable implied he had intercepted the driver before he drove, then seized his keys to prevent him from driving.

The Constable initially implied the same to OPI, but later suggested he had mistakenly believed he had discretion to seize keys rather than pursue an evidentiary breath test.

The Probationary Constable admitted falsifying the patrol duty sheet. He said he was “not happy” about being dishonest but felt powerless to do otherwise.

The Sergeant revealed he had suspected that night that the phone call was being recorded.

The phone call

The passenger called the Sergeant and asked him to help and the Sergeant said he would try. When the Constable came on the phone he found out the passenger was the Sergeant’s ‘best mate’. He responded: “Oh, shit”.

Throughout the call, the Constable expressed indecision and stress and asked the Sergeant for guidance, saying: “What do you want us to do?” and “Give me a direction”. The Sergeant’s responses included: “I’ll leave it up to you whether you want to give a … warning or whatever you want to do …” and “it’s up to you”.

The Constable said his manager would be “asking questions” if he did not conduct an evidentiary breath test. The Sergeant said: “… if you decided that you pulled him over … before he drove and you tested him to see if he could drive home … well – up to you, up to you”.

The Constable said: “… I just don’t want to stuff things around, one for you and obviously one for the station …” The Sergeant again said: “it’s your call” and “It’s up to you whether you do anything about it, like give him a warning”.

The Constable said: “Fucking hell! I might just seize keys”, and the Sergeant replied: “Yeah, you can do that”.

Follow-up call

Later the passenger called the Sergeant again and suggested the Constable come to his cafe for a meal. The Sergeant did not pursue the suggestion.
Mistake to misconduct: What went wrong

The mistake
The Constable in this case told OPI he later viewed his acceptance of the phone call that night as an error of judgment. He said:

“Put it this way. From experience now, if that was to happen to me again – if anyone was to shove a phone in my face, I wouldn’t answer it.”

There is no rule, policy or law against accepting a phone call in such circumstances, but hindsight shows the Constable would have been better off had he not accepted the phone. Common sense says it should not matter who was on the other end of the phone or what that person might have to say – the Constable’s duty to uphold the law against driving under the influence of alcohol would be the same. However, at that moment the Constable responded as he saw fit and to criticise him for that would be harsh. But once he accepted the phone, he became embroiled in a conflict of interest.

The Constable found out that a Sergeant he knew and respected in the workplace had a close friendship with the passenger of the car he had pulled over. Although he did not speak the words ‘conflict of interest’, the Constable’s reaction of “oh shit” betrayed some awareness of competing demands.

The Constable then made the more serious mistake of letting the driver go. Victoria Police requires an evidentiary breath test for all drivers who register a preliminary reading of 0.05 per cent blood alcohol content or greater.

The lie
Having made the mistake of not pursuing an evidentiary breath test, the Constable and Probationary Constable were obliged to lie about it by calling-in a fabricated second reading and falsifying the patrol duty sheet.

The cover-up
Once the Constable and Probationary Constable had committed themselves to a lie, they were in a difficult situation. When the Sergeant’s actions were investigated, the Constable continued with the cover-up but the Probationary Constable admitted falsifying the patrol duty sheet.

The Constable misled both Victoria Police and OPI, giving conflicting accounts of the night’s events. The content of the phone call shows he neither intercepted the driver before he had driven nor believed he had discretion to let him go.

What began at most as a minor error of judgment – accepting the phone call – led to a more serious mistake, deciding to mislead Victoria Police and OPI.
Consequences

The station
The Constable told investigators he feared making things difficult for the local police station because if the driver was a local business owner, he might be required to help police with criminal investigations. He said the driver might become less cooperative if he was ‘done’ for drink driving. As it turned out, the driver was later ‘done’ for trafficking heroin. Making exceptions to the rules on such a hollow basis is not in the interests of the local station. It undermines the credibility of the station’s law enforcement activities.

The Constable
OPI is satisfied the Constable did not know the driver was involved in the illegal drug trade, but his decision to break the rules in the driver’s favour put him at risk of being linked to criminal activity in the eyes of a reasonable observer. The offer of a meal in return for his favour indicates there was a danger of ongoing reciprocity, whether the Constable knew about the offer or not. No doubt it was in the interest of the driver and his passenger to ‘cultivate’ the Constable. Knowing which police are prepared to break the rules, turn a blind eye or grant favours is valuable for anyone engaged in criminal activity. Showing the driver and his passengers he was willing to break the rules put the Constable at risk of being dragged into bribery and blackmail.

While again there is no evidence the Constable intended anything sinister by letting the driver go, the cover-up after the mistake created an atmosphere of guilt.

Victoria Police
If it is not dealt with when it first arises, conflict of interest spreads from person to person. In this case the Constable was affected by a loyalty to what he saw as the Sergeant’s interests.

The Constable attempted to deny any influence when he told OPI:

“I didn’t know the guy. I didn’t get anything out of the situation, so it’s not like I gained anything out of it.”

However, he also said:

“When I realised it was [the Sergeant] I thought, ‘Oh, great, here we go … What am I going to do now? What is this that I’m sort of walking into?’”

The Sergeant’s friendship with the passenger put pressure on the Constable. The Constable then allowed the pressure to affect the Probationary Constable as well. The Probationary Constable now had to choose either to make a stand against the Constable or to ‘go along with’ the Constable’s decision. The Probationary Constable said he was ‘shocked’ and ‘uncomfortable’, but ultimately overwhelmed by the situation and his own inferior rank.
The reasonable observer

Once again the reasonable observer loses confidence in Victoria Police when police misuse their powers to protect people close to them. It appears the driver in this case was treated differently because he had a connection, through his passenger, to a Sergeant of police.

What should have happened

The driver of the car should have been taken to the station for an evidentiary breath test. The Sergeant, the Constable and the Probationary Constable all knew that.

Show leadership

Leadership is needed to assist less-experienced police to negotiate challenging situations. Victoria Police leaders are expected to ‘guide, trust, develop and empower colleagues’. They must also ‘strongly commit to the values of the organisation’.

The Sergeant in this case led his junior colleagues into difficulty, instead of assisting them out of it. The Sergeant’s recurring reminder that “it’s up to you” was undermined by his repeated prompt to “give him a warning”. His suggestion the Constable could “decide” he intercepted the driver before he had driven amounts to an instruction to lie. If the Sergeant felt he could not guide the Constable because he was off-duty or because he was conflicted, a professional response befitting a leader would have been simply to say so – to declare (or register) his conflict of interest – rather than attempt to influence his colleague’s actions indirectly.

Show support

To ‘care for the wellbeing of colleagues’, police should help each other deal with conflict of interest. Support for colleagues does not mean bend the rules or cover up poor behaviour. Such loyalty is misplaced; it does not recognise the true professional interests of police. In a culture of true loyalty and support, police should help colleagues avoid doing things they will feel the need to lie about and cover up. Police should not expose a colleague to a decision where he or she has a conflict of interest, and they should not allow their own conflict to become someone else’s.

OPI’s conflict of interest wheel prompts police to ask themselves the question: “If I fail to follow correct procedure, could I be placing others at risk?” This case study demonstrates that one person not following correct procedure does make it harder for other police to do the right thing.

Senior police have a crucial role in providing support. The experiences of the Constable and Probationary Constable in this case showed that the conflicts of interest of senior police will affect the integrity of junior members if senior police do not recognise and manage them.
Be prepared for ‘on the spot’ conflict of interest

The difficulty for the Constable and Probationary Constable in this case was caused partly by being on patrol, away from formal supervision and no doubt feeling an obligation to take decisive action. None of this is unusual for operational police, nor is it an excuse for poor conduct. But it shows police must be prepared for dealing with conflict of interest when there is no time to declare it to a supervisor and ask for advice or to check the Victoria Police Manual, and when there is no freedom to walk away from the situation.

While the Constable could have removed the Sergeant from the situation, he could not remove himself, nor could he remove from his mind the knowledge that the Sergeant had a personal interest in whatever decision he made. The best the Constable could do was remain true to the values of integrity and professionalism and pursue an evidentiary breath test as he originally intended.

The best preparation for these situations is proper understanding of conflict of interest, its consequences and how to deal with it. When the Constable in this case wondered “What am I walking into?” he did not really pinpoint the problem – he did not specifically identify a conflict of interest. If the Constable was more familiar with conflict of interest and its consequences, he might have ended the call to the Sergeant when he found out the passenger was his friend. He might also have called his on-duty manager for advice. When there is little understanding of and commitment to conflict of interest management, there is a risk the traditions of misplaced police loyalty will continue to direct police decisions in cases like this one.

Acknowledge mistakes

Once the mistake was made, the Constable and Probationary Constable should have acknowledged it rather than lie and cover-up. Victoria Police must ensure an environment where police who make a mistake can feel comfortable acknowledging it. When police admit an honest and reasonable mistake arising from a conflict of interest, they should be educated to understand conflict of interest and given strategies to avoid similar mistakes in the future.
Case study: Freebies

Gifts and benefits, sometimes known as ‘freebies’, are dangerous territory for police. In the following case study, an Inspector of Victoria Police has difficulty understanding the risks of accepting a gift.

The freebie

A liquor licensing Inspector in metropolitan Melbourne regularly met with promoters of licensed events as part of his role. In a letter sent to him by one licensed event promoter, the Inspector found two tickets worth $250 each to the promoter’s licensed event.

The Inspector did not record receipt of the tickets. He sent an email to two friends and offered the tickets to them. The friends did not accept the tickets. The Inspector was working during the event and did not use the tickets himself either.

The complaint

OPI received a complaint about the Inspector’s receipt of the tickets. OPI referred the complaint to Victoria Police and Victoria Police asked the Inspector to respond.

The Inspector’s response

The Inspector admitted receiving the tickets. He did not mention offering the tickets to friends, but said he thought they could be used for police purposes, to covertly check on the running of the event. He said he was known for his firm stance on liquor licensing.

He wrote: “I believe that the file you have infers that I may have acted contrary to my normal decision-making … and that is why I was given tickets”. He said such an inference was “clearly incorrect” and inconsistent with his “professional approach” to liquor licensing. The inspector saw the complaint as an attack on his credibility, which disappointed him.

He did not agree he should be questioned “based upon inference or supposition” and said: “We wouldn’t investigate a criminal offence unless there were some evidence that an offence had actually been committed”.

At interview with OPI, the Inspector said he did not ‘accept’ the tickets. He said the tickets were provided to him, but ‘accepting’ them would mean:

“… actually using them, if it was a product, consuming it or giving it to someone, assuming the rights of the owner.”
The Inspector denied offering the tickets to anyone until he was shown evidence he had offered them to friends.

The event

The licensed event was reported in the media as a ‘drugs and alcohol-related crisis’ with large numbers of people treated for drug and alcohol problems. The Inspector was quoted in a newspaper saying the event was “out of control” and referring to widespread under-age drinking.

What went wrong

An Inspector responsible for liquor licensing accepted a gift of significant monetary value from a person promoting a licensed event. He did not record receipt of the gift and denied his attempt to make personal use of it.

Consequences

The ‘reasonable observer’

Accepting ‘freebies’ can damage the reputation of Victoria Police. Even if a gift or benefit is not intended as a reward or solicitation for police favour, it can create the impression of favourable treatment. The impression of favourable treatment undermines public trust and confidence in police.

The tickets given to the Inspector were worth a total of $500 and could be exchanged for money, for example on an internet trading site or through ‘scalping’ at the event. The gift was also controversial because the Inspector regulated the licensed event and would continue to regulate it in years to come. The free tickets could be seen as an incentive or reward for favourable treatment – a bribe.

In his defence, the Inspector said the liquor licence conditions he set for the event increased the organisers’ costs considerably. Therefore, he said:

“I hardly think I was being rewarded for doing him any favours when I subsequently received the tickets.”

The Inspector may have felt confident he set appropriate conditions on the liquor licence, but the community cannot know whether that was the case or whether even tougher conditions might have been appropriate. The community must trust that the Inspector knows best and will do what is best for the community. The alcohol-related problems at the event might cause a ‘reasonable observer’ to doubt the suitability of the liquor licence and to wonder whether there was a link between the free tickets and the alcohol-related problems.
‘Proving’ a conflict of interest is not the same as proving a criminal offence. It is impossible for anyone to know for sure whether the Inspector was influenced by the gift; the ‘reasonable observer’, OPI, and even the Inspector himself would have trouble determining the actual extent, if any, of the influence. As the Queensland Integrity Commissioner said, the person involved is “not best placed to judge”. While the Inspector argued he did not lower his standards, the perception he might have done so cannot be denied.

The Inspector
The Inspector’s failure to understand or admit perceived conflict of interest caused him to appear guilty. After a complaint was made, the Inspector may have felt he needed to protect himself by covering-up his attempt to use the tickets and by arguing that technically he did not ‘accept’ them. But covering-up did not protect the Inspector. On the contrary, it intensified the impression he had done something wrong.

What should have happened
Decline and declare
The only way the Inspector – or any police member – can ‘prove’ he is not influenced by a gift is not to accept the gift in the first place. By refusing or returning the gift or by handing it over to Victoria Police, the Inspector would have relinquished the private interest that caused complainants to question his impartiality.

If police feel it is reasonable to accept a gift in certain circumstances, the gift must be accepted transparently. The offer should be public, not hidden. Both the offer and the decision to accept should be recorded. Any use made of the gift should also be declared (or registered). Questions asked about the gift should be answered honestly to prove nothing untoward has occurred. Even if the Inspector had returned the tickets, registering the offer and his refusal would have helped protect his reputation.

Show professionalism
The Inspector insisted compromising his standards on liquor licensing would be contrary to his ‘professional approach’. The Inspector’s commitment to professionalism as he understood it may well be sincere. But professionalism entails openness and transparency and in that sense the Inspector’s handling of the gift was not professional.

Rather than be outraged by the suggestion he might be improperly influenced, the Inspector should have been open about receiving the gift in the first place and his intended use of the gift. Such transparency is consistent with true police professionalism and would lessen the likelihood of the ‘reasonable observer’ suspecting foul play.
Conclusion

The problem of conflict of interest

OPI investigations suggest many breaches of duty originate from a failure to recognise and deal with some form of conflict of interest. In this report, ordinary, everyday duties including a routine car check, a response to an alleged assault and the signing of a statutory declaration, led to varying degrees of unacceptable behaviour.

However, it is critically important to understand the difference between a conflict of interest itself and an associated breach of duty. Conflict of interest is inevitable and most conflicts of interest are not in themselves a sign of wrongdoing – they are merely risks to be recognised and managed.

Understanding that conflict of interest itself is not something to hide will help circumvent the types of mistakes, lies and cover-ups encountered in these cases.

Identifying conflict of interest

Most of the conflicts of interest reported in OPI investigations were not overtly identified by the police involved. Perceived conflict of interest was an area of particular difficulty. When considering whether a conflict of interest exists in any given situation, police must ask themselves: “How would a reasonable member of the public see this?” If an observer is likely to be at all concerned about the fair and impartial delivery of police services, then there is a perceived conflict of interest.

Managing conflict of interest

Declaring it

Once a conflict of interest has been recognised, the most crucial step in managing it is declaring it. Declaring a conflict of interest at the earliest possible stage ensures transparency and protects the police involved.

As the case studies show, once police lie about or attempt to cover-up an incident, the opportunity to claim it was a mistake, a misunderstanding or a temporary lapse of judgment is lost. The lie creates an atmosphere of guilt, causing the reasonable observer to view the original incident more harshly.

The reluctance of some police to acknowledge conflict of interest may be caused by fear of punishment or loyalty to someone other than Victoria Police. Both are misguided. The existence of a conflict of interest in the first place is not grounds for punishment, but ignoring the conflict, or exploiting it and covering it up, is.
Declaring a conflict of interest eliminates the perceived need for lies and cover-ups and relieves individual police of the burden of trying to negotiate competing interests alone, without support or advice from a more objective third party.

**Practical strategies**

In some cases declaring (or registering) conflict of interest is enough. Further strategies usually involve separation of the affected person from decisions and actions related to his or her personal interest. Depending on the degree of risk, separation may be as minor as restricting the role of an individual in a particular decision, or as major as the individual resigning from his or her police role or relinquishing his or her personal circumstances.

The separation of an individual from a situation seen to involve a conflict of interest does not imply the individual is unethical or likely to deliberately harm the interests of Victoria Police. It is simply designed to ensure and to demonstrate to the reasonable observer that there is no opportunity for improper influence. It should not be taken personally or as a slur on an individual’s professionalism.

Tools such as the six Rs and OPI’s conflict of interest wheel are simply examples of strategies that may be employed to understand and deal with conflict of interest. Victoria Police is encouraged to provide practical strategies to its employees to help them manage conflict of interest.

**Values**

To increase the effectiveness of its policy rules on conflict of interest, Victoria Police must ensure the values underpinning those rules are fully understood by its people and embodied in its leaders. Values are particularly important for decision-making in areas like conflict of interest that are not – and cannot be – comprehensively addressed by a prescriptive list of rules.

Victoria Police is currently trialling a new values-based approach to education for its recruits. Making values central to training activities at all levels would benefit police struggling to recognise and manage conflict of interest.

**Integrity**

The Victoria Police value of integrity involves ‘fair process for all’, ‘moral strength and courage’ and ‘honour and impartiality’. If police were to act in accordance with this value, conflict of interest would hardly, if ever, be a problem. Conflict of interest is fundamentally concerned with fairness and resisting influences that might undermine police work. Therefore, a culture of fairness and moral strength will assist in dealing with conflict of interest.
Leadership
Poor responses from leaders destroy confidence and discourage others from declaring conflict of interest. Leaders who are themselves inappropriately influenced by personal interests also deter police from declaring conflicts and reinforce a culture of ignoring or exploiting conflict of interest. An understanding of conflict of interest and a commitment to manage it should be required of all leaders in Victoria Police. Leaders must also create an environment where police can admit mistakes and be guided to solutions.

Support
Some cases featured misguided police loyalty rather than genuine support for colleagues. Clearly, matters involving fellow police do, at times, cause well-intentioned police to take actions they would otherwise not take, including actions they know are wrong. There appears to be a cultural misunderstanding of the value of support.

The intention to support one another is an admirable quality in police. However, ‘protecting’ a colleague under suspicion by covering up or lying is not supportive. It only aggravates the problem. Genuine support for a colleague with a conflict of interest means assisting the colleague to recognise and manage the conflict; such support helps colleagues avoid compromising situations where there is no way out but to lie and cover up.

Professionalism
One of the key features of professionalism for Victoria Police is transparency. Transparency is also key to managing conflict of interest because it ensures the observer can see when proper processes have been followed and potential influences have been taken into account. While police may themselves be confident they have integrity, it is the open demonstration of integrity that allows the community to share their confidence.

Also, while the challenges of conflict of interest may continue to cause mistakes to be made, a culture of openness and transparency allows police to acknowledge, make amends and learn, rather than lie and cover-up.

Future work
This report demonstrates to Victoria Police and the general community the nature and impact conflict of interest can have. For Victoria Police it suggests a values-based approach to understanding conflict of interest and some practical strategies for managing it, based on the available tools. OPI encourages Victoria Police to continue to build a culture of service that appreciates the importance of impartiality, transparency and accountability.
Recommendations

It is recommended that Victoria Police:

1. Within three months develop and provide to OPI an action plan to improve the response to conflict of interest by employees at all levels of the organisation. The plan might include, for example:
   a. Providing guidance to police on identifying and managing conflict of interest, including practical strategies
   b. Measuring the understanding of conflict of interest among members, for instance via an ethics survey
   c. Ensuring that organisational values are a fundamental and explicit component of training for managers
   d. Incorporating conflict of interest in training for managers
   e. Incorporating organisational values as part of the key selection criteria for promotion
   f. Providing and promoting a point of advice for conflict of interest and general ethical dilemmas, separate from the local workplace, for instance the Centre for Ethics and Communication
   g. Developing positive case studies to demonstrate the effects of recognising and managing conflict of interest

2. Ensure relevant guidelines acknowledge conflict of interest can not always be avoided and that breaches of duty associated with conflict of interest occur when conflicts are not properly managed.
Appendix – Response of Chief Commissioner

Regarding the recommendations contained in the report, I can advise that Victoria Police is already taking action in respect of most of the matters raised.

As an example, Victoria Police has completed substantial work on ensuring conflict of interest is addressed within numerous Victoria Police policies, namely:

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<tr>
<th>POLICY/CCI</th>
<th>STATUS</th>
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<tbody>
<tr>
<td>Professional and ethical standards</td>
<td>VPM (Published)</td>
</tr>
<tr>
<td>Managing conflict of interest</td>
<td>VPM Policy Rules (Published)</td>
</tr>
<tr>
<td>Gifts and Benefits</td>
<td>VPM Procedures and Guidelines (Published)</td>
</tr>
<tr>
<td>Donations and sponsorships</td>
<td>VPM Policy Rules (Published)</td>
</tr>
<tr>
<td>Employees holding public office</td>
<td>VPM (Presently under review)</td>
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<td>Declarable associations</td>
<td>VPM Procedures and Guidelines (Published)</td>
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<tr>
<td>Secondary Employment</td>
<td>CCI (Awaiting publication)</td>
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<tr>
<td>Vehicle collisions</td>
<td>VPM Procedures and Guidelines (Published)</td>
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<tr>
<td>Election comments and involvement in political activities</td>
<td>CCI (Published)</td>
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<tr>
<td>Access and Use of information systems</td>
<td>VPM Policy Rules (Published)</td>
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<tr>
<td>Liquor control</td>
<td>VPM Procedures and Guidelines (Published)</td>
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<tr>
<td>Public order</td>
<td>VPM Policy Rules (Published)</td>
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Victoria Police have also recently initiated the Centre for Ethics, Community Engagement and Communication, located at the Police Academy to ensure that ethical content, including conflict of interest, is included in all relevant training programs conducted by Victoria Police. It is intended, as your report recommends, that this Centre become a source of advice for all members on ethical matters.

Lastly, staff employed by Victoria Police under the Public Administration Act, already have the organisations’ values included in their position descriptions, as recommended in your report.

It is important that your report acknowledges the progress that has been made to date and that it also recognises, as evidenced by the above reforms, that improving conflict of interest management within Victoria Police has been a priority over the past two years. Victoria Police is an organisation which, by its nature, is always at risk of real, perceived and potential conflicts of interest. I can assure the Office of Police Integrity and the Victorian community that the Victoria Police Executive are committed to treating that risk.