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Victoria Police response to IBAC's Operation Oldfield

In 2016 and 2018, Victoria Police provided responses to IBAC, outlining the actions it had taken to address the corruption and misconduct vulnerabilities identified in Operation Oldfield.

IBAC publishes responses to our investigations to inform the community about actions agencies advise they are taking, and to share learnings that may help other agencies improve their systems and practices to prevent corruption and misconduct.

Victoria Police's responses were as follows:

1. Victoria Police Manual rules relating to court processes

a. The authority granted to police prosecutors to withdraw substantive charges and the processes in place to proactively oversight such decisions and ensure agreement of the informant is gained

- The policy rules that were in existence at the time of the incident were explicit but brief and lacking in detail. Those policy rules were supplemented by the Prosecutions Division Standard Operating Procedures ('SOPs') which provided another layer of accountability and guidance for prosecutors albeit similarly lacking in detail.
- Following this incident, Victoria Police initiated a full review of the relevant Policies and the SOPs that applied in these circumstances.
- Victoria Police Policy was ultimately amended and focused on a requirement that police prosecutors had to consult a sub-officer prior to the withdrawal of charges.
- Police Prosecutions Division SOPs were also revised to provide clarity around the definitions of 'Substantive' and 'Alternative' charges and the formalisation of recording procedures to ensure accountability.
- All police prosecutors were notified and made aware of the amendments through internal communications processes. These changes were reinforced and addressed through a number of training and induction programs, coupled together with the day-to-day managerial oversight of the withdrawal of charges.
- Police Prosecutions Division monthly reporting regimes were enhanced with statistical trends relating to the withdrawal of charges able to be cross referenced with trends identifiable from the Brief Management System (BMS). Monthly Workplace Inspection Reports were also amended to include oversight and 'sampling' of the withdrawing of charges.

b. Mandatory recording of the name of the police prosecutor appearing in court for all prosecutions in the Brief Management System

- The Brief Management System (BMS) is a police prosecutorial database utilised by the Police Prosecutions Division to record and manage the movement of briefs of evidence.
- There is a significant administrative burden associated with the operation of the BMS (*approximately 250,000 cases a year are dealt within the Magistrates Court jurisdiction*) and although the addition of a prosecutors name could to be considered

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a minimal addition in the overall process, it is however, much more problematic than it would appear at first instance.

- The proposed initiative of including the prosecutor's name overlooks the pragmatics of brief resolution. Frequently, the actual prosecutor who conducts the negotiation will not be the person who appears in court and ultimately seeks the withdrawal of a charge or charges. Within the practice of summary case conferencing it is customary for a number of prosecutors to work on the resolution of a particular case and there will be cross-over with other briefs of evidence and potentially even co-accused.
 - The response to this issue has therefore been addressed by the mandatory introduction of brief of evidence 'cover-sheets' which are used to record all negotiations and the full decision-making process as determined by each prosecutor involved at each stage of negotiation. This cover sheet must remain attached to the brief of evidence and provides for full accountability of all decisions and actions across the brief management process.
 - While a process similar to this was in existence and applied in various forms at a number of police prosecution units, this revised process formalises and standardises the procedure and ensures full consistency, transparency and accountability across the entire Police Prosecutions Division.
- c. What guidance is provided to police prosecutors when dealing with unrepresented accused**
- While undergoing training, police prosecutors are instructed that they cannot provide legal advice to unrepresented persons.
 - This is not the same as giving legal information and advising on Court processes and administration procedures etc.
 - Whilst this instruction is reinforced regularly through day-to-day interactions and ongoing professional development, the differences between providing legal advice and discussing general information on Court process can sometimes be difficult to separate; but essentially legal information concerns the court processes whereas legal advice relates to the charges at hand.
 - Prosecutors are instructed to refer any unrepresented person seeking legal advice to Victoria Legal Aid, or alternatively to advise them to source their own legal counsel.
 - Advice sheets particularising these arrangements have been developed and are provided by prosecutors to those seeking police assistance.
- d. How to ensure policy compliance by police prosecutors with the 'Victoria Police Manual Court Processes', including assurance that transparent decision making is evident and conflicts of interest are resolved.**
- The mandatory attachment of 'Brief of Evidence Cover Sheets' that track all decisions and interactions relating to the brief of evidence, together with any correspondence, email or other notations between prosecutor/s, informant and supervisors/managers, ensures that the decision making process is open to scrutiny, transparency and accountability.

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2. Victoria Police to report on how it is comprehensively assured that police prosecutors have the necessary level of judgement and integrity expected of the organization, the judiciary and the public's interest they serve, including police prosecutor selection and training practices

An independent external audit process that was undertaken clearly identified that this was an isolated incident and not indicative of widespread corrupt practises across police prosecution units.

In the context of strengthening Victoria Police procedures and police prosecutor training the following process was put in place:

Suitability Testing (Prosecutor Screening) is undertaken by all potential police prosecutors prior to being able to submit an application for transfer into the Police Prosecutions Division. This process includes aptitude and integrity assessments.

- i) An 'ethics' component is now integrated into the Police Prosecutions qualification framework, namely the Graduate Certificate in Police Prosecutions including:
 - (1) An ethics session delivered by a senior police prosecutions manager on the first day of Module One of the qualification program.
 - (2) A 'Human Rights' and "Ethics" session in Module Two of the qualification.
 - (3) An open session (Ethics discussion) in Module Three of the Qualification.
 - (4) Ethical assessment in the practical component of the qualifications (This is incorporated into the 'Moot' Court appearance sessions).
- ii) Ethics sessions are now a component of the Continuous Professional Development program.
 - (1) These sessions commenced in 2015 and are offered to all police prosecutions staff and are video recorded.
 - (2) The sessions comply and are consistent with the Continuous Professional Development Rules for Lawyers.
- iii) Focusing on ethical practice at the Prosecutions Divisional Management Group meetings for broader dissemination to Police Prosecution Unit development and training days.
- iv) Adoption of the Victoria Police Integrity Framework as a model for advancing business.
 - (1) This includes the establishment of working groups to drive the key issues of Standards, Education, Governance and Transparency.
- v) The development and updating of the Prosecutions Ethical Health and Wellbeing Strategy.

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3. Victoria Police report to IBAC on how it is comprehensively assured that the practises brought to light in this investigation are not occurring in other prosecution units.

A full audit was conducted at the Police Prosecutions Unit where the subject police officer was attached and all matters involving that officer were assessed and reviewed.

No additional matters of concern were identified.

Ethical and Professional Standards Officers were consulted to identify and verify any complaint data in relation to the police officer concerned and any other police officer attached to the Police Prosecutions Division alleging similar type conduct.

No additional matters were identified.

An independent consultant was engaged on the 30 October 2015 to undertake an audit process to address this issue raised by IBAC.

At the conclusion of the audit no additional incidents of impropriety were found.

During the course of the audit an opportunity arose to determine if the compliance with regards to completing 'withdrawal reports' improved as a result of changes to the Police Prosecutions Division SOPs.

Ernst & Young as independent and external consultants were engaged to provide a robust 'Sampling' approach to the audit process to be utilised by the independent consultant.

- The Ernst & Young Audit established that prior to changes to the Police Prosecutions Division SOPs there was 48% compliance with regards to the completion of "Withdrawal of Charges" reports across the Police Prosecutions Division.
- The 'post-policy implementation audit' reflects compliance rates have effectively doubled and now reflect 94% compliance.
- The amendments to the policy had achieved a 46% increase in compliance rates.

Additionally, an ongoing monitoring process was established whereby oversight by the Prosecutions Frontline Support Unit occurs in the withdrawal of charges process across the entire Police Prosecutions Division.

This involves consideration of matters categorised as 'non-routine' withdrawals (these are any withdrawals caused by errors of persons or a failure of a process).

This practice entails review of the integrity of the classification of the 'withdrawal' itself, the requirement for the submission of the report in the first instance and if this requirement was complied with, compliance with the SOPs in terms of decision making and identifying trends with regards to individual police prosecutors and Unit-based withdrawals.

This process of data interrogation also allows for further, more holistic analysis beyond prosecutorial activity, enabling identification of any particular trends or patterns with respect to particular police informants and or their respective 'Authorising' supervisors, in regard to failed or withdrawn prosecutions.

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Additionally, the involvement of police informants and complainants or victims themselves in prosecutions provides additional visibility serving to safeguard probity in prosecutorial activity given the capacity to report any erroneous or questionable activity related to withdrawal of charges.

PSC provides another layer of accountability to review any concerns relative to the conduct of prosecutions.

Notably and to ensure ongoing compliance and integrity another more recent 'sampling' audit was conducted by the Police Prosecutions Frontline Support Unit.

This audit was completed in September 2018 and the results are commensurate with the previous post-policy implementation audit with total compliance established at 91%. The outstanding 9% of matters requiring attention related to administrative detail only. No issues of integrity were identified during this audit.

4. Victoria Police report to IBAC on the review processes in place for applications for secondary employment and what strategies Victoria Police has in place to ensure police employees denied authority to undertake secondary employment do not ignore such decisions or policy instructions or continue secondary employment beyond expiry of such approval.

This was assigned to Professional Standards Command (PSC) and formally acquitted on 27 January 2016 by Chief Commissioner Ashton via PSC.

The relevant instructions applicable to Victoria Police Officers are underpinned by legislation, policy and guidelines. There are a series of oversight and review phases with the ultimate responsibility of monitoring the risk being placed on local managers.

The onus remains on the employees to comply with this policy with any breach rendering them subject withdrawal of approval, discipline action and performance review.

High risk employees across Victoria Police can be further monitored by intelligence reporting.

The Prosecutions Division applies the policies as per the Victoria Police Manual in relation to secondary employment and outside interests. The Police Prosecutions Division records all secondary employment or outside interest approvals on HR Assist and requires regular audits to be conducted at unit managerial level to ensure that police officers are complying with Victoria Police guidelines.