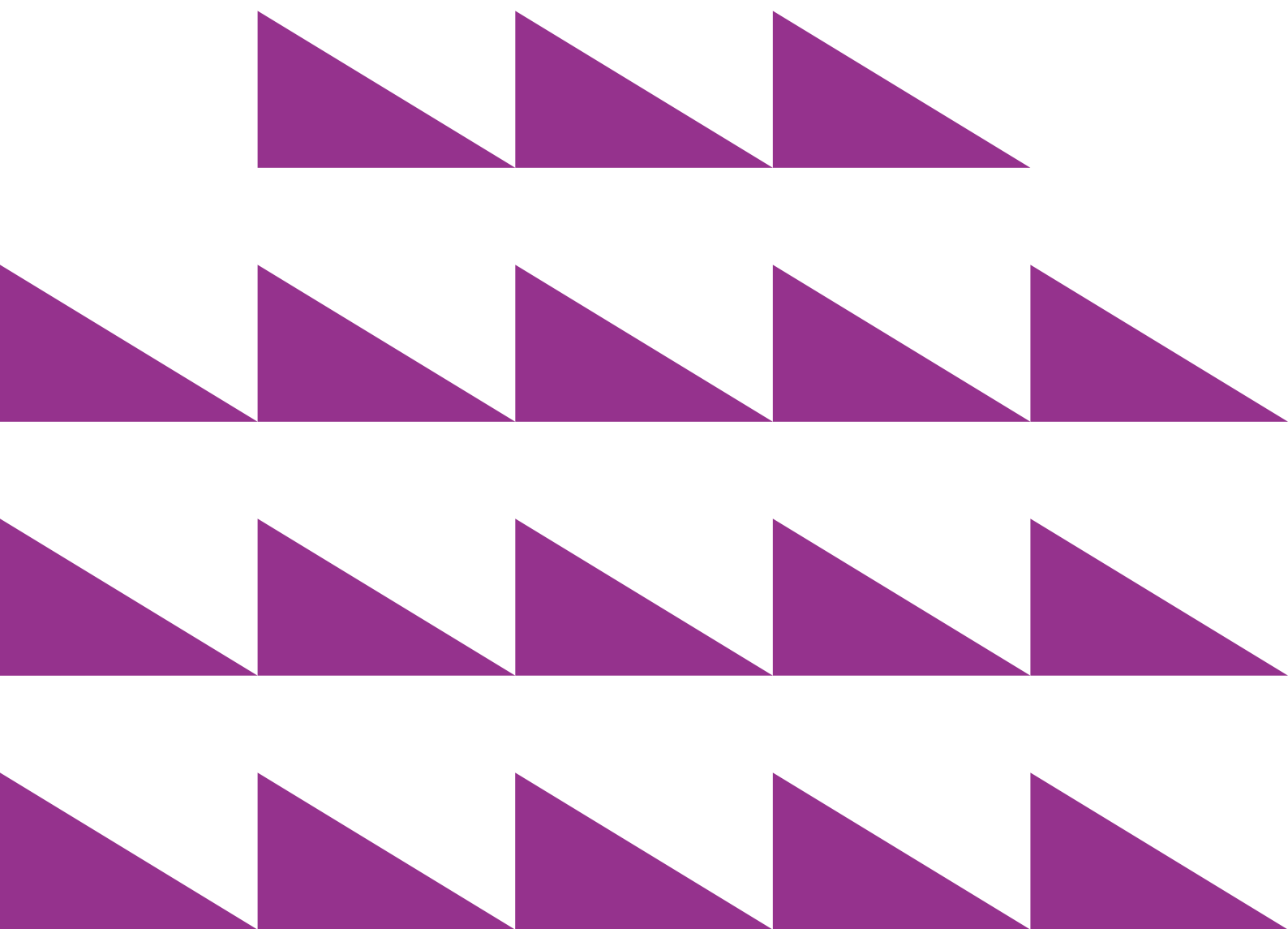


# Operation Gloucester

An investigation into improper evidentiary and disclosure practices in relation to the Victoria Police investigation of the murders of Sergeant Gary Silk and Senior Constable Rodney Miller

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July 2020



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## Letter of transmittal

To

**The Honourable President of the Legislative Council**

and

**The Honourable Speaker of the Legislative Assembly**

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) I present IBAC's report on its Operation Gloucester investigation into improper evidentiary and disclosure practices in relation to the Victoria Police investigation of the murders of Sergeant Gary Silk and Senior Constable Rodney Miller.

IBAC's findings and recommendations are contained in the report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Redlich', written in a cursive style.

**The Honourable Robert Redlich AM, QC**  
Commissioner

## Definitions

Term	Explanation/expanded abbreviation
<b>Acknowledgement clause</b>	A signed section on a police or witness statement acknowledging the statement is true and correct and made on the understanding that a person making a false statement is liable to the penalties of perjury.
<b>Affidavit</b>	A written statement, sworn or affirmed, that may be used as a substitute for oral evidence in court.
<b>Brief</b>	<p>A set of documentation and evidence which is provided by an informant (often the police) to the prosecutor in a criminal proceeding, compiling the evidence relevant to the offence. Briefs will include witness statements and other physical evidence relevant to the proceeding.</p> <p>In some instances, there may be multiple briefs provided at different stages of a prosecution. It is essential that the trial brief contains all relevant evidence held by the informant, whether or not it supports the case.</p> <p>Unless otherwise indicated, the term 'brief' is used in this report to refer to a brief used at trial.</p>
<b>CCTV</b>	Closed circuit television
<b>Committal brief</b>	A committal brief is a brief containing all relevant evidence for an indictable offence, used at the committal hearing.
<b>Committal hearing</b>	A preliminary examination in the Magistrates' Court to assess the strength of the accusation that an accused has committed an indictable offence. This determines whether or not the accused is committed for trial in the County or Supreme Court.
<b>Contemporaneous notes</b>	Documents (including photographs, and audio or video recordings) of an event or a discussion made at the time of its occurrence, or while the event or discussion was fresh in the memory of the witness.
<b>DPP</b>	Director of Public Prosecutions
<b>Exculpatory evidence</b>	Evidence favourable to the defendant or suspect that exonerates or tends to exonerate them.
<b>First responders</b>	For the purposes of this report, first responders are the police officers (both general duties and detectives) who were first to attend the scene of the shooting of Victoria Police Sergeant Gary Silk and Senior Constable Rodney Miller. Some of these first responders heard the dying declarations of Senior Constable Miller.
<b>IBAC</b>	Independent Broad-based Anti-corruption Commission
<b>IBAC Act</b>	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
<b>Inculpatory evidence</b>	Evidence that supports a person's involvement in an act, or evidence that can establish guilt.

## Definitions

Term	Explanation/expanded abbreviation
<b>Indictable offence</b>	Indictable offences are serious offences that carry a maximum penalty of at least five years' imprisonment. These offences are usually tried before a jury in the County Court or Supreme Court.
<b>Informant</b>	The police officer who charges a person with an offence and gives evidence in court in support of the charge.
<b>Jurat</b>	A section on a statement that states the place, date and time the form is sworn or affirmed, and the name, signature and address of the person authorised to take the statement. This completes the statement.
<b>NSW</b>	New South Wales
<b>OPP</b>	Office of Public Prosecutions
<b>Original statement</b>	A signed witness statement usually compiled by a police officer after they have interviewed the witness, and the officer and the witness have agreed the facts to be recorded.
<b>PBT</b>	Preliminary Breath Test
<b>Police personnel</b>	All those employed by Victoria Police, such as police officers, protective services officers, police recruits, police reservists and Victorian Public Service employees.
<b>Police officer</b>	A police officer is a member of Victoria Police personnel with police powers who works either in a general duties or specialised role. This is consistent with the definition used in the <i>Victoria Police Act 2013</i> .
<b>QC</b>	Queen's Counsel
<b>Replacement, secondary or tertiary statement</b>	For the purposes of this report, a replacement statement is a statement compiled after an original statement has been made, with no reference to the original statement, therefore giving the appearance of being an original statement. Some replacement statements, including secondary or tertiary statements, are also backdated.

Term	Explanation/expanded abbreviation
<b>Running sheet</b>	A running sheet is a written log of activities undertaken by general duties officers during a shift. One running sheet is completed for each pair of partnered officers. It is submitted and checked by a supervising sergeant. Today, this is often done electronically.
<b>Statement</b>	For the purposes of this report, the term statement refers to a witness statement (made by a police officer or a member of the public) unless stated otherwise. To be considered as evidence, a statement needs to be sworn to or affirmed by the witness.
<b>Statement taker</b>	The police officer who has taken a witnesses statement. The police officer will write out the statement as the witness's account of the event is told to them.
<b>Statement maker</b>	The person who has made the statement, either by writing out their own statement or recounting the relevant events to the statement taker.
<b>Statement of alleged facts</b>	The informant's summary about the offence and the relevant circumstances. This can include evidence from witnesses.
<b>Summary offence</b>	Offences that are less serious than indictable offences (for example, minor traffic offences and offensive behaviour). Summary offences are heard in the Magistrates' Court.
<b>Supplementary statement</b>	A supplementary statement provides additional information to that which was provided in any previous statements. A supplementary statement should include reference to any previous statement(s) and the date on which the previous statement was made, as well as an explanation to why further information is being provided.
<b>UK</b>	United Kingdom
<b>VEOHRC</b>	Victorian Equal Opportunity and Human Rights Commission
<b>VLRC</b>	Victorian Law Reform Commission
<b>VPM</b>	Victoria Police Manual

## Operation/taskforce

<b>Lorimer Taskforce/ the Taskforce</b>	The Lorimer Taskforce was established by Victoria Police in August 1998 to undertake the investigation of the murders of Victoria Police officers, Sergeant Gary Silk and Senior Constable Rodney Miller. The investigation was known as Operation Lorimer. Bandali Debs and Jason Roberts were found guilty of these murders in 2002. The Lorimer Taskforce comprised officers from the Homicide Squad, the Armed Robbery Squad and other specialist areas of Victoria Police.
<b>Operation Hamada</b>	Operation Hamada was an investigation by the Victoria Police Armed Robbery Squad which commenced in March 1998 in response to armed robberies suspected to be committed by the same two offenders in the south-eastern and eastern suburbs of Melbourne. The investigation was assisted by officers from local criminal investigations bureaus. Bandali Debs and Jason Roberts were each charged with 22 armed robberies investigated under Operation Hamada but these charges never progressed to trial.
<b>Operation Lorimer</b>	Operation Lorimer was established by Victoria Police in August 1998 to investigate the murders of Victoria Police officers, Sergeant Gary Silk and Senior Constable Rodney Miller. Bandali Debs and Jason Roberts were found guilty of these murders in 2002. This operation was conducted by the Lorimer Taskforce.
<b>Operation Mothballing</b>	Operation Mothballing was a Victoria Police investigation of an aggravated burglary by three armed offenders on a home in the eastern suburbs of Melbourne in 2015. It is unconnected to the events investigated by the Lorimer Taskforce.
<b>Operation Pigout</b>	Operation Pigout was a Victoria Police investigation set up to respond to armed robberies committed between 1991 and 1994 by offenders whose identities were unknown to police at the time. Jason Ghiller, an associate of Bandali Debs, was convicted of these crimes in 2003. Although Victoria Police suspected Bandali Debs was the co-offender, he was never charged due to a lack of admissible evidence.
<b>Operation Rainmaker</b>	Operation Rainmaker was the review of the Lorimer Taskforce conducted by Ron Iddles in 2012–13.

## Glossary of names

The Homicide Squad and the Lorimer Taskforce	
<b>Charlie Bezzina</b>	On 16 August 1998, Charlie Bezzina was a detective senior sergeant of the Homicide Squad. He attended Moorabbin Police Station to take statements from first responders to the murders of Sergeant Gary Silk and Senior Constable Rodney Miller.
<b>George Buchhorn</b>	George Buchhorn was a detective sergeant of the Homicide Squad and was seconded to the Lorimer Taskforce. One of Mr Buchhorn's key tasks was compiling the brief for the prosecution of Bandali Debs and Jason Roberts for the murders of Sergeant Gary Silk and Senior Constable Rodney Miller.
<b>Mark Butterworth</b>	Mark Butterworth was a detective sergeant of the Armed Robbery Squad from 1996 and was seconded to the Lorimer Taskforce in 1998.
<b>Graeme Collins</b>	Graeme Collins was a detective senior sergeant of the Homicide Squad and was seconded to the Lorimer Taskforce. He was the direct supervisor of all investigative members of the Taskforce, including Mr Buchhorn.
<b>Grant Kelly</b>	On 16 August 1998, Grant Kelly was a detective senior constable of the Homicide Squad. He attended Moorabbin Police Station to take statements from first responders to the murders of Sergeant Gary Silk and Senior Constable Rodney Miller.
<b>Paul Sheridan</b>	Paul Sheridan was an inspector of the Homicide Squad and was seconded to the Lorimer Taskforce. Mr Sheridan had overall management responsibility for the Taskforce.

## Glossary of names

First responders to the 1998 murders of Sergeant Gary Silk and Senior Constable Rodney Miller	
<b>Francis Adams</b>	On 16 August 1998, Francis Adams was a general duties senior constable from Cheltenham Police Station.
<b>Colin Clarke</b>	On 16 August 1998, Colin Clarke was a general duties senior constable from Cheltenham Police Station.
<b>Lou Gerardi</b>	On 16 August 1998, Lou Gerardi was a general duties senior constable from Malvern Police Station.
<b>Ian Gray</b>	On 16 August 1998, Ian Gray was a general duties senior constable from Elsternwick Police Station.
<b>Peter Morris</b>	On 16 August 1998, Peter Morris was a detective senior constable from the Frankston Criminal Investigations Bureau.
<b>Francis Olle</b>	On 16 August 1998, Francis Olle was a detective senior constable from the Moorabbin Criminal Investigations Bureau.
<b>Helen Poke</b>	On 16 August 1998, Helen Poke was a general duties senior constable from Cheltenham Police Station.
<b>Glenn Pullin</b>	On 16 August 1998, Glenn Pullin was a general duties senior constable from Malvern Police Station.
<b>Graham Thwaites</b>	On 16 August 1998, Graham Thwaites was a general duties senior constable from Cheltenham Police Station.
Other key police personnel	
<b>Paul Edwards</b>	On 16 August 1998, Paul Edwards was a senior constable and crime scene examiner at the Victorian Forensic Science Centre.
<b>Ron Iddles</b>	From 1994 to 2015, Ron Iddles was a detective senior sergeant at the Homicide Squad. In 2012–13, Mr Iddles conducted a review of the Operation Lorimer investigation.
<b>Graham Riley</b>	From 1998 to 2001, Graham Riley was a general duties senior constable at the Glen Waverley District Support Group.

## 1 Summary of investigation and outcomes

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# 1 Summary of investigation and outcomes

The administration of justice requires that a statement made by a witness to police investigators is an accurate and full record of the witness's account and that the statement, if relevant, is disclosed in a criminal prosecution. A failure to comply with either of these requirements is likely to jeopardise that legal process. Without someone coming forward to say that these requirements have not been followed, non-compliance or related improper practices are unlikely to be detected.

Operation Gloucester identified a variety of improper practices by police officers with respect to witness statements which did not comply with proper evidentiary and disclosure practices. A number of these practices were used by some officers connected to the Lorimer Taskforce investigation and prosecution of Bandali Debs and Jason Roberts for the murders of Sergeant Gary Silk and Senior Constable Rodney Miller.

This report identifies improper practices which were consistently used by some officers within the Lorimer Taskforce and Homicide and Armed Robbery Squads. As none of these improper practices have ever been recorded or expressly identified by Victoria Police as practices that need to be corrected and which must not be followed, there is an appreciable risk that these practices, or variations of them, remain current. Indeed, most of these practices by their nature are hidden but the Independent Broad-based Anti-corruption Commission (IBAC) has detected current examples of a number of these practices. IBAC has made recommendations to address the risk of the occurrence of any of these practices in the future and to protect the integrity of investigations and the administration of justice.

## 1.1 Acknowledgement

Operation Gloucester significantly impacted a large number of people, including those directly affected by the murders of Sergeant Silk and Senior Constable Miller. The impact was particularly pronounced during the IBAC public examinations. IBAC acknowledges the difficulties Operation Gloucester raised for the families of these two officers and the officers who initially responded to the murders and thanks them for their ongoing cooperation and understanding.

## 1.2 Introduction

On 16 August 1998, two Victoria Police officers, Sergeant Silk and Senior Constable Miller, were shot and killed at close range in the Melbourne suburb of Moorabbin while conducting surveillance as part of an armed robbery investigation. These murders had a devastating impact on the families of the two officers. The events also had significant impacts on the officers' colleagues, the officers who were first to attend the murder scene, and more broadly on Victoria Police and the Victorian community. Victoria Police responded quickly to the incident, establishing the Lorimer Taskforce to investigate the murders. The work of that Taskforce contributed to the convictions of Bandali Debs and Jason Roberts.

Operation Gloucester examined the evidentiary and disclosure practices of the Lorimer Taskforce.

The disclosure duties and obligations police officers currently have under the *Criminal Procedure Act 2009* existed at the time of prosecution of Mr Debs and Mr Roberts under Schedule 5 of the *Magistrates' Court Act 1989*. The differences between the disclosure obligations then and now are minor. Today the obligation to disclose relevant information not relied upon by the prosecution is set out in more detail in the *Criminal Procedure Act*. The rules of evidence applicable at the time were primarily derived from common law. Now the rules of evidence are predominantly contained in the *Evidence Act 2008*, though many of these rules are still applied referencing the corresponding common law.

These obligations were recently restated by the Victorian Court of Appeal in its consideration of Jason Roberts' application for leave to appeal against his conviction.

In 2015, IBAC commenced Operation Gloucester, an investigation into allegations some officers from the Lorimer Taskforce involved in preparing the briefs for the trials of Mr Debs and Mr Roberts had engaged in misconduct by altering the content of witness statements or otherwise not properly handling the evidentiary processes and not disclosing this at trial. It was also alleged police witnesses who gave evidence to the Lorimer Taskforce engaged in similar misconduct.<sup>1</sup> The primary allegation at that time was that at least one officer, a first responder at the murder scene, made two witness statements. It was alleged the statement included on the brief contained a false account of the events by the first responder.

IBAC's initial Operation Gloucester investigation was closed due to insufficient evidence but was re-opened in November 2017 when new evidence was obtained supporting the original allegations. Public examinations were conducted in 2019 as part of the investigation.

IBAC's Commissioner determined that the new evidence and the allegations were sufficiently serious to warrant renewed investigation. The allegations concerned improper evidentiary and disclosure practices by some police. Such practices have significant adverse impacts on the proper administration of justice. They may affect the accused's right to a fair trial and result in a miscarriage of justice. The consequences of these improper practices are felt throughout the community, including by the victims of crime and the taxpayer, and can impact on community safety. These improper practices can also reduce the community's confidence in police and the justice system.

In addition, if any of the allegations were substantiated, there was a significant risk that some or all of these improper practices were still being applied. Investigations of homicides are generally complex and challenging. For Victoria Police, investigating the murders of two colleagues presented significant challenges. There was pressure on the Lorimer Taskforce to find the offender or offenders who had murdered Sergeant Silk and Senior Constable Miller, and to successfully prosecute them. Undoubtedly, the members of the Lorimer Taskforce were strongly committed to these outcomes as they rightly wanted those responsible for the murders of their colleagues to be brought to justice.

Every investigation carries with it some risk that investigators may depart from the correct procedures, that thinking 'the ends justify the means' may prevail or 'noble cause' corruption<sup>2</sup> may occur. All officers have an obligation to guard against this and to ensure the highest standards of probity are applied to the gathering and disclosure of evidence, including the making and taking of witness statements. In the circumstances of the Operation Lorimer investigation, that risk was particularly acute. IBAC's findings have shown that not enough was done to ensure these risks were avoided and that all officers complied with their obligations.

A witness statement is a critical part of the sound administration of justice. If a statement is not a full and complete account of events described by a witness, it may impact upon the reliability or credibility of the witness, or upon specific aspects of the evidence in the legal proceedings. A police officer has a responsibility to take a witness's account in its entirety and record all the evidence that is potentially relevant. The officer should never withhold potentially relevant evidence from the prosecution or defence. The omission of relevant information from a statement deprives the prosecution, the defence and the court of information, and may result in a miscarriage of justice.

<sup>1</sup> Operation Gloucester did not re-investigate the murders of Sergeant Silk and Senior Constable Miller or seek to establish if those convicted of the crimes received a fair trial.

<sup>2</sup> 'Noble cause' corruption is when officers fail to follow proper processes because they are under pressure to solve crimes, are frustrated with the justice system or believe they are doing what is needed to secure convictions and punish those who they are certain have committed serious offences.

# 1 Summary of investigation and outcomes

The initial allegation that a first responder to the murders made a statement, included on the brief for the prosecution of Mr Debs and Mr Roberts, which contained a false account of the events was not substantiated. However IBAC found serious failures by some officers of the Lorimer Taskforce to properly discharge their obligations when they failed to disclose all potentially relevant information to the prosecution, defence and the court in relation to the prosecutions of Mr Debs and Mr Roberts. IBAC also identified numerous deficiencies in evidentiary and disclosure practices by some members of the Armed Robbery Squad in the 1990s.

The evidence demonstrated a variety of improper practices, some of which overlap. IBAC has clear examples of these occurring throughout the late 1990s and early 2000s, as well as in more recent investigations.<sup>3</sup>

Improper practices identified included:

- descriptions of offenders being deliberately omitted from witness statements and recorded elsewhere
- statements that are not based entirely on the independent recollection of the witness
- relevant information being omitted from witness statements because it was considered unreliable or incorrect or because it would be disclosed in some other way
- original witness statements being replaced with a new statement, without disclosing the existence of the original and backdating the new statement to give it the appearance of being the original statement
- officers wrongly representing their notes as contemporaneous
- officers making statements in collaboration with each other, therefore potentially contaminating the statements
- officers failing to disclose all relevant material to the prosecution, defence and the courts
- the destruction or discarding of signed statements or unsigned completed draft statements.

Any failure by police to discharge their obligations not only undermines public confidence in police and their obligation to perform their duties fairly, impartially and in accordance with the law; it also reduces community confidence in the criminal justice system.

Importantly, IBAC found some of the improper practices identified in Operation Gloucester continue to be used by some Victoria Police officers today, including contamination of statements and fabrication of contemporaneous notes. IBAC has also identified some of these practices in other investigations and reviews. In the absence of a clearly articulated policy and express direction by Victoria Police on how to make and take a witness statement, and the explicit identification by Victoria Police of these practices as improper, there is a real risk that some officers will fail to uphold their obligations around gathering and disclosing evidence.

Although Victoria Police did not seek to be represented during the Operation Gloucester public examinations, and did not seek to contest any of the evidence given, it was granted leave to appear during closing submissions. Victoria Police then submitted that systemic deficiencies in evidence gathering and disclosure should be viewed as historical and that improper practices were no longer being taught at the Victoria Police Academy or 'on the job'. IBAC accepts that submission in part. Based on the evidence received, IBAC can be satisfied that none of these improper practices are currently taught at the academy. However, it was acknowledged in evidence that these practices have not been specifically identified as improper in the training given at the academy. Moreover, the correct policies and practices in each of these areas are not addressed adequately or at all in any policy or training manual.

<sup>3</sup> IBAC reviewed 298 Victoria Police internal investigation files and found approximately 10 per cent identified some issue with note or statement taking practices. Two per cent demonstrated analogous issues to the improper evidentiary practices identified in Operation Gloucester.

Based upon the evidence received, the concern remains that practices identified during Operation Gloucester are still being applied today by Victoria Police. For this reason, Victoria Police must strengthen its leadership, supervision, systems, policies and procedures around statement taking and other evidence gathering and disclosure practices to address the issues identified in Operation Gloucester. To this end, the Commission has recommended that Victoria Police review its practices and report to IBAC within 18 months. IBAC's recommendations are detailed in section 1.4.

One area of focus for the Victorian Royal Commission into the Management of Police Informants is disclosure practices in the criminal justice system in the context of human source information, and the potential for the miscarriage of justice. In its July 2019 Progress Report the Royal Commission highlighted the responsibility of prosecutors, including law enforcement agencies, to disclose all relevant material to an accused person.<sup>4</sup> The Royal Commission has received evidence of improper statement practices. The Royal Commission may recommend changes to Victoria Police's current evidentiary gathering and disclosure processes, procedures and guidelines in relation to prosecutions involving the use of human source information. It will be necessary for Victoria Police to consider the issues identified by the Royal Commission, as well as those identified by IBAC in Operation Gloucester, in order to strengthen its evidentiary and disclosure practices.

### 1.3 Role of police in the proper recording and disclosure of evidence in witness statements

A primary task of police investigating a crime is to gather and record all the evidence that is relevant to the crime. All of that material must be disclosed to an accused if a prosecution is undertaken.

Police have well-recognised obligations around evidence gathering and disclosure. Key obligations concerning the recording of evidence in witness statements and the disclosure of these statements and supporting evidence are outlined in Figure 1. However, these obligations are not recorded in the Victoria Police Manual (VPM) or elsewhere, as discussed in section 4.2.2 of this report.

These principles of evidence recording and disclosure are to be applied when the officer is making their own statement or taking a statement from a witness. Proper practice requires that all relevant information be included in a witness statement and be disclosed. The statement must accurately reflect when the information has been obtained or provided, and when the record of it was made. All statements, including completed drafts, must be retained and disclosed by police, even where they are not signed, and even when any alterations are so minor that they do not alter the witness's account of what occurred.<sup>5</sup> Minor alterations may assume future significance for unforeseen reasons.

<sup>4</sup> Royal Commission into the Management of Police Informants 2019, Progress Report, July 2019, pp 59–60, <[www.rcmpi.vic.gov.au/MediaLibraries/RCManagementOfPoliceInformants/keydocuments/RCMPI-Progress-Report-July-2019.pdf](http://www.rcmpi.vic.gov.au/MediaLibraries/RCManagementOfPoliceInformants/keydocuments/RCMPI-Progress-Report-July-2019.pdf)>.

<sup>5</sup> A completed draft of a statement is not defined within legislation or current policy. However, completed draft statements are both disclosable and able to be requested through legal processes (such as a subpoena). Victoria Police will need to consider how best to define draft statements to provide clear guidance to its officers.

# 1 Summary of investigation and outcomes

**FIGURE 1 – PROPER PRACTICE IN THE MAKING, TAKING AND DISCLOSURE OF WITNESS STATEMENTS, AND CONTEMPORANEOUS NOTES**

These are the key elements of the proper practices for the recording of evidence in witness statements and for the disclosure of these statements and supporting evidence.

## **Independent recollection**

- A statement must be the witness's independent recollection of the event.
- The witness's recollection cannot be aided by showing the witness a statement by some other witness or some other record of the event such as CCTV footage.
- The witness cannot draft the statement in collaboration with any other potential witness to the event.

## **All relevant facts and matters**

- A statement must contain all observations and recollections of the witness as related to the event.
- Where the witness provides a description of an offender, that description must be included in the statement.
- Any other documentary or other evidence produced by the witness needs to be referenced in the statement.
- The taker of the statement cannot exclude some portion of the witness's account because it is thought to be inaccurate or unreliable.

## **The time at which the statement is made**

- The statement must accurately record the time and date the information is provided, as well as the time and date the statement is made.

## **Retention and disclosure**

- Any signed statement or completed draft statement must be retained by the taker of the statement and disclosed.
- Any completed draft statement, although unsigned, must be retained and disclosed.
- The destruction or discarding of signed statements or unsigned completed draft statements is not permitted.

## **Acknowledged to be accurate**

- The maker must acknowledge the statement's truth and accuracy in the presence of the taker of the acknowledgement and at the time, date and place recorded on the acknowledgement.

## **Amendment by supplementary statement**

- Any amendment or alteration to an original statement must be by supplementary statement.
- Every supplementary statement must refer to the fact that previous statement/s have been made (and on what date) and must identify the matter to be altered.
- The original and all supplementary statements must be retained and disclosed.

## **Contemporaneous records or notes**

- If the note or record is to be produced as a 'contemporaneous' note or record, it must be made whilst the facts are fresh in the witness's memory. It should also record the time, date and place the contemporaneous note was made.

Operation Gloucester found that some members of the Lorimer Taskforce and the Armed Robbery and Homicide Squads failed to comply with one or more of these standards, and engaged in improper practices around the making, taking and disclosure of witness statements.

The importance of police officers' obligation of disclosure when investigating crime was highlighted in a 2018 United Kingdom (UK) Parliamentary Committee report, which noted it 'is fundamentally important that all police officers recognise both that they are searching for the truth; and that they have core disclosure duties which are central to the criminal justice process and are not merely an administrative add-on'.<sup>6</sup>

The prosecution in criminal proceedings has an obligation to disclose all relevant material to an accused. Consequently, investigators must ensure that all evidence which bears upon the credibility or reliability of prosecution witnesses is provided to the prosecution. In considering Mr Roberts's application for leave to appeal against his conviction, the Victorian Court of Appeal described the duty of disclosure as follows:

*'It is now accepted that it is fundamental that there must be full disclosure in criminal trials. It is a 'golden rule'. The duty is to disclose all relevant material of help to an accused. It is owed to the court, not the accused. It is ongoing. It includes, where appropriate, an obligation to make enquiries. It is imposed upon the Crown in its broadest sense. And a failure in its discharge can result in a miscarriage of justice.'*<sup>7</sup>

Full disclosure is vital to a fair trial. As the Court of Appeal further observed:

*'Non-disclosure is a potent source of injustice and even with the benefit of hindsight, it will often be difficult to say whether or not an undisclosed item of evidence might have shifted the balance or opened up a new line of defence.'*<sup>8</sup>

In Victoria the Criminal Procedure Act creates statutory disclosure obligations on police (where they are the informant in criminal proceedings) and the Director of Public Prosecutions (DPP). The obligations include the type and content of the brief which is required to be submitted by police.<sup>9</sup> For indictable offences, specific pre-trial and continuing disclosure requirements are contained in Parts 4.4 and 4.5, and Division 2 of Part 5.5 of the Criminal Procedure Act. In particular, section 110 provides that a brief must contain any information, document or thing in the possession of the prosecution that is relevant to the alleged offence, including a list of every person who has made a statement relevant to the alleged offence and a copy of every statement made by each of those persons. This is designed to ensure prosecutors and investigators fulfil their duty of full disclosure, and furthers the objective of producing a just outcome.<sup>10</sup> Similar obligations exist for summary offences.<sup>11</sup>

<sup>6</sup> House of Commons Justice Committee (United Kingdom) 2018, Disclosure of evidence in criminal cases, 20 July 2018, p 32, <publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/85903.htm#\_idTextAnchor000>.

<sup>7</sup> Roberts v The Queen [2020] VSCA 58 at [56]. This excerpt from the judgment includes footnoted references which are omitted from this report.

<sup>8</sup> Roberts v The Queen [2020] VSCA 58 at [63]. This excerpt from the judgment includes footnoted references which are omitted from this report.

<sup>9</sup> Prior to this Act, these obligations existed under the *Magistrates' Court Act 1989*.

<sup>10</sup> Judicial College of Victoria 2014, Victorian Criminal Charge Book, 'Section 5.1.2 – Pre-trial Disclosure', 1 March 2017, <www.judicialcollege.vic.edu.au/eManuals/VCPM/27478.htm>.

<sup>11</sup> Largely contained in Part 3 of the Criminal Procedure Act.

# 1 Summary of investigation and outcomes

## 1.4 Outcomes and findings

### 1.4.1 Improper evidentiary and disclosure practices within the Lorimer Taskforce, and Homicide and Armed Robbery Squads

IBAC did not substantiate the primary allegation reported to IBAC in 2015, that a statement made by a first responder at the murder scene included on the brief for the prosecution for Mr Debs and Mr Roberts contained a false account of the events by the first responder. However, Operation Gloucester revealed some members of the Lorimer Taskforce and the Homicide and Armed Robbery Squads engaged in a range of improper evidentiary and disclosure practices. These improper practices are outlined on the following pages.

#### DESCRIPTIONS OF OFFENDERS DELIBERATELY OMITTED FROM WITNESS STATEMENTS AND RECORDED ELSEWHERE

A statement must be the witness's full account of the event. Where a witness provides a description of an offender, it must be included in the statement.

IBAC found some officers of the Armed Robbery Squad during the period of, and immediately prior to, the murders of Sergeant Silk and Senior Constable Miller, followed a practice of omitting descriptions of offenders from witness statements and sometimes recording these elsewhere. Witnesses to crimes who had made a statement shortly after the incident were sometimes later asked to make a further statement once police had identified an offender. The additional information regarding the offender, originally provided by the witness but not included in their original statement, was then formally recorded in a supplementary statement. It is not clear what criteria were employed to determine when a supplementary statement should be made. The prominent risk which would arise from such a practice was that if the description initially provided did not match the suspect charged, the description would not be disclosed.

#### Police misconduct and the standard of proof

Section 162(6)(a) of the *Independent Broad-based Anti-corruption Commission Act* (IBAC Act) provides that IBAC may not include any finding or statement that a specified person is guilty or has committed any criminal or disciplinary offence.

Except where the context suggests otherwise, references in this report to police misconduct have the same meaning as police personnel misconduct in section 5 of the IBAC Act. This is generally conduct that would bring Victoria Police into disrepute or diminish the public's confidence in it.

IBAC's findings are made on the civil standard, namely the balance of probabilities, based on the principles applied in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

During Operation Lorimer, investigating officers were required to go back to witnesses to robberies suspected to have been committed by Mr Debs and Mr Roberts and have them make supplementary statements to include the descriptions of the offenders where they were consistent with the appearance of Mr Debs or Mr Roberts.

Evidence was given by some witnesses in IBAC's examinations that the omission of descriptions from statements and other improper practices were taught to new recruits at the Victoria Police Academy in the late 1990s, while other officers learnt the practices 'on the job'.

Multiple witnesses in Operation Gloucester testified that a potential explanation for the application of this practice was to ensure the brief would contain consistent supplementary witness statements which would withstand scrutiny and, in the case of Operation Lorimer, would support the prosecution of Mr Debs and Mr Roberts.

Some officers who gave evidence during the Operation Gloucester examinations said the omission of relevant information from statements was considered appropriate because it was too early to document specific facts. However, it was recognised by all witnesses examined on this point during Operation Gloucester that there was no legitimate reason for this practice.

Police officers following this practice in all likelihood did so as they did not want to have descriptions initially recorded which were later found to be inconsistent with the appearance of the offender eventually charged by police. In essence, they did not want to initially include the description in the witness statement that could potentially undermine the chances of a successful prosecution.

Where witnesses to the armed robberies gave evidence in the prosecutions of Mr Debs and Mr Roberts, the descriptions they initially provided were in supplementary statements. However, the extent to which other witnesses' accounts were omitted is unclear. In this case, the previously omitted information was provided to witnesses called in the prosecution of Mr Debs and Mr Roberts. But non-disclosure of evidence becomes a real risk when the description of the offender or other relevant information is deliberately omitted from a statement. There are a number of other examples IBAC has identified through its investigations and in matters before the courts that demonstrate the omission of information from witness statements is a more common practice than that acknowledged by some officers during Operation Gloucester.

### RELEVANT INFORMATION OMITTED ON THE BASIS THAT IT IS UNRELIABLE OR INCORRECT

All relevant evidence must be included in a statement regardless of whether the officer believes the information to be accurate or not.

However, some current and recently retired officers said it was appropriate to omit part of a witness's account if the officer considered the account was unreliable or if it was inconsistent with other evidence obtained by police. It appears such omissions were justified by the officers to avoid prejudicing the prospect of a successful prosecution or to reduce inconsistency that could impact successful prosecution.

### TAKING A 'REPLACEMENT STATEMENT' INSTEAD OF A SUPPLEMENTARY STATEMENT

If a completed statement requires amendment, a supplementary statement should be made. Both the original and supplementary statements should be disclosed.

However, this was not always the practice followed for the statements taken in the course of the Lorimer Taskforce investigation. Operation Gloucester identified a practice of replacing an original statement with another statement, and destruction of the original statement.

In some instances, replacement statements were backdated to appear as if they were the original statements. This practice may give the false impression that the witness's recollection is fresh and therefore wrongly enhances the credibility of the witness and their evidence.

### ACKNOWLEDGING A STATEMENT IN THE ABSENCE OF A STATEMENT-MAKER

Evidence was given of instances where a senior officer formally recorded the acknowledgement on statements without the person who made the statement being present. This practice is inconsistent with the procedure that must be followed. The maker of the statement acknowledges the truth of its content to the officer taking the acknowledgement who then witnesses the maker's signature. The acknowledgement is usually recorded on the statement as follows: *'Acknowledgement made and signature witnessed by me at [location] at [time] on [day, month, year].'*

### FABRICATING CONTEMPORANEOUS NOTES

Contemporaneous notes are official written recordings of an event or a discussion made at the time of its occurrence, or while the event or discussion is fresh in the memory of the witness. Operation Gloucester identified the improper practice of some police officers falsely presenting their notes as contemporaneous. This is also an issue which has been identified in other IBAC investigations. The practice is concerning because it is difficult to detect when notes have actually been made. Notes that are false may be difficult to disprove, and whether deliberately false or the result of a faulty recollection, a false claim of contemporaneity may then support a false statement and wrongly enhance the credibility of a witness's account.

# 1 Summary of investigation and outcomes

This practice was of particular concern to former police prosecutors examined by IBAC who had reported widespread improper statement taking practices and record-keeping to the Victoria Police Ethical Standards Department (now Professional Standards Command) and members of Victoria Police Command. There were two police-wide communications that touched on some aspects of these issues. One in 1998, a Chief Commissioner's Instruction, outlined the importance of a police officer making contemporaneous notes of any relevant evidence that they could be required to give. The second was a 2002 email which outlined the importance of documenting updates to statements. These communications did not provide guidance to ensure officers understood that falsely claiming that a note was a contemporaneous record would constitute misconduct and therefore would not be tolerated.

## CONTAMINATION OF STATEMENTS

A statement must be the witness's independent recollection of the event.

IBAC received evidence of witnesses' recollections of events and their statements being contaminated by the influence of other witnesses or external information. In particular, this was said to be an issue for police witnesses who often made statements in collaboration with each other and whose statements were therefore insufficiently independent.

This is an improper practice that remains prevalent today. It is conduct detected in IBAC investigations and also detected in IBAC's reviews of investigations conducted by Victoria Police.

The other form of statement contamination involved the compromise of the witness's independent recollection of events by showing the independent witness statements that were made by other people, or showing CCTV footage of the relevant incident or some other external information. This can alter the witness's own recollection of the event. The contaminated recollection would then be recorded in their statement as their true account, without disclosing the process that had been used to obtain the witness's account.

## FAILURE TO DISCLOSE RELEVANT MATERIAL

IBAC found some members of the Lorimer Taskforce improperly destroyed or otherwise failed to disclose supporting documents which recorded prior accounts or events, including notes proving the existence of a previous statement. This is relevant material which must be retained and disclosed.

Another form of failure to disclose occurred when original statements were discarded and not disclosed when a replacement statement was created and backdated to the date of the original statement by an officer connected to the Lorimer Taskforce.

### 1.4.2 Improper evidentiary and disclosure practices occurring today

IBAC found some of the improper practices outlined in section 1.4.1 continue to be applied today by some officers and in some workplaces. This was found to be particularly the case with contamination of statements and fabrication of contemporaneous notes. These practices have also been found in current IBAC investigations and reviews. IBAC considers this conduct is, in part, due to some officers not understanding or trusting the process of testing evidence in court.

Although the evidence obtained during Operation Gloucester did not demonstrate that every one of the improper practices identified remain prevalent today, there is an appreciable risk that they are. The absence of evidence that a particular practice is current does not mean that it is not continuing to occur. Recognising that each of these practices involves non-disclosure and concealment, proof that they are still occurring would only emerge in the unlikely event that the practice is acknowledged or if there is an investigation during which such misconduct is exposed.

It is also important to note that evidence of the existence of such practices came in part from both current and recently retired officers who did not have a proper appreciation of the impropriety of the practices being examined. With respect to some of the practices, there was ample evidence to suggest they endure. This results in the non-disclosure of relevant information by officers who either knowingly or unwittingly fail to meet their obligations. There remains a significant risk that police officers, both in uniform and in criminal investigations, are still adopting forms of each of the improper practices discovered in Operation Gloucester.

IBAC welcomed the evidence given by the Assistant Commissioner, People Development Command, Kevin Casey, and the then Acting Detective Inspector Centre for Crime Investigation, Trevor Rowe, at the public examinations of Operation Gloucester. This evidence was of considerable assistance in understanding the current training in investigation practices within Victoria Police, particularly on note and statement taking. However, neither of these witnesses was able to offer an opinion on whether the improper practices uncovered in Operation Gloucester are prevalent today.

Victoria Police did not seek to challenge any of the evidence elicited during the examinations that improper evidentiary and disclosure practices continue to be applied. As already noted, although Victoria Police was granted leave to appear and to make submissions at the conclusion of the evidence, it submitted only that IBAC should not find these practices remain prevalent. For reasons already stated, that submission cannot be sustained. Further, Victoria Police did not at any time seek to place evidence before IBAC from which it might be inferred that any of these practices are no longer followed.

### 1.4.3 Conclusions

Victoria Police officers must rigorously uphold their obligations in relation to evidence gathering and disclosure. Unfortunately the importance of complying with the obligation to provide timely, full and accurate disclosure of all relevant evidence is not well understood.

Victoria Police needs to strengthen its leadership and supervision, practices, policies and training in evidentiary and disclosure practices. There is a need for more explicit policies and procedures, more guidance about processes and more focused training that will reduce the significant risk officers may not be complying with required standards. The improper practices identified in this investigation demonstrate particular attention must be given to improving how officers discharge their critical function of recording potential evidence. The risk of these improper practices occurring will be significantly diminished when Victoria Police provides clear internal direction that such conduct involves a breach of duty.

Consequently, IBAC recommends Victoria Police reviews and strengthens its systems, policies and procedures around evidence gathering and disclosure, with a focus on statement taking and record keeping. The amended policies and procedures must be supported by more focused training on mandatory obligations of officers when both making and taking statements and the requirement of full disclosure. IBAC notes, in response to Operation Gloucester and other inquiries, Victoria Police has commenced a review of policy and training for evidence gathering and disclosure practices. This is a positive step towards addressing the issues identified in Operation Gloucester.

In sharing the outcomes of Operation Gloucester with the Chief Commissioner of Police, IBAC notes that it will be a matter for Victoria Police to consider whether disciplinary or management action is appropriate in relation to any current serving officer, in light of the findings highlighted in this report.

# 1 Summary of investigation and outcomes

## 1.5 Recommendations

Pursuant to section 159(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, IBAC makes the following recommendations:

### Recommendation 1

Victoria Police reviews and amends the Victoria Police Manual (VPM) and its training to ensure police officers fully understand and comply with their obligations regarding evidence gathering and disclosure practices in investigations of criminal conduct, with a focus on statements and record keeping. The VPM and training should include the elements of proper practices in the making, taking and disclosure of a witness statement, and contemporaneous notes. These are highlighted in Figure 1 in section 1.2 of this report. Additionally, Victoria Police's review should consider:

- a. the guidance and direction provided in other jurisdictions with a view to identifying other good practices
- b. officers' obligations regarding evidence and disclosure under the *Criminal Procedure Act 2009*
- c. how to most effectively communicate to all officers, including those who do not receive regular formal training, the obligations in recording evidence and the obligations of disclosure
- d. the role of supervising and senior officers in ensuring officers understand and comply with their evidentiary and disclosure obligations, and how this may be improved to address the concerns identified by Operation Gloucester
- e. how to achieve understanding by officers that non-compliance with the rules of evidence and the obligations of accurately recording and disclosing relevant evidence may affect the administration of justice and constitute misconduct or corruption.

It is recommended Victoria Police provide a progress report to IBAC on this review in nine months and full report on the outcome of this review within 18 months.

### Recommendation 2

Twelve months after amending its policies, procedures and training to ensure police officers understand and comply with their evidentiary and disclosure obligations, Victoria Police conduct an audit of statement making, taking and disclosure practices, and record keeping practices across the organisation to assess compliance. Victoria Police to report to IBAC on the outcome of this audit and any action taken to address deficiencies by June 2022.

### Recommendation 3

That the Victorian Government introduce a statutory obligation of disclosure, in similar terms to section 15A of the *Director of Public Prosecutions Act 1986* (NSW), to reinforce the common law duty of disclosure.

## **2** The investigation

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## 2 The investigation

### 2.1 Timeline

FIGURE 2

<b>December 1991- October 1994</b>	Operation Pigout – Victoria Police investigation into armed robberies committed in 1991-1994
<b>March-August 1998</b>	Operation Hamada – Victoria Police investigation into armed robberies committed in 1998
<b>16 August 1998</b>	Murders of Sergeant Gary Silk and Senior Constable Rodney Miller while performing duty as part of Operation Hamada
<b>17 August 1998</b>	Operation Lorimer formed. Victoria Police investigation of the murders of Sergeant Silk and Senior Constable Miller conducted by the Lorimer Taskforce
<b>July 2000</b>	Arrest of Bandali Debs
<b>August 2000</b>	Arrest of Jason Roberts
<b>September 2001</b>	Committal hearing of Bandali Debs and Jason Roberts commences
<b>December 2002</b>	Bandali Debs and Jason Roberts convicted of the murders of Sergeant Silk and Senior Constable Miller
<b>September 2003</b>	Jason Ghiller convicted of the armed robberies investigated pursuant to Operation Pigout
<b>November 2012 - December 2013</b>	Operation Rainmaker – review of the Lorimer Taskforce by Ron Iddles
<b>March 2015 - August 2018</b>	Operation Mothballing – Victoria Police investigation of an aggravated burglary in 2015
<b>September 2015</b>	Operation Gloucester commenced (closed in early 2016 due to insufficient evidence)
<b>November 2017</b>	Operation Gloucester reopened when new evidence was obtained

### 2.1.1 Overview of the murders of Sergeant Silk and Senior Constable Miller, and the associated investigation and legal proceedings

Shortly after midnight on 16 August 1998, Victoria Police officers Sergeant Silk and Senior Constable Miller were on duty conducting surveillance in Moorabbin as part of Operation Hamada, an armed robbery investigation. Based upon the prosecution case at the trial of Mr Debs and Mr Roberts, the officers pulled over a vehicle they considered suspicious and were shot as they spoke to the occupants of the vehicle. Sergeant Silk died almost immediately. Senior Constable Miller was found alive by fellow police officers who attended the scene shortly after the officers were shot. An ambulance was called but Senior Constable Miller died after arriving at hospital. As he was able to talk to some of the first responders after he was shot, what he said was at the time known as a 'dying declaration'. A dying declaration, if it met particular requirements set out at common law, was considered unique evidence in a court of law as it was an exception to the hearsay rule<sup>12</sup> and was admissible evidence.<sup>13</sup>

Victoria Police immediately established the Lorimer Taskforce to investigate the murders. The Taskforce consisted of detectives, intelligence practitioners and other officers primarily from the Homicide Squad and the Armed Robbery Squad. On 25 July 2000, Bandali Debs was charged with the murders; Jason Roberts was charged a few weeks later.

In 2001, committal proceedings were held in the Magistrates' Court, and in late 2001 Mr Debs and Mr Roberts were committed for trial. On 31 December 2002, after a three-month trial, Mr Debs and Mr Roberts were convicted of the murders. Mr Debs was sentenced to life imprisonment with no parole and Mr Roberts was sentenced to life imprisonment with a minimum term of 35 years before being eligible for parole. Mr Roberts appealed his conviction to the Court of Appeal; the appeal was dismissed in 2005.

In 2018, the Victorian Parliament passed legislation<sup>14</sup> prohibiting anyone convicted of murdering a police officer from being granted parole unless they are in imminent danger of dying, or are seriously incapacitated and no longer have the physical ability to do harm to any person. In the same year, Mr Roberts lodged a petition for mercy to the Attorney-General. In August 2018, a referral under section 327(1)(b) of the Criminal Procedure Act was made to the Supreme Court on a 'point arising in the case' regarding the credibility of certain evidence used in his conviction.<sup>15</sup> Subsequently in November 2019, further legislative change set up a new framework for subsequent appeals, subject to the grant of leave to appeal, to be heard by the Court of Appeal.<sup>16</sup>

In March 2020, the Court of Appeal granted Mr Roberts leave to appeal against his conviction. At the time of writing this report, Mr Roberts' appeal was still before the Court.

<sup>12</sup> The hearsay rule is a key rule of evidence that applies in judicial proceedings. It generally prohibits witnesses repeating out-of-court statements they hear made by others to prove the existence of a fact.

<sup>13</sup> The introduction of the *Evidence Act 2008* has changed the way the rules of evidence (including hearsay) are applied, however a dying declaration is still admissible today.

<sup>14</sup> *Corrections Amendment (Parole) Act 2018*.

<sup>15</sup> Premier of Victoria 2018, Statement on Petition For Mercy On Behalf of Jason Roberts, Media release, 6 August 2018, <[www.premier.vic.gov.au/statement-on-petition-for-mercy-on-behalf-of-jason-roberts/](http://www.premier.vic.gov.au/statement-on-petition-for-mercy-on-behalf-of-jason-roberts/)>.

<sup>16</sup> *Justice Legislation Amendment (Criminal Appeals) Act 2019*.

## 2 The investigation

### 2.1.2 Operation Rainmaker – an early review of the Lorimer Taskforce

In 2012 Mr Roberts' then solicitor approached the Office of Public Prosecutions (OPP) claiming, amongst other things, Mr Roberts was innocent of the murders of Sergeant Silk and Senior Constable Miller. The OPP facilitated contact between the solicitor and Mr Iddles, then a member of the Homicide Squad. Mr Iddles undertook a review of Mr Roberts' conviction, as part of a broader police operation codenamed Operation Rainmaker.

While the source of the request for Mr Iddles to conduct the review is unclear, Mr Iddles met with Mr Roberts' solicitor in November 2012 and met Mr Roberts on a number of occasions. In March 2013, Mr Iddles took a statement from Mr Roberts who claimed he was innocent of the murders. Mr Iddles finalised his review in December 2013 providing his report directly to the DPP.

Despite identifying a number of anomalies, Mr Iddles did not conclude Mr Roberts' conviction was unsound or that there was any wrongdoing by the Lorimer Taskforce. However, Mr Iddles claimed the statements of four officers concerning Senior Constable Miller's dying declarations were inconsistent and contradictory. The alleged inconsistencies related to the number and description of offenders involved and the description of the vehicle.

### 2.1.3 Operation Gloucester – 2015

In March 2015 Mr Iddles, who was then Secretary of The Police Association Victoria, was contacted by a Victoria Police officer in relation to a welfare concern for Glenn Pullin, one of the officers who had comforted Senior Constable Miller at the scene of the shooting. Mr Iddles subsequently contacted Mr Pullin and informed him he had reviewed Operation Lorimer and was aware Mr Pullin was present at the scene and had assisted Senior Constable Miller.

Mr Iddles also told Mr Pullin that Mr Roberts had made a statement in 2012 denying he was present when the murders were committed. Mr Iddles asked Mr Pullin about the statement he made on the night of the murders, saying there was an issue as to the date on which the statement was actually made. Mr Iddles claims Mr Pullin was silent for a short time before asking how Mr Iddles 'knew'. Mr Pullin went on to say he thought only two Victoria Police officers were aware he had made two statements and that he had been told by a senior officer that only the second statement had been placed on the brief. There was only one statement made by Mr Pullin on the brief.

Nearly five months later, on 20 August 2015, Mr Iddles made a complaint to IBAC alleging serious police misconduct by current and former Victoria Police officers who investigated the 1998 murders of Sergeant Silk and Senior Constable Miller. Operation Gloucester commenced in September 2015. Mr Iddles explained to IBAC he thought there were inconsistencies between Mr Pullin's statement in the trial brief and evidence of other first responders. Based on the information provided by Mr Iddles, IBAC examined whether Mr Pullin's statement on the brief was an altered version of his original statement and whether there were inconsistencies with the statements of other witnesses.

Mr Pullin and two of the other first responders who attended to Senior Constable Miller were privately examined. Mr Pullin said that he could not recall making a second statement and disputed Mr Iddles' account of their conversation. At that time IBAC was unable to substantiate Mr Iddles' claims and IBAC closed the investigation in early 2016. It was only in 2017, when it re-opened Operation Gloucester, that IBAC was subsequently able to substantiate that the statement included in the brief by Mr Pullin was an improperly backdated replacement statement made to appear as the original statement.

#### **2.1.4 Expansion of Operation Gloucester – 2017**

On 20 November 2017, Mr Iddles and former Homicide Squad officer Charlie Bezzina met with IBAC and produced a different copy of Mr Pullin's witness statement to the one on the brief, apparently signed by Mr Pullin and witnessed by Mr Bezzina. A comparison of that statement and Mr Pullin's statement (Figure 4) which the prosecution produced at the trial of Mr Debs and Mr Roberts revealed a number of differences. Due to this new evidence, Operation Gloucester was re-opened in late November 2017.

As part of Operation Gloucester, in 2018 IBAC acquired and examined records relevant to Operation Lorimer from Victoria Police, the OPP, and current and former Victoria Police officers. IBAC examined digital and hard copy records, briefs of evidence including original witness statements, as well as police diaries and daybooks. These records suggested certain officers of the Armed Robbery Squad were engaged in improper statement taking practices on a regular basis. These practices had been employed during Operation Hamada, which was investigating a number of armed robberies. Sergeant Silk and Senior Constable Miller were conducting surveillance as part of Operation Hamada at the time of their murders.

As IBAC's examination of these records indicated clear evidence of improper statement taking practices and non-disclosure, IBAC decided to expand the scope of Operation Gloucester to examine witness statement taking practices used by Victoria Police, and non-compliance with the obligation to disclose evidence.

## 2 The investigation

### 2.2 How Operation Gloucester was conducted

During July and August 2018, IBAC conducted 16 private examinations of witnesses who were able to provide information concerning the Lorimer Taskforce and Operation Hamada. Interviews were conducted with a further 26 members of the Lorimer Taskforce.

Investigative activities undertaken by IBAC included:

- analysis of the witness statements of 81 Operation Hamada armed robbery victims, and interviews with a selected number of these witnesses
- a review of the materials the Lorimer Taskforce provided to the OPP
- analysis of investigation files for the armed robberies investigated under Operation Pigout and the subsequent brief against Jason Ghiller
- a review of the files from Operation Rainmaker.

Some analysis was also undertaken of files and briefs in more recent armed robberies.

In December 2018, IBAC announced it would hold public examinations for Operation Gloucester to investigate alleged serious misconduct involving Victoria Police officers in relation to certain aspects of the investigation into the murders of Sergeant Silk and Senior Constable Miller. Between 4 February 2019 and 1 March 2019, IBAC conducted 34 examinations. The transcripts of these examinations are available on IBAC's website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

### 2.3 Welfare provided to those involved in Operation Gloucester

Operation Gloucester was traumatic for many people involved, particularly the families and friends of Sergeant Silk and Senior Constable Miller. It was also stressful for the officers who were first to respond to the murders. Others summonsed to attend public and private examinations were also likely to have experienced some level of stress.

Examinations and the use of other coercive powers can place individuals under pressure and affect their welfare. As with all IBAC investigations, the health and safety of persons interviewed or examined is a high priority for IBAC. In Operation Gloucester, counselling services were made available to all witnesses required to attend examinations. During the public examinations, a professional counsellor and a private room were available, with support people allowed to accompany witnesses to examinations. At the conclusion of the examinations, witnesses were also able to access up to four counselling sessions if they required further assistance.

Additionally, IBAC worked with Victoria Police to ensure its welfare services and those provided by The Police Association Victoria were also available to witnesses from Victoria Police. IBAC also liaised with the families of the murdered police officers throughout Operation Gloucester to ensure they remained informed of any relevant developments.

### **3** Improper practices identified

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## 3 Improper practices identified

As summarised previously, Operation Gloucester identified improper practices in the gathering, recording and disclosing of evidence by Victoria Police officers connected to the Lorimer Taskforce. IBAC found these improper practices were used by some Lorimer Taskforce officers in the late 1990s and early 2000s, and by officers of the Armed Robbery Squad<sup>17</sup> who were investigating armed robberies as part of Operations Pigout and Hamada in the 1990s. However, the improper practices do not appear to be confined to these operations or to particular squads. IBAC also found evidence that some of these practices are still being followed, and that there remains an appreciable risk that other practices are being applied today.

Each of the improper practices identified resulted in concealment of potentially relevant evidence. When this occurs, the sound administration of justice may be adversely affected. An officer has no right to withhold evidence from the prosecution or defence that is potentially relevant. If they do, they risk perverting the course of justice. It does not matter whether the officer's intention is to conceal evidence which may assist the defence, or whether the officer intended only to amend a witness's statement by inserting accurate content which should have been included in the original statement. The officer's duties do not permit them to withhold evidence. As stated previously, the officer is obligated to accurately record the information received, including the time it is received, and disclose all the evidence that is potentially relevant.

All of the practices discussed in the following section have the effect of concealing or obscuring relevant information from the prosecution, the defence and the court. When proper statement taking and disclosure occurs, the time at which information pertinent to the investigation emerged will be apparent from the statements disclosed. The practices exposed in Operation Gloucester deny the parties and the court in a criminal proceeding the full ability to test and assess the accuracy of the evidence introduced at trial. Consequently, the practices can give rise to a miscarriage of justice.

### 3.1 Omitting relevant information from witness statements

IBAC heard evidence from witnesses, some of whom were only recently retired, that when taking statements, they deliberately omitted relevant information because of a concern the information was not reliable or might not assist an ultimate prosecution. Without specific training to ensure that this practice is not followed, some officers may still be engaged in such a practice today.

This practice existed in two discrete ways. In the first, the officer omitted descriptions of offenders from a witness's initial statement and recorded it elsewhere, until a suspect had been identified and it could be determined whether the witness's description matched the suspect. Regardless of the individual reasons officers gave for engaging in this practice, it was evident that its original purpose could only be that evidence which tended to assist the accused, namely a description which did not match the accused, would not be disclosed to the prosecution, the defence and the courts. Where officers were making their own statement, the practice also manifested as the omission of information to ensure that the statement was not inconsistent with other evidence. Information was not included in a first statement so that another source could be checked before potentially inconsistent information was recorded in a statement.

In the second, the officer omitted relevant information from the statement which they considered to be incorrect or unreliable on the basis of other evidence in the possession of police.<sup>18</sup>

All of the variations of this practice are improper as they conceal relevant information. More information is outlined on the following pages.

<sup>17</sup> The Armed Robbery Squad was disbanded in 1999 when its responsibilities became part of the Armed Offenders Squad.

<sup>18</sup> In other words, the first variation of the practice calls for relevant information to be omitted (at least initially) because it may turn out to be incorrect, whilst under the second variation relevant information is omitted because it is believed to be incorrect on the basis of information already in the possession of the police.

### 3.1.1 Descriptions of offenders deliberately omitted from witness statements and recorded elsewhere

Numerous police witnesses provided evidence about officers deliberately excluding witnesses' descriptions of offenders from statements, with the descriptions instead being recorded elsewhere.

Several witnesses gave evidence this practice had emerged in Victoria Police at least by the 1980s. One witness referred to the practice having 'crept into' the Armed Robbery Squad in the 1980s or 1990s.<sup>19</sup> However, it was not confined to that squad. Two officers gave evidence they had continued the practice at the Homicide Squad and a number of general duties officers testified they had also been taught, and therefore followed, the practice.

Police witnesses spoke about only including descriptions necessary to distinguish between offenders in witness statements. For example, the statement may refer to the 'taller' offender and the 'shorter' offender, without specifying estimated heights.

The way in which descriptions of suspects were documented, other than in statements, varied between officers. Some recorded the descriptions in notebooks or daybooks. Others recorded them on separate pieces of paper which may or may not be attached to the statement depending on the officer. Other officers recorded descriptions in Victoria Police's computer database.

The unifying feature of these variations in approach was that descriptions were frequently omitted from witness statements by certain officers attached to the Armed Robbery Squad or by officers who took statements later used by the Lorimer Taskforce. Normally, officers who engaged in this practice would not have witnesses refer to the existence of the separate description in their original statement. Occasionally, however, first statements would state that a description was recorded elsewhere. While this is more transparent than failing to mention at all that a witness has provided a description which is recorded separately, there remains a risk of the description being misplaced, destroyed or amended, and this practice therefore also poses a serious risk to the fair and proper administration of justice.

### A. PURPOSE OF THE PRACTICE

No officer who testified before IBAC was able to identify any legitimate purpose for the practice of omitting descriptions of offenders from statements.

Many officers referred to a perceived concern that witnesses were often traumatised or nervous, which could impact their ability to provide accurate descriptions. This is not a legitimate reason to omit descriptions. Implicit in this justification is an acknowledgement by officers that a witness's description will not be disclosed if it does not match the suspect ultimately arrested.

For example, in 1996 Mr Iddles, then a senior Homicide Squad detective, observed members of the Armed Robbery Squad omitting offender descriptions from witness statements in a murder investigation he was leading. The officers explained the practice to him in these terms: *'well what if the witness was wrong, so we don't want to have it in the statement'*. This did not dissuade Mr Iddles from his view the practice was wrong, and he did not permit it in his investigation.

Graham Riley, a general duties officer in the late 1990s, told IBAC he understood an omitted description of an offender would ultimately only be used if the police informant considered the witness had got it 'right'.

Similarly, Neville Peterson, a sergeant in the Armed Robbery Squad in the 1990s, told IBAC a subsequent statement may have been taken at a later date if it would help the prosecution case. As Mr Peterson accepted, the implication was if the description would not help the prosecution case, the description would not be included in any subsequent statement. Mr Peterson said he assumed the practice was taught because a number of prosecuted cases had been lost in the early 1980s due to the inaccuracy of witnesses' descriptions.

<sup>19</sup> Former Armed Robbery Squad officer Mark Butterworth gave evidence the practice had 'crept into' the Armed Robbery Squad and other units in the 1980s or 1990s.

### 3 Improper practices identified

The only possible explanation for the practice – at least when it was first adopted – was an intention the description would only be used subsequently if it matched the ultimate suspect. This is contrary to the established rules of evidence and disclosure.<sup>20</sup> All relevant matters must be disclosed to the prosecution and to the defence, irrespective of whether it helps or hinders the prosecution case. Were it otherwise, accused persons would not have a fair hearing as is their right under section 24 of the *Charter of Human Rights and Responsibilities Act 2006*, and innocent persons may be wrongfully convicted.

Many police witnesses who adopted the practice gave evidence they had never considered its purpose, but said they were simply following what they had been taught. Given the hierarchical structure of policing organisations, it is possible that individual police officers applied the practice without intending to deliberately conceal evidence but concealment was always a prominent risk.

Some officers also testified they omitted descriptions from statements and recorded them elsewhere but they intended or assumed the information would ultimately be provided to the prosecution and the defence. However, these officers would not normally be involved in compilation of the brief and therefore had no way of ensuring that would occur.

Irrespective of whether individual police officers had any nefarious intent, the non-disclosure of relevant evidence in the cases identified by IBAC – and potentially many others – was the result of the practice.

#### B. DOCUMENTARY EVIDENCE OF THE PRACTICE

Numerous witness statements taken from members of the public and by officers from the Armed Robbery Squad in the 1990s omitted descriptions of offenders. Often the descriptions were recorded on separate documents, only some of which have been located by IBAC investigators.

By way of example, the Debs and Roberts brief indicates six witnesses to armed robberies investigated by Operation Hamada gave descriptions of the offenders to police which were not included in their original statements. For three of these witnesses, their first statements were accompanied by separate offender descriptions. For the other three witnesses, subsequent witness statements referred to police officers making notes of descriptions at the time the first statement was made. These notes were not included in the brief and have not been located.

It is not possible to determine whether additional witnesses to armed robberies investigated in Operation Hamada gave offender descriptions which were not included in their statements.

Notably, the Debs and Roberts brief contained 11 supplementary statements where witnesses provided additional descriptions of offenders two years after the armed robberies in question, following visits to the witnesses by members of the Lorimer Taskforce. This raises the important question of whether more detailed descriptions had been deliberately omitted in the first statements of these witnesses.

IBAC also identified instances where general duties officers took statements from witnesses to an armed robbery in the northern suburbs of Melbourne in 1996 and recorded descriptions on a separate piece of paper. One of these officers told IBAC this was not their normal practice and they did not recall taking statements in this way, but conceded if a senior officer had given a direction to take statements in that way, they would have complied.

The brief for the prosecution of Jason Ghiller, who committed a series of armed robberies with a co-offender suspected to be Mr Debs, contained 50 statements with accompanying separate suspect descriptions included, as well as three statements where additional descriptions were added years after the armed robberies in question, following visits by armed robbery detectives seconded to the Lorimer Taskforce.

<sup>20</sup> If a witness states they can remember and can provide a description, the officer is obligated to take a statement which includes all the information – regardless of the officer's opinion of whether or not the witness is reliable. It is then a matter for the courts to test the reliability of that information.

### C. EXAMPLES OF THE PRACTICE – THE ARMED ROBBERY SQUAD AND OPERATION HAMADA

The statements made by two witnesses to the armed robberies investigated in Operation Hamada are discussed below. As part of the Lorimer Taskforce, detectives visited and re-interviewed the majority of witnesses to the series of armed robberies investigated by Operations Hamada and Pigout.

#### **Witness A**

Witness A witnessed an armed robbery by two offenders in Kew on 28 June 1998. In their first statement (taken early the following morning by an officer of the Armed Robbery Squad) Witness A did not describe the two offenders, apart from their clothing.

In a second statement, made on 14 January 2000, Witness A corrected a matter in their first statement that was unrelated to offender descriptions. This same day Witness A was re-interviewed by Lorimer Taskforce detectives in their home.

A third statement was taken from Witness A on 26 November 2000 by the Lorimer Taskforce. In that third statement, Witness A said:

*‘From referring to the notes of the descriptions I gave to police on the night and my memory I am able to say that there was (sic) two males.’*

The evidence suggests the notes referred to were notes made by police officers on the night of the armed robbery. Those notes were not included in the brief, and could not be located by IBAC’s investigators. In the third statement, Witness A gave detailed descriptions of the two offenders including their build, height, hair colour and age which were generally consistent with that of Mr Debs and Mr Roberts.

#### **Witness B**

Witness B was a witness to an armed robbery carried out by two offenders in Surrey Hills on 18 July 1998. In a statement taken early the following morning by general duties officer Graham Riley, Witness B provided no description of the offenders, except to say the first man was taller than the second.

On 13 January 2000 Witness B was visited by officers from the Lorimer Taskforce. On that same day Witness B made a further statement. He said he wished to now add to his previous statement *‘by saying that the bigger or larger of the two male offenders had a Southern European or Middle Eastern accent’*.

In a final statement dated 26 November 2000, Witness B said:

*‘On that evening [of the armed robbery] I supplied the police with descriptions of the offenders that committed this armed robbery. These descriptions were not included in my original statement, although the police wrote down notes pertaining to them’*

Witness B then gave detailed descriptions of both offenders in this final statement.

A copy of the police notes referred to by Witness B was ultimately included in the Debs and Roberts brief. Although undated and unsigned, the notes were in the same handwriting as the statement, which is Mr Riley’s, and Mr Riley testified he would have made the notes at the time he took the statement.

The descriptions in Witness B’s final statement mirror those in Mr Riley’s original notes, save that the first male was said to have a Southern European accent (whereas the notes said he *‘sounded Australian’*) and no mention was made of the second male having any accent (whereas the notes said he possibly had a Southern European, Arabic or Lebanese accent). Several other additional details provided by Witness B to the Lorimer Taskforce were not included in the final statement – including that the first male was described as 6 feet 2 inches tall, and of solid build. The descriptions included were consistent with that of Mr Debs and Mr Roberts.

A common theme of the evidence given by current and former officers was that they generally denied any knowledge of this practice until confronted with evidence they had followed it, or were aware it had occurred. Once confronted with the evidence, they readily acknowledged it was improper. Based on the evidence at least some of the officers knew at the time that such a process was improper.

### 3 Improper practices identified

#### D. EXAMPLES OF THE PRACTICE – LORIMER TASKFORCE

##### ***Graham Thwaites***

In the early hours of the morning on 16 August 1998, in the immediate aftermath of the murders of Sergeant Silk and Senior Constable Miller, then Detective Senior Constable Grant Kelly of the Homicide Squad was sent to the Moorabbin Police Station to help take statements from first responders.

General duties senior constables Graham Thwaites and Helen Poke were two of the first responders who heard Senior Constable Miller's dying declarations. They both gave evidence to IBAC that while at Moorabbin Police Station, a Homicide Squad detective, which the undisputed evidence establishes was Mr Kelly, instructed Mr Thwaites to remove Senior Constable Miller's descriptions of offender(s) from his statement. This angered Mr Thwaites and he recorded Mr Kelly's name and registered number in his running sheet. Mr Thwaites originally claimed he refused to make a statement on the night of the murders and did not make a statement until 16 October 1998. However, during Operation Gloucester, Mr Thwaites advised he had made two statements: one on 16 August 1998 and one at a later date. Only the latter was included in the brief.

Mr Kelly testified that his practice as a less experienced investigator (including when he joined the Homicide Squad) had been to exclude offender descriptions from statements, in accordance with what he had been taught early in his career. Although he had no specific memory of applying that practice as part of the investigation into the murders of Sergeant Silk and Senior Constable Miller, Mr Kelly did not challenge the account given by Mr Thwaites and Ms Poke.

##### ***Colin Clarke***

General duties senior constable Colin Clarke was another first responder sent to Moorabbin Police Station to make a statement immediately after the murders. Mr Clarke directly heard some of Senior Constable Miller's dying declarations and heard other first responders repeating what he had said. Mr Clarke also relayed some of this information over the police radio.

Mr Clarke made two statements about the murders of Sergeant Silk and Senior Constable Miller. The first was made at Moorabbin Police Station shortly following the murders and was taken by Mr Kelly. The second was made on 5 May 2000 as a supplementary statement and taken by Detective Sergeant George Buchhorn from the Lorimer Taskforce. Both of these statements were included in the Debs and Roberts brief.

Mr Clarke's supplementary statement included additional information on Senior Constable Miller's dying declarations that was not included in his first statement; in particular that there were two offenders. The police radio recorded Mr Clarke saying this when he was with Senior Constable Miller, and he used both the audio recording and the radio transcript when making his supplementary statement.

Mr Clarke told IBAC that, when making his first statement, Mr Kelly told him not to include the additional dying declaration information as this would later be available via the radio recording for Mr Clarke to use in a supplementary statement. Mr Clarke stated that Mr Kelly's reason for this was to ensure that his evidence would accurately reflect what was recorded on the radio. In effect, this means that Mr Clarke's first statement was not his full recollection of the events.

### ***Francis Adams***

The statement of another first responder, then Senior Constable Francis Adams, included in the brief and dated 29 February 2000, also contained surprisingly little detail of the words spoken by Senior Constable Miller, despite Mr Adams being by Senior Constable Miller's side on two occasions before he died. It is possible the officer who took Mr Adams' statement deliberately omitted descriptions given by Senior Constable Miller to Mr Adams. The notes of Rosemary Eden, who was then a Detective Senior Constable in the Homicide Squad, suggest she had some involvement with an earlier statement from Mr Adams made on 16 August 1998; however, that statement has never been located.

Ms Eden could not recall taking a statement from Mr Adams. A redacted copy of Ms Eden's daybook for 16 August 1998 was located by IBAC. The entire entry recorded for 9.20 am, as can be seen in Figure 3, was redacted with the exception of a portion of the last line which appears to say 'statement from S/C Adams'. This may indicate she took the statement, or that she simply collected it. Ms Eden gave evidence to IBAC that, in accordance with what she had been taught, her practice at that time was to deliberately exclude descriptions from witness statements. IBAC sought Ms Eden's original daybooks from Victoria Police but was advised these could not be located.



## E. AWARENESS OF THE PRACTICE BY SENIOR OFFICERS OF THE LORIMER TASKFORCE

Graeme Collins and Paul Sheridan were, respectively, the detective senior sergeant and detective inspector of the Lorimer Taskforce. Both were ultimately responsible for the brief against Mr Debs and Mr Roberts. According to Mr Collins, he and Mr Sheridan became aware of the practice of excluding descriptions from witness statements when examining the initial statements taken from witnesses to the robberies investigated under Operations Hamada and Pigout. Mr Collins' diary entries confirm this. Mr Sheridan was not prepared to concede he was aware such a practice was used in the Armed Robbery Squad and disputed that it was followed by members of the Homicide Squad.

Mr Collins testified he and Mr Sheridan were concerned that the witnesses' descriptions had not been recorded in the witnesses' initial statement, but were recorded elsewhere. Mr Collins thought it probable they both considered what steps Victoria Police might take to address the practice but were too preoccupied with putting the brief together to follow this up. Mr Collins was not aware of any formal or informal direction from Victoria Police Command that such a practice was and is unacceptable.

## F. TEACHING OF THE PRACTICE

Several witnesses gave evidence they were taught the practice at the Victoria Police Academy between 1985 and 1989.<sup>21</sup> Some witnesses considered they may have learned the practice 'on the job' early in their careers in the 1980s or early 1990s. One witness (who said they did not follow the practice because they did not see the point) gave evidence the practice was advocated by 'wise old and senior investigators'.

Given testimony that at least some officers were taught the practice of omitting descriptions at the academy, and that there is considerable movement of officers between units and stations, there is a high risk this practice of omitting initial descriptions from witness statements was adopted more broadly by officers at numerous units and stations.

## G. DOES THE PRACTICE CONTINUE TO BE USED TODAY?

There was evidence the practice of omitting descriptions and recording them separately continued into the early 2000s. For example, Graham Riley said he followed the practice until he resigned from Victoria Police in 2002.

Mr Iddles said he was informed by fellow officer Allan Birch in 2001 the practice had ceased at the Armed Robbery Squad with the departure of the senior personnel who had advocated the practice. The unnamed senior people may have left the Armed Robbery Squad but some continued their careers elsewhere within Victoria Police. There is a significant likelihood they continued the improper practice they had previously advocated, in their new workplaces.

Notably, there has never been any formal direction within Victoria Police that this practice is improper and must cease. Given the practice involves non-disclosure and concealment, it may still be employed by officers, particularly amongst those who have not received ongoing training that explicitly draws attention to this being improper.

IBAC has previously raised concerns with Victoria Police about the frequency of training for personnel who do not receive regular training because they remain in the same role or at the same rank for a significant period of time.<sup>22</sup> Without regular training in both professional skills and practices, and also in integrity, poor practices can continue without being addressed.

<sup>21</sup> Former Lorimer Taskforce detective Grant Kelly gave evidence to IBAC in 2018 that he was taught the practice at the Victoria Police Academy in 1987. Janine Gleeson similarly gave evidence that she was taught the practice at the academy in 1985. Former Lorimer detective Rosemary Eden had also been taught the practice, either at the academy in 1985, or by senior officers when she was a trainee. Similarly, Graham Riley testified that he had been taught the practice by a sergeant or detective, either at the academy in 1989 or early in his service.

<sup>22</sup> IBAC 2019, *Unauthorised access and disclosure of information held by Victoria Police*, September 2019, p 22 and pp 28–29. <[www.ibac.vic.gov.au/docs/default-source/research-documents/unauthorised-access-and-disclosure-of-information-held-by-victoria-police.pdf?sfvrsn=1283ccb8\\_4](http://www.ibac.vic.gov.au/docs/default-source/research-documents/unauthorised-access-and-disclosure-of-information-held-by-victoria-police.pdf?sfvrsn=1283ccb8_4)>.

## 3 Improper practices identified

### 3.1.2 Relevant information omitted on the basis that it is thought to be incorrect

Some officers were also found to omit information from witness statements which the officers considered to be incorrect or unreliable. For example, the information may have been considered implausible or inconsistent with other evidence or with the police theory of what occurred. This was a variation on the practice outlined in section 3.1.1 of omitting descriptions from statements before there was a clear description of an offender to avoid inconsistency in descriptions across statements on the brief.

As part of Operation Lorimer, detectives asked numerous witnesses to the armed robberies investigated in Operations Hamada and Pigout to complete questionnaires for the purpose of obtaining additional information about the robberies. By this time, Mr Debs and Mr Roberts were Victoria Police's prime suspects in the murders. Police believed that evidence of Mr Debs and Mr Roberts jointly committing many of the robberies would support the case for prosecuting them for the murders.

Mr Sheridan told IBAC the purpose of re-approaching Operation Hamada witnesses was to try to strengthen the case against Mr Debs and Mr Roberts. Whether it would do so depended upon what further identification information the witness could provide. Whilst it was appropriate to further interview these witnesses, the fact that their descriptions of offenders had been kept separate from their statements by the Armed Robbery Squad created the risk that investigators would only use descriptions of offenders that assisted their case against Mr Debs and Mr Roberts.

Mr Collins recorded in his notes that further statements were to be taken from the Operation Hamada witnesses only if they had 'excellent recall'. This may explain why the Lorimer Taskforce took further statements from some, but not all, witnesses who were able to provide details not included in their original statements. And not all additional information provided by witnesses was included in their further statements.

Individual officers, who knew by this time that Mr Debs and Mr Roberts were the prime suspects, were therefore able to exercise their discretion as to whether to take a further statement and what information to include. The information ultimately selected for inclusion in further statements was that which strengthened the case to be made against Mr Debs and Mr Roberts.<sup>23</sup>

IBAC notes that the follow-up of Operation Hamada witnesses by the Lorimer Taskforce would not have been required if the full descriptions provided by those witnesses had been included in their first statements. There would have been no need for individual officers to exercise discretion as to whether further information provided by the witnesses, some years later, was reliable and enhanced the prosecution hypothesis that both the armed robberies and the murders had been committed by Mr Debs and Mr Roberts.

For example, Witness C, a witness to an armed robbery investigated under Operation Hamada, said in their questionnaire for the Lorimer Taskforce that the first offender was six feet tall, and the second offender was younger than the first and approximately six feet three inches tall. These details did not match Mr Debs and Mr Roberts. No further statement was taken from Witness C.

<sup>23</sup> For example, a further statement was taken from another witness, whose description matched Mr Debs and Mr Roberts; however, a further statement was not taken from Witness C, who said the second, younger offender was 6 foot 3, considerably taller than Mr Roberts, who was 5 foot 6.

Witness D, a witness to the armed robbery in Kew investigated under Operation Hamada, provided further information for the Lorimer Taskforce the main offender was ‘tall, maybe 6 foot’ and the second offender was ‘a little bit smaller – maybe 5 foot 11’. Such a description did not match the second suspect, Mr Roberts, who was five foot and six inches. Witness D’s further statement, taken on 26 November 2000, said simply that the more aggressive male was six feet tall, and the second male was ‘smaller’.

The practice of omitting relevant information because it might prove to be unhelpful or was perceived to be incorrect or unreliable at the time was not confined to descriptions of offenders.

Neville Peterson, an officer at the Armed Robbery Squad until 2000, provided the following example: a witness to an armed robbery said the gun used was a double-barrelled shotgun but CCTV footage clearly showed it to be handgun. Mr Peterson stated in those circumstances he omitted the clearly incorrect information regarding the gun from the witness’s statement.

It is not suggested such a practice is necessarily designed to conceal evidence but the practice of omitting part of a witness’s recollections because it is demonstrably incorrect or implausible is clearly improper. In Mr Peterson’s example, both the CCTV footage and a statement containing all relevant information provided by the witness – including the incorrect information about the gun – should have been included in the brief.

The full account by the witness may have a bearing on their general reliability, or on some specific aspect of their evidence in the proceedings. The removal of such matters deprives the prosecution, the defence, the court, and the jury of relevant information, and can therefore interfere with the administration of justice.

As Jeremy Rapke QC, former Victorian DPP, said when asked about Mr Peterson’s example.

*‘[I]t ceases to be the witness’s statement and becomes a statement which essentially has been concocted by the police officer. It’s not a legitimate practice to fashion a statement of a witness so that it conforms with other evidence that you have. If it’s a witness’s statement, it’s what the witness says, correct or incorrect’.*

A police officer has a responsibility to take witnesses’ accounts in their entirety. It is critical to the proper administration of justice this is understood and applied as standard police practice for all witness statements.

Further, once a decision was taken to re-interview witnesses, further statements should have been taken whenever a witness could provide information additional to their initial statement, irrespective of the officer’s view of its reliability. It is for the court to determine whether evidence is reliable.

## 3 Improper practices identified

### 3.2 Amendments to witness statements by Victoria Police officers

#### 3.2.1 Speaking to witnesses to fix inconsistencies between their statements and other evidence, and not disclosing that intervention

The example to which reference has already been made was advanced in evidence by an experienced officer who suggested it was appropriate to omit incorrect information from a witness statement where the CCTV footage demonstrated the witness was mistaken in their observations.<sup>24</sup>

George Buchhorn, a detective sergeant at the Lorimer Taskforce, who had a key role in the compilation of the brief, testified he corrected major discrepancies between police witness statements by speaking to the officers involved. Consultation with a witness in order to remove or avoid inconsistencies between the witness's account and other evidence was not disclosed to the prosecution or the defence. While there is nothing inherently wrong with investigators obtaining further evidence or seeking clarification of evidence as an investigation unfolds, the process they follow must be transparent and cannot lead to the initial inconsistent account being concealed.

If the intervention by investigators is not properly recorded and disclosed, the prosecution and defence cannot see the sequence and manner in which all of the information relevant to a prosecution emerged. In particular, if a witness changes part of their account, the prosecution and the defence cannot see why. Where those changes are made, it cannot be via a replacement statement that conceals the existence of the original statement.

The omission of this type of information from statements or the brief of evidence appears to be driven in many instances by a lack of understanding or trust by police in the process of testing evidence in court. This may go to both training and culture within Victoria Police. By excluding relevant information in a statement or brief, police risk creating a legitimate basis for challenge to the evidence. Police should also understand that judges and prosecutors have a responsibility to ensure juries understand that a witness's mistake in their recollections will not necessarily affect the outcome of the case.

Failure to capture and fully disclose all information provided by witnesses risks entrenching adversarial approaches to evidence testing. It encourages police to believe that absolute consistency and accuracy across witnesses' recollections is necessary in order to be accepted by a jury or judge. Some do not appreciate that a fair and open justice system governed by the rules of evidence can tolerate imperfect statements.

<sup>24</sup> A more appropriate process for using CCTV to support statements was detailed by a different police officer. The officer told IBAC a statement should be taken from a witness and based purely on the witness's memory of the incident, and then, if necessary, the witness could be shown CCTV. If the CCTV showed the witness was mistaken on any descriptions, the witness would then make a supplementary statement correcting their first statement.

### 3.2.2 Taking a 'replacement statement' instead of a supplementary statement

All police witnesses who gave evidence at IBAC's examinations agreed that if a first statement is deficient in that it contains an error or omission, the deficiency is to be addressed by taking a supplementary statement from the witness which specifically refers to the first statement. Both statements should then be disclosed in the brief.

There was considerable evidence that some officers connected to the Lorimer Taskforce did not do this but instead simply replaced the first statement with an improved version with additional information. The original statement was not disclosed to either the prosecution or the defence.

In one instance the new statement was backdated to the date of the original statement. It was suggested by one witness that backdating was a common practice. This improper practice is significantly misleading. Regardless of the date on the replacement statement, the practice of backdating is wrong. It obscures the time at which the information was recalled or adverted to by the witness and conceals the additional information included in the statement.

From the available evidence, most if not all of the original statements that were replaced had been completed and signed. Rosemary Eden was responsible for registering all statements received by the Lorimer Taskforce in the months following the murders. Both Ms Eden and Graeme Collins agreed she would not have recorded that statements had been received unless they had been signed. Mr Collins stated he would not expect to receive an unsigned draft statement from a witness who had been at the scene with Senior Constable Miller.

The Debs and Roberts brief also contained multiple statements from individual first responders, using the proper process of supplementary statements. This included Mr Clarke's supplementary statement which provided evidence of there being two offenders. The variation in how multiple statements were taken from, or made by, individual witnesses highlights that this improper practice was only followed by some officers.

### POLICE PROSECUTORS' AWARENESS OF THIS PRACTICE

Two former police prosecutors came forward as a result of IBAC's Operation Gloucester public examinations.

Ian Dunn worked as a police prosecutor between 1984 and 2012. He commenced with Victoria Police in 1962 and retired as a sergeant in 2012. He became aware of what he described as systemic problems of junior officers 'improving' both their notes and statements at the direction of their supervisors, and then lying on oath about the dates on which notes and statements had been made.

Janine Gleeson worked for 18 years as a police prosecutor and as a police officer for 22 years. She testified that when she left Victoria Police in 2007, many junior officers were being told to alter their statements. For example, she learned officers were instructed to insert references to cautions and an explanation of the suspect's rights in their statements when they had told their supervising sergeant the required caution and explanation of rights had not been given. Further, Ms Gleeson testified that untrue material was sometimes included in statements when some sergeants felt the statements were not strong enough to ensure a conviction. There are more recent examples of this that have come to IBAC's attention.

### 3 Improper practices identified

Mr Dunn and Ms Gleeson became aware of these practices in part because they conducted training with constables 12 months after constables graduated from the academy. These matters were reported to them by these constables when the constables became aware their training differed from the directions they were receiving from their supervising officers.

Some witnesses who gave evidence to IBAC acknowledged a junior officer would feel pressured to comply with a direction of a senior officer as to what should be included or excluded from a statement. In 2002, following a drink driving case in which the defence had discovered police officers had made multiple undisclosed versions of their statements, the Victoria Police Prosecutions Division reported to Victoria Police Command the problem of junior officers being required by their superiors to alter their statements. Mr Dunn noted that while Victoria Police sent out an all-staff communication reminding officers of the importance of adhering to proper evidentiary practices, there was no formal direction identifying this improper practice and instructing that it must cease.

As already observed, when accurate information is added to a statement but the amendment is concealed, those reading the statement do not know that the witness provided the additional information at a later time. It therefore prevents the parties and the court from being able to properly consider matters relating to the witness's reliability and credibility.

One motivation for the practice of replacement statements was to avoid questions about the reliability and credibility of the witness or the officer responsible for taking the initial statement. Specifically, their motives and the accuracy and truthfulness of the additional information could be questioned if an original witness statement is disclosed which is inaccurate or incomplete. That will inevitably be so if the additional information strengthens the prosecution case. Examples were provided of prosecutions failing or being withdrawn when multiple versions of statements were uncovered which damaged the credibility of police witnesses. Amendments to a statement that are uncovered but have not been disclosed to the prosecution and the defence, put at risk the process of a fair trial and undermine the public's confidence in Victoria Police.

#### A. EVIDENCE OF THE PRACTICE – LORIMER TASKFORCE

During the public examinations, it was established at least eight 'replacement statements' appear to have been made during Operation Lorimer. All of these replacement statements were made by first responders. At trial, the prosecution and the defence were not made aware of any of the replacement statements, other than one provided by Helen Poke. A replacement statement may also have been taken from the crime scene videographer, Paul Edwards.

It became clear that replacement statements had been made, but the earlier versions of all but one of these statements were never found. The one original statement found was that of Mr Pullin. It has not been possible to determine whether any other witnesses made replacement statements. There was evidence that a large number of documents, including at least one original statement, were shredded. Although a significant volume of material relating to the Taskforce was obtained during Operation Gloucester, due to the time that had lapsed since the conclusion of Operation Lorimer, and because records were destroyed by members of the Taskforce, some important information relevant to Operation Gloucester has not been obtained.

Of the eight replacement statements which appear to have been made by first responders, five replacement statements were made by those officers who were in a position to hear the dying declarations of Senior Constable Miller, namely Mr Pullin, Mr Thwaites, Ms Poke, Mr Adams and Lou Gerardi.<sup>25</sup> The other three replacement statements were of first responders (Francis Olle, Peter Morris and Ian Gray) who did not hear the dying declarations of Senior Constable Miller. None of the first statements made by these first responders were found among the Lorimer Taskforce records and it is highly likely they were destroyed.

<sup>25</sup> Mr Gerardi denies that he made a replacement statement and only ever made the one statement related to the murders which was made on 25 October 1998.

The omission of Senior Constable Miller's description of the offenders from the initial statements made by most of the first responders, was entirely consistent with the practice of some members of the Armed Robbery and Homicide Squads – namely, that descriptions of offenders should not initially form part of a witness's recorded statement. This was the explanation given by Mr Buchhorn, the detective responsible for following up with the first responders for further statements.

## GLENN PULLIN'S STATEMENT

As can be seen in Figure 4, significant amendments were made to the first statement of then Senior Constable Glenn Pullin, who heard the dying declarations of Senior Constable Miller.

### FIGURE 4 – THE REPLACEMENT STATEMENT AND ORIGINAL STATEMENT OF GLENN PULLIN

**Photocopy of witness statement** in the name Glenn Andrew PULLIN / witnessed by DSS BEZZINA at 4.25 am on Sunday 16 August 1998 / **provided to IBAC by former police officer**

Senior Constable Glenn Andrew PULLIN states..

**COPY**

I am a Senior Constable of Police stationed at Malvern Police Station. On Sunday, 16th August, 1998, I was on duty on the Malvern 311 divisional van with Senior Constable GERARDI.

At approximately 12.15 am on the same date, we were patrolling the Chadstone Shopping Centre when I heard Moorabbin 406 come up on the air and request assistance at the intersection of Cochrane Road and Warrigal Road Moorabbin in relation to a member being shot. On this, we attended toward the scene south on Warrigal Road.

Upon our arrival, I observed approximately 4 police units at that intersection, all of which were parked in Cochrane Road. I instructed S/C GERARDI to park our van approximately 10 meters south of Cochrane Road on Warrigal Road across the north bound carriageway. I alighted the van and placed on my ballistic vest and started to walk toward the other units on Warrigal Road. I began to walk across approximately 1 minute after alighting the van. As I began to walk I heard a male voice yell 'Help. Help'. I looked further south on Warrigal Road and observed a person I know now to be S/C Rod MILLER lying in the driveway of a premises at 477 Warrigal Road, approximately 100 meters south of Warrigal Road.

I ran toward him and arrived at him with another member. I observed a police issue firearm lying at his feet. I observed a small amount of blood on the left upper part of his t shirt and observed blood coming from a wound on the right side of his abdomen. I lifted his t shirt and observed a small hole on the left upper side of his chest. I told him to lie still and that an ambulance was on the way. He was conscious and said 'Silkies dead, Silkies dead'. I continued to calm him and he stated that he couldn't breathe. I assisted him to move into a position whereby he felt comfortable. Other members were arriving and I opened the chamber of the police issue firearm and observed that approximately 4 shots had been fired from the firearm. I said to him "Did you hit him" and he replied "I don't think so." I closed the chamber of the firearm and replaced the firearm on the ground where I had found it.


MILLER was now being comforted by other members and myself, S/C HOWELL from Caulfield Police Station and another member conducted a search in the lower car park area of the premises at 477 Warrigal Road, Moorabbin. We did not locate anybody.

I returned to MILLER and again comforted him. Whilst I was with MILLER, he continued to repeat 'It hurts, get me an ambulance.' Upon the arrival of the ambulance, myself and other members assisted him onto the stretcher and into the ambulance. I removed MILLER's ASP baton and OC Spray from their holders prior to placing him on the stretcher. I placed the OC spray and ASP baton on the ground with the firearm. I did this at the request of the ambulance officers to remove all unnecessary items from MILLER. I instructed a Constable, whose name I do not know, to travel with MILLER in the ambulance to hospital and to take notes of anything MILLER said in the ambulance.


D/S/C HANSON had arrived at the scene and I detailed my observations to him. I placed crime scene tape across both carriageways of Warrigal Road and allowed no unauthorised person to enter past these tapes. As I was placing the tapes, I observed 2 sets of

recent tyre marks on the median strip on Warrigal Road. These tyre marks were approximately 150 meters further south of MILLER's position. One set appeared to have come from a vehicle with large tyres and a limited slip diff, in that the tyre marks on the grass were even and constant. It appeared that the vehicle that caused these tyre marks had been facing north on Warrigal Road and had done a U turn on the grass and travelled south on Warrigal Road. The other set were approximately 10 meters further south of the first set. These tyre marks appeared to have been made by a smaller vehicle, due to the width of the tyre marks, and appeared to have a standard diff, as only one wheel had spun. These tyre marks appeared to have been made by a vehicle travelling south on Warrigal Road in the north bound carriageway from the vicinity of 477 Warrigal Road, and had crossed the median strip to the south bound carriageway and caused a skid mark on the concrete gutter of the median strip which continued for approximately 2 meters further south on Warrigal Road.

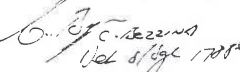
Upon the arrival of the Homicide Squad I detailed my observations to them. I was conveyed to the Moorabbin Police Station by D/S/SGT BEZZINA with S/C SHERREN and made this statement there.

  
Glenn PULLIN  
Senior Constable 26254

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

  
Glenn PULLIN  
Senior Constable 26254

Acknowledgment made and signature witnessed by me at Moorabbin at 4.25 am on Sunday 16th August 1998.

  
D/S/SGT BEZZINA  
16/8/98

### 3 Improper practices identified

**Original version of witness statement** in the name Glenn Andrew PULLIN / witnessed by DSS BEZZINA at 4.25 am on Sunday 16 August 1998 / **pages 3784 to 3785 of full brief of evidence**

Senior Constable Glenn Andrew PULLIN states..

I am a Senior Constable of Police stationed at Malvern Police Station. On Sunday, 16th August, 1998, I was on duty at Malvern 311 divisional van with Senior Constable GERARDI.

At approximately 12.15 am on the same date, we were patrolling the Chadstone Shopping Centre when I heard Moorabbin 406 come up on the air and request assistance at the intersection of Cochranes Road and Warrigal Road Moorabbin in relation to a member being shot. On this, we attended towards the scene south on Warrigal Road.

Upon our arrival, I observed approximately 4 police units at that intersection, all of which were parked in Cochranes Road. I instructed S/C GERARDI to park our van approximately 10 meters south of Cochranes Road on Warrigal Road across the north bound carriageway. I alighted the van and placed my ballistic vest on and started to walk toward the other units on Warrigal Road. I began to walk across Warrigal Road approximately 1 minute after alighting the van. As I began to walk I heard a male voice yell 'Help. Help'. I looked further south on Warrigal Road and observed a person I know now to be S/C Rod Miller lying in the driveway of a premises at 477 Warrigal Road, approximately 100 meters south of Warrigal Road.

I ran towards him and arrived at him with another member S/C CLARKE from Cheltenham Police Station. I observed a police issue firearm lying at his feet. I observed a small amount of blood on the left upper part of his t shirt and observed blood coming from a wound on the right side of his abdomen. I lifted his t shirt and observed a small hole on the left upper side of his chest. I told him to lie still and that an ambulance was on the way. He was conscious and said 'Silkies dead, Silkies dead.' I continued to calm him and he stated that he couldn't breathe. I assisted him to move into a position whereby he felt comfortable. Other members were arriving and I opened the chamber of the police issue firearm and observed that approximately 4 shots had been fired from the firearms. I said to him 'Did you hit him?' and he replied 'I don't think so'. I also asked him 'Were they in a car or on foot?' and he replied 'They were on foot'. I asked him 'How long ago did it happen?' and he replied 'Couple of minutes'. MILLER was quite obviously in pain so I didn't ask him any more questions, I tried to comfort him. I closed the chamber of the firearm and replaced the firearm on the ground where I had found it. By this time a number of police were in attendance and were continually arriving.

I left MILLER to be comforted by other members and myself, S/C HOWEL from Caulfield Police Station and another member conducted a search in the lower car park of the premises at 477 Warrigal Road, Moorabbin. We did not locate anybody.

I returned to MILLER and again comforted him. Whilst I was with MILLER, he continued to repeat 'It hurts, get me an ambulance'. I was kneeling next to him and speaking with him trying keep him calm. During this time, a number of members were asking questions of MILLER as he lay on the ground. I don't recall exactly what he was being asked, but I believe the questions were similar to what I had asked him earlier. MILLER was answering some of these questions, the only answer I remember was that he didn't know where the offender was. I was mainly concerned with making MILLER comfortable. Upon the arrival of the ambulance several

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minutes later, myself and other members assisted him onto the stretcher and into the ambulance. I removed MILLER'S ASP baton and OC Spray from their holders prior to placing him on the stretcher. I placed OC spray and ASP baton on the ground with the firearm. I did this at the request of the ambulance officers to remove all unnecessary items from MILLER. I instructed a Constable, whose name I do not know, to travel with MILLER in the ambulance to hospital and to take notes of anything MILLER said in the ambulance. MILLER was taken away in the ambulance with this member.

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D/S/C HANSON had arrived at the scene earlier and I detailed my observations to him. I placed crime scene tape across both carriageways of Warrigal Road and allowed no unauthorised person to enter past these tapes. As I was placing the tapes, I observed 2 sets of recent tyre marks on the median strip on Warrigal Road. These tyre marks were approximately 150 metres further south of MILLER'S position. One set appeared to have come from a vehicle with large tyres and a limited slip diff, in that the tyre marks on the grass were even and constant. It appeared that the vehicle that caused these marks has been facing north on Warrigal Road and had done a U turn on the grass and travelled south on Warrigal road. The other set were approximately 10 metres further south of the first set. These tyre marks appeared to have been made by a smaller vehicle, due to the width of the tyre marks, and appeared to have a standard diff, as only one wheel had spun. These tyre marks appeared to have been made by a vehicle travelling south on Warrigal Road in the north bound carriageway from the vicinity of 477 Warrigal Road, and had crossed the median strip to the south bound carriageway and caused a skid mark on the concrete gutter of the median strip which continued for approximately 2 meters further south on Warrigal Road.

Upon the arrival of the Homicide Squad I detailed my observations to them. I was conveyed to the Moorabbin Police Station by D/S/S BEZZINA with S/C SHERREN and made this statement there.

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Glenn PULLIN  
Senior Constable 26254

I hereby acknowledge that this statement is true and correct and I make it in behalf that a person making a false statement in the circumstances is liable to the penalties of perjury.

18

Glenn PULLIN  
Senior Constable 26254

Acknowledgment made and signature witnessed by me at Moorabbin at 4.25 am on Sunday 16th August 1998.

C. Bezzina  
Del 15/8/98

#### Key changes

1. **Changed** from 'on my ballistic vest' to 'my ballistic vest on'
2. **Added** 'Warrigal Road'
3. **Added** 'S/C CLARKE from Cheltenham Police Station'
4. **Changed** from 'firearm' to 'firearms'
5. **Added** sentences
6. **Added** sentence
7. **Changed** from 'MILLER was now being' to 'I left MILLER to be'
8. **Removed** 'area'
9. **Added** sentences
10. **Added** 'several minutes later'
11. **Changed** from 'abulance' to 'ambulance'
12. **Changed** from 'unnecessary' to 'unnecessary'
13. **Added** sentence
14. **Added** 'earlier'
15. **Removed** 'tyre'
16. **Changed** from 'D/S/SGT' to 'D/S/S'
17. **Formatting changed** from left-aligned to justified
18. **Changed** from 'the belief' to 'behalf'

Unlike the other replacement statements identified, it is clear Mr Pullin's replacement statement was backdated. This concealed the fact that a previous statement had been made, the amendments made to it, and the date on which those amendments were made.

Mr Pullin's first statement was made at the Moorabbin Police Station on the night of the murders, 16 August 1998. It was signed by Mr Pullin at 4.25 am and acknowledged by then Detective Senior Sergeant Bezzina of the Homicide Squad.

The second (replacement) statement was made some considerable time later. It was backdated to 16 August 1998 at 4.25 am, the date and time of the first statement, and it purported to have been acknowledged by Mr Bezzina at Moorabbin Police Station at that time. This gives the false impression it was the original statement.

The evidence shows that it is most likely Mr Buchhorn, a detective sergeant with the Lorimer Taskforce assigned to assess whether there were inconsistencies in the statements that needed to be rectified with further information, directed Mr Pullin to make substantive changes to his statement. Although Mr Buchhorn gave evidence he had no recollection of doing so, Mr Collins, who was a detective senior sergeant and Mr Buchhorn's supervisor at the Lorimer Taskforce, made an entry in his diary on 21 October 1998 stating *'chase up Buchhorn re clarification of statements by Miller at scene. Queries identified in statements. Follow-up required re dying declarations'*

On 21 June 1999, Mr Buchhorn visited Mr Pullin. Mr Buchhorn made a note in his diary *'re clarification of statement'* and noted in his daybook *'statement to be clarified'*.

IBAC heard evidence from another witness that Mr Pullin claimed Mr Buchhorn instructed him that the statement needed to be amended to 'make all things fit'. That evidence was consistent with evidence given by Mr Pullin.

There are many differences between Mr Pullin's two statements. Most significantly for the prosecution of the matter, a conversation was inserted into Mr Pullin's replacement statement which mirrored the statement made by another first responder stating Senior Constable Miller referred to two offenders. Mr Pullin's first statement did not make such a reference. The first statement was not disclosed at trial and had probably been shredded by members of the Lorimer Taskforce.

Both Mr Pullin and Mr Buchhorn conceded that the replacement statement was not made at the Moorabbin Police Station on 16 August 1998. Mr Pullin signed the replacement statement which included those substantive changes and it was backdated. According to Mr Pullin's evidence to IBAC in 2015, he did not recall the conversations between Senior Constable Miller and the first responders which were inserted into his replacement statement.

It is clear significant amendments were made to Mr Pullin's first statement, probably around the time of his meeting with Mr Buchhorn on 21 June 1999. It is also clear the replacement statement was typed from scratch. It was Mr Pullin's evidence to IBAC he did not save his first statement at the Moorabbin Police Station. That is supported by other evidence about practices at that time. Because the replacement statement was backdated, it is highly likely there was a deliberate attempt to conceal the fact that this modified version of Mr Pullin's statement was not the original version.

### 3 Improper practices identified

The exact process by which the amendments were made is not clear. IBAC received conflicting evidence as to who typed the amendments, and whether Mr Buchhorn had any direct involvement in that process. Ultimately, it is not necessary to resolve this matter.

Mr Bezzina's precise role in the production of the replacement statement is unclear. Clearly, he signed the acknowledgement clauses on both the first and the replacement statements, and he conceded this. However, Mr Bezzina agreed that he was not at the Moorabbin Police Station and it was not 4.25 am on 16 August 1998 when he acknowledged the second statement nor was Mr Pullin present as Mr Bezzina was attesting by signing the statement. Mr Bezzina told IBAC he assumed the second document he acknowledged was the same as the original. To support this, he stated it was his practice to sign statements which had been reformatted or typed for the brief, and while acknowledging this was improper, it was his view he was 'reasserting what was in the initial statement taken on that day given it was the same time and date; it wasn't an additional statement.'

The explanation Mr Bezzina has given for his conduct is implausible. Police officers sometimes reformat statements for a brief, to make them more legible – this is particularly the case for handwritten statements. But there is no need for statements which are reformatted for a brief to be signed. Second, IBAC received much evidence the proper practice is that statements reformatted for the brief are never signed by the witness or acknowledged. Third, the replacement statement acknowledged by Mr Bezzina was not in the form of a reformatted statement but purported to be the original statement.

At the time of Operation Lorimer, Mr Bezzina was, by his own admission, a senior officer with considerable experience in serious crime investigations. His signing of the acknowledgement without being present for the witness's signing and acknowledgement of the statement – as well as falsely recording the date, time and place the statement was acknowledged – was blatantly improper.

#### HELEN POKE'S STATEMENT

Helen Poke was a senior constable performing general duties on 16 August 1998. She did not make a statement on the morning of the murders as she was greatly distressed. Her stress was exacerbated because she had heard a Homicide Squad detective direct her colleague, Graham Thwaites, to omit some of Senior Constable Miller's dying words from his statement.<sup>26</sup> What occurred thereafter in obtaining her statement is not clear.

An unsigned copy of a statement of Ms Poke, dated 11 April 2000 and intended to be witnessed by a sergeant, was included in the committal brief. IBAC investigators were unable to locate the original signed version of this statement in the records examined.

On 14 and 17 September 2001, shortly before the committal hearing, Mr Buchhorn had two discussions with the OPP during which he said that two statements had been provided by Ms Poke but that the first statement was unsigned and a further statement had been taken from Ms Poke on 12 January 2001, with the acknowledgement crossed out and replaced by hand and signed by Mr Buchhorn.<sup>27</sup>

This amended statement contained an additional description of the offenders provided by Senior Constable Miller when Ms Poke and other first responders were attending to him after the shooting. What was not included in the statement dated 11 April 2000 (on the right) on the brief was '*6 foot 1 dark hair*'. This description had been recorded by Ms Poke in her notes shortly after the murders.

<sup>26</sup> This was not identified by the Lorimer Taskforce until later in the investigation when it was preparing the committal brief, and Mr Buchhorn contacted Ms Poke to make a statement.

<sup>27</sup> Shortly prior to the committal it became apparent that the latter, acknowledged by Mr Buchhorn, had not been included in the brief.

## FIGURE 5 – EXCERPTS FROM THE STATEMENTS OF HELEN POKE

### THE UNSIGNED STATEMENT DATED 11 APRIL 2000 WITH NO REFERENCE TO '6 FOOT 1 DARK HAIR'

HELEN POKE

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I could see that he had been shot in the right side near his waist area. There was not a lot of blood coming from this wound. I also saw another bullet wound near his left armpit, this was also not bleeding. I remained at the head of the member just talking to him and trying to keep him calm, he kept saying "I'm fucked, just get them", "I'm fucked, help me" I tried to reassure him, but he was insistent with trying to tell us everything he knew. I asked him his name, I didn't catch his christian name, just his surname MILLER.

I remember MILLER saying they were on foot, "two of them, one on foot, checked shirt, dark Hyundai." MILLER kept repeating this and saying "Get them, I'm fucked". When MILLER spoke it was not in full sentences but in bursts like he was gasping for breath. The ambulance arrived and an oxygen mask was placed on his face. MILLER kept pulling the mask off to speak to us. He kept repeating "Get them, checked shirt, I'm fucked." I asked him to calm down and told him it was alright and that we had it under control. I placed the oxygen mask back on his face and comforted him the best I could. Ambulance officers then placed MILLER on the stretcher, I held the top end of the stretcher steady while this happened. I remained at the head of the stretcher and continued to speak to MILLER to reassure him. He kept trying to remove the oxygen mask and was waving his arms around. I placed his arms down by his side, and he again said, "I'm fucked, get them." MILLER was then placed in the rear of the ambulance, Constable GARDNER of Cheltenham 206 accompanied MILLER in the ambulance to the Monash Hospital.

After MILLER had been taken to hospital Senior Constable THWAITES and I commenced a patrol in the vicinity of the incident. We were then allocated a static post at the

### 3 Improper practices identified

#### THE SIGNED STATEMENT DATED 12 JANUARY 2001 WITH GEORGE BUCHHORN'S SIGNATURE ON THE ACKNOWLEDGEMENT

I then knelt down at the head of the member, Senior Constable CLARKE was to my right. The injured member was wriggling around, and trying to talk. I spoke to him. I said, "It's O.K., try and stay still?" I then took hold of his arms, as he was waving them around, I was trying to keep him calm and still. Senior Constable CLARK then lifted the members T shirt. I could see that he had been shot in the right side near his waist area. There was not a lot of blood coming from this wound. I also saw another bullet wound near his left armpit, this was also not bleeding. I remained at the head of the member just talking to him and trying to keep him calm, he kept saying "I'm fucked, just get them," "I'm fucked, help me" I tried to reassure him, but he was insistent with trying to tell us everything he knew. I asked him his name, I didn't catch his christian name, just his surname MILLER.

I remember MILLER saying they were on foot, "two of them, one on foot, checked shirt, 6'1", dark hair, dark Hyundai." MILLER kept repeating this and saying "Get them, I'm fucked". When MILLER spoke in was not in full sentences but in bursts, like he was gasping for breath. The ambulance arrived and an oxygen mask was placed on his face. MILLER kept pulling the mask off to speak to us. He kept repeating "Get them, checked shirt, I'm fucked." I asked him to calm down and told him it was alright and that we had it under control. I placed the oxygen mask back on his face and comforted him the best I could. Ambulance officers then placed MILLER on the stretcher, I held the top end of the stretcher steady while this happened. I remained at the head of the stretcher and continued to speak to MILLER and reassure him. He kept trying to remove the oxygen mask and was waving his arms around. I placed his arms down by his side, and he again said, "I'm fucked, get them." MILLER was then placed in the rear of the ambulance, Constable GARDNER of Cheltenham 206 accompanied MILLER in the ambulance to Monash Hospital.

After MILLER had been taken to hospital Senior Constable THWAITES and I commenced a patrol in the vicinity of the incident. We were then allocated a static post at the intersection of Henry Street and Old Dandenong Road, Heatherton. We stayed at this location for approximately half an hour before checking a suspicious vehicle in Henry Street, Heatherton. We then resumed a mobile patrol of the area.

At 4.15 A.M. we were requested to assist with the transport of a male person from the vicinity of Fairchild Street and Warrigal Road, Moorabbin. We conveyed this person to Moorabbin Police Station at approximately 4.45 A.M. and placed him in the custody of Detectives from the Homicide Squad.

The amended statement (on the left) dated 12 January 2001 was filed with the Magistrates' Court and served on the defence on 21 September 2001, shortly before the committal hearing.<sup>28</sup>

An unsigned electronic version of that statement, in the same format and with the same content, except as noted below, was located by IBAC in the Lorimer Taskforce files.

The differences between the two versions of Ms Poke's replacement statement were:

- the jurat and acknowledgement clause on the electronic version referred only to Mr Buchhorn and not to the sergeant who witnessed her original statement
- the electronic statement made no reference to the previous statement date of 11 April 2000.

An examination of metadata indicates the electronic statement was created on 14 September 2001, a week before it was filed with the Magistrates' Court and served on the defence.

The electronic statement was not a reformatted version of the statement served on the defence on 21 September 2001 as per normal practice. This electronic statement and the copy served on the defence were in exactly the same format. It is not clear what the person who typed up the statement on 14 September 2001 intended to do with it. However, this was the same day that Mr Buchhorn left a message for the OPP solicitor in charge of the matter, advising that Ms Poke had been asked for a second statement to include the additional information describing the offender, but due to administration error it had not appeared in her second statement acknowledged by Mr Buchhorn.

Further complicating matters, Ms Poke told the committal hearing that more evidence was added to her unsigned copy of her original statement dated 11 April 2000 which was included in the brief than is apparent from comparing the versions of Ms Poke's statement in IBAC's possession. Specifically, Ms Poke's evidence at committal was the detail of there being two offenders (*'two of them, one on foot'*) had been added to her first statement.<sup>29</sup> This detail was then also later included in the replacement statement dated 12 January 2001.

Both Ms Poke and Mr Buchhorn have given inconsistent accounts in relation to these matters over the past 18 years.<sup>30</sup> IBAC could not establish how many versions of Ms Poke's statements were made, why those different versions were created, or how the versions came to be. This starkly highlights why the practice of creating replacement statements rather than taking supplementary statements is problematic – the process is not transparent. By definition, a replacement statement fails to acknowledge the existence of a previous statement, and does not reveal the amendments made to the original statement or why they were made.

What is clear from the information provided to the OPP at the time, is that original documents were shredded by a member of the Lorimer Taskforce, and at least one replacement statement was made.

<sup>28</sup> The amended Poke statement was provided to the Court and the lawyers for Mr Debs and Mr Roberts shortly prior to the committal.

<sup>29</sup> The fact the statement had been amended was disclosed but not necessarily what had been amended (due to the original version apparently being shredded). Contrary to the implication of her evidence at committal hearing in 2001, Ms Poke's evidence at IBAC in 2019 suggests that the statement which appeared in the brief is a typed version of her first statement.

<sup>30</sup> Perhaps due to the passage of time, or perhaps for other reasons.

### 3 Improper practices identified

#### GRAHAM THWAITES'S STATEMENT

Senior Constable Graham Thwaites was working with Ms Poke on the night of the murders. Mr Thwaites also made a replacement statement.

Mr Thwaites gave evidence to IBAC that he made and signed a statement at the Moorabbin Police Station on the night of the murders, 16 August 1998. The evidence suggests the statement was acknowledged by then Detective Senior Constable Grant Kelly from the Homicide Squad. A note sent from the Lorimer Taskforce to the OPP following the committal also referred to Mr Thwaites having made a statement at the police station that night. Further, a Lorimer Taskforce spreadsheet, last modified on 24 August 1998, lists Mr Thwaites as already having made a statement.

The original statement cannot be located. The evidence of Mr Thwaites, Mr Kelly and Ms Poke establishes the statement would not have included Senior Constable Miller's description of the offenders, which Mr Thwaites was told should be omitted from his account by Mr Kelly on the night of the murders.

Mr Thwaites subsequently made a replacement statement dated 23 October 1998 which was included on the brief. This statement was acknowledged by Mr Buchhorn. It did not refer to the existence of an earlier statement.

#### FRANCIS ADAMS'S STATEMENT

A replacement statement was also made by then Senior Constable Francis Adams, another first responder who was performing general duties on the night of the murders and who was in a position to hear Senior Constable Miller's dying declarations. Mr Adams' statement in the brief was dated 29 February 2000. However, a Lorimer Taskforce spreadsheet, last modified on 24 August 1998, indicates Mr Adams had already made a statement by that time.

Although Mr Adams did not specifically remember making a statement on the night of the murders, Mr Adams told IBAC he did recall giving an account to a detective that night, and he recalled signing something. Further, Rosemary Eden's daybook, while unclear, states on 16 August 1998 at 9.20 am: '*...statement from S/C Adams*'.

Ms Eden did not recall acknowledging statements that morning, although she said she may have been given statements to hold. She readily conceded that, based on the note in her daybook, it appeared she had received or obtained a statement from Mr Adams at that time. Ms Eden also testified the timings in the Crime Scene Log were consistent with Mr Adams having made a statement on that morning. The Crime Scene Log had Ms Eden and Mr Adams at the crime scene at the same time supporting the conclusion Mr Adams made a statement on the morning of 16 August 1998 at the scene which was then provided to Ms Eden.

Finally, the statement of Mr Adams dated 29 February 2000 which was included on the brief indicates he was stationed at the Cheltenham Police Station. While he was stationed at Cheltenham on the night of the murders, he had left that station by 29 February 2000 suggesting this statement was either backdated or otherwise inaccurate. This raises the possibility of there being more than one replacement statement for Mr Adams.

The statement made by Mr Adams and included on the brief was a replacement statement, and likely an amended version of the statement made on the morning of 16 August 1998. The original statement was not disclosed or retained by the Lorimer Taskforce. It is not possible for IBAC to determine what changes were made to it.

### LOU GERARDI'S STATEMENT

Lou Gerardi was a senior constable performing general duties with Mr Pullin on the night of the murders. He was another first responder who heard Senior Constable Miller's dying declarations and from whom a replacement statement was obtained.

Mr Gerardi's statement on the brief is dated 25 October 1998. However, a Lorimer Taskforce spreadsheet which was last modified on 9 October 1998 reveals Mr Gerardi had already made a statement by that time. Mr Gerardi's first statement made prior to 25 October 1998 has not been found and there is no record of the amendments made to it.

Mr Gerardi denied that he made a replacement statement and maintains the statement on the brief is the only statement he made.

### IAN GRAY'S STATEMENT


Ian Gray was another senior constable and a first responder to the murders, although he was not in a position to hear Senior Constable Miller's dying declarations. The evidence establishes he too made a replacement statement.

Mr Gray's statement on the brief is dated 8 September 1998. In evidence, Mr Gray said he vividly remembers making his statement at the Moorabbin Police Station on the morning of 16 August 1998. This recollection is supported by his daybook which states, on 16 August 1998: '*Code 1 to CMB. CMB Re: statement.*' This is police shorthand for 'go to Moorabbin Police Station. Moorabbin Police Station re statement.'

Mr Gray's recollection is supported by the fact he was directed to attend Moorabbin Police Station, which is where other police officers were being directed to go to make statements immediately following the murders. Mr Gray's first statement has not been found and there is no record of the amendments made to it.

### 3 Improper practices identified

FIGURE 6 – EXCERPT FROM THE STATEMENT OF PETER MORRIS AND THE MEMORANDUM

  
VICTORIA POLICE

Name: MORRIS, Peter Wayne Det.Sen.Constable 27441  
Address: Frankston C.I.B., 15 Fletcher Rd, Frankston  
Ph: 9784 5597

States: My name is Peter Wayne MORRIS, I am a Detective Senior Constable currently attached to Frankston Criminal Investigation Branch.


On Saturday the 15th of August, 1998, I commenced my shift at 6.00 p.m. at the Frankston C.I.B. offices re: Operation HAMADA. I perused the operation order in relation to this task and was then briefed by Detective Senior Constable HANSON who had been contacted by Detective Sergeant BUTTERWORTH from the Armed Robbery Squad.

At approximately 7.30 p.m. I left the Frankston C.I.B. offices, in a Holden Commodore sedan registration number OQW 808, in the company of Senior Constable SEYMOUR who was performing temporary duties at Frankston C.I.B. At approximately 08.00 p.m. Senior Constable SEYMOUR and myself arrived at the Shark Fin Inn Cheltenham Road, Keysborough and took up a static position that afforded an unobstructed view of the front door. I then exited the police vehicle and performed reconnaissance on the external exits of the premises.

At approximately 11.45 p.m. the restaurant shut and Senior Constable SEYMOUR and I began to return to the Frankston Police Station. A short time after this I was informed by Detective Senior Constable HANSON, a police member had been wounded in Cochrane Road, Moorabbin. Detective Senior Constable HANSON contacted myself via the mobile telephone as my vehicle was experiencing radio communication problems. I immediately drove to the intersection of Warrigal Road and Nepean Highway, arriving at approximately 12.30 a.m. Upon arrival at this location I met an unknown police divisional van and instructed same to close off all traffic from travelling north along Warrigal Road. I then drove to the car parks of the Royal Oak Hotel and surrounding areas. I was informed that a command post had been set up near Cochrane Road and Warrigal Road. I attended at this location and logged my units call sign of Frankston 402, with Detective Senior Constable SOUTHAM from South Melbourne C.I.B.

I then commenced a mobile and static patrol of Kingston Road and Clarinda Road per instructions from Intergraph. Whilst performing mobile patrols of Kingston Road I had cause to speak to Jonathan BEECH (22.02.1981) of 17 Nicholas Grove, Heatherton (which runs off Kingston Road), BEECH did not appear to match the description of the alleged suspect wanted in relation to the police shootings.

I continued mobile patrols until 04.15 a.m, I then attended at Moorabbin Police Station to be debriefed by Detective Senior Sergeant BEZZINA.

  
MORRIS, Peter Wayne Det. Sen. Constable 27441 ~ Page 1 of 2

To:

From: S/D Peter Morris

1. HOW WAS HE INFORMED BY S/D HANSON? CLARIFY.
2. CLARIFY TIME.
3. TOLD VAN TO CLOSE WARRIGAL RD & STOP TRAFFIC TRAVELLING WEST. WARRIGAL RD IS BASICALLY N/S.
4. PUT ARRIVAL TIME AT COMMAND POST.
5. PLEASE FLEET CONTACT WITH BEECH - ITS NOT RELEVANT.
6. WHAT CHECKS WERE DONE WITH BEECH?

S/D FROM SEYMOUR NOT REQUIRED. DIDNT APPROACH SCENE. DIDNT ROAD BLOCK.

## PETER MORRIS'S STATEMENT

Peter Morris, then a detective senior constable, was another first responder who made a replacement statement. Like Mr Gray, he was not in a position to hear Senior Constable Miller's dying declarations.

Mr Morris's statement on the trial brief was dated 1 September 1998. An undated, six point memorandum headed with Mr Morris's name, in Mr Buchhorn's handwriting, was located by IBAC at the OPP. The memorandum was attached to Mr Morris's statement in the committal brief, as can be seen in Figure 6.

The three points ticked off on the memorandum were included in Mr Morris's statement on the trial brief, while the three points not ticked off were not. This indicates Mr Buchhorn had reviewed a previous statement Mr Morris had prepared and drawn attention to various matters. These matters were then amended in the replacement statement.

The first version of Mr Morris's statement has not been found.

One of the matters listed in Mr Buchhorn's memorandum which was not ticked off related to Mr Morris stopping a man referred to as 'Beech' when he was looking for a suspect for the murders on the night. Information relating to Beech was included in the signed copy of Mr Morris's statement on the brief.

However, all information about Mr Morris's interaction with Beech was deleted from an unsigned reformatted copy of Mr Morris's statement which was included in the committal brief. IBAC has no evidence to suggest that Mr Morris was involved in the production or inclusion of the unsigned reformatted copy of his statement. In his evidence, Paul Sheridan, as the then detective inspector with ultimate responsibility for the committal and trial brief, agreed that the passage related to Beech from Mr Morris's statement was relevant, as it suggested Mr Morris was looking for only one suspect. The use of the replacement statement and the non-disclosure of matters added or omitted raises an inevitable question as to the motivation of those officers responsible for taking this action.

Again, it is not necessary to resolve this question. As Mr Sheridan properly conceded, the very process of creating replacement statements which do not disclose the existence of any earlier statements has the potential to pervert the course of justice. It is an improper statement taking procedure.

### 3 Improper practices identified

FIGURE 7 – FRANCIS OLLE'S STATEMENT AND THE ATTACHED MEMORANDUM

  
VICTORIA POLICE

Name: OLLE, Francis Det.Sen.Constable 26601  
Address: Moorabbin CIB, 1011 Nepean Highway, Moorabbin  
Ph: 9556 6115

States: On Saturday the 15th of August, 1998, I was on duty at the Moorabbin C.I.B offices tasked to plain clothes duties with Senior Constable Jim MARTIN Re: Operation Hamada. At about 7:00pm we were briefed by Senior Detective WISE and Detective Sergeant BUTTERWORTH of the Armed Robbery Squad. We were given surveillance duties of the Rani Indian Restaurant at 358 Koomang Rd. Carnegie. Our allocated call sign was Moorabbin 402.

At about 8:20pm I took up a position with a view of the restaurant and remained there until the restaurant closed and all of the staff had gone. At about 11:30pm I cleared the above address and Patrolled the East Bentleigh, Sandringham and Beaumaris areas looking for another open restaurant fitting the allotted criteria.

At about 12:20am I heard another unit come up on the radio stating that shots had been fired and members down at the intersection of Cochrane Rd and Warrigal Rd. Moorabbin. I drove to this location arriving at about 12:30am entering from the Chesterville Rd end travelling west along Cochrane Rd. When there I could see three other unmarked Police units already in attendance. Without stopping I turned around and exited the scene from my direction of entry back along the north side of Cochrane Rd. At this intersection Cochrane Rd. is divided by a car park and median strip. At no time did I get out of the car nor did I drive to the south side of the road.

I continued on to the intersection with Joyner St. where Cochrane Rd. becomes single lanes again and set up a road block marked with crime scene tape. Shortly after this I lifted the tape to allow entry to an ambulance.

I remained at this location until about 1:10am when I was relieved by the Brighton Divisional Van. After this I conducted a Patrol of the immediate area moving over to South Oakleigh and was later tasked to grid search the area of factories bounded by Warrigal, Cochrane, Keys and Chesterville Rd's.

At the completion of this I conducted a general patrol of the Kingston and South Cheltenham areas. At 7:00am I was dismissed from duty by the Uniformed Sergeant at the command post.

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in these circumstances is liable to the penalties of perjury.

Francis OLLE  
Det.Sen.Constable 26601

Acknowledgment taken and signature witnessed by me  
at 4:13 PM on 7/9/98 at Moorabbin.

W. MATTHEWS Detective Senior Sergeant 15110

OLLE, Francis Det.Sen.Constable 26601 ~ Page 1 of 1

To:	
From:	Francis OLLE.
1.	HAS ARRIVAL TIME AT SCENE OF 12.30 PM - SHOULD BE AM.
2.	NEED MORE DETAIL RE OBSERVATION OF SCENE - CAR POSITIONS, PORTABLE BLUE LIGHT, BODY & IN RELATION TO EACH OTHER.
3.	REMOVE CALL SIGNS OF CBT 311
4.	TIME IN PM/PM ONLY.

## FRANCIS OLLE'S STATEMENT

Francis Olle was a detective senior constable and first responder who was not in a position to hear Senior Constable Miller's dying declarations. The evidence establishes a replacement statement was also obtained from Mr Olle.

Mr Olle's statement in the brief was dated 7 September 1998. However, an undated 'points for correction' memorandum in Mr Buchhorn's handwriting was located by IBAC attached to Mr Olle's statement in the committal brief at the OPP. The memorandum shows that Mr Olle had made an earlier statement. Four points in the memorandum were ticked off by Mr Buchhorn, with two of those changes clearly reflected in the statement. It is not certain what, if any, corrections were made in respect of the other two points illustrating the danger of the practice. The points listed are visible in Figure 7.

Like the memorandum in relation to Mr Morris, the corrections required in relation to Mr Olle's statement may not have been significant to the prosecution. However, the process demonstrates how replacement statements can obscure information from the prosecution and the defence, as the memo and original statement were never disclosed.

The first version of Mr Olle's statement has not been found and was not disclosed to the prosecution or the defence.

## PAUL EDWARDS'S STATEMENT

Paul Edwards was a senior constable and the crime scene video operator on the night of the murders, 16 August 1998. His statement was dated 11 January 2001. The evidence suggests this too may have been a replacement statement.

The reformatted version of Mr Edwards's statement included on the committal brief was unsigned and undated, save that it was marked '2000'. Mr Edwards's signed statement on the trial brief was dated 11 January 2001.

Further, Mr Collins's daybook on 1 November 2000 includes a document headed 'The Lorimer Taskforce – Brief Prep. Tasks' (Figure 8 on the next page) which states '*Update S/C Paul Edwards s/ment. Remove reference to the crime scene video*'. Mr Collins made a written note in respect of that task '*Reformat – Buchhorn*'.

This entry reveals two things: first, the Lorimer Taskforce had in its possession a statement from Mr Edwards as at 1 November 2000, two months before the date of his statement on the brief; and second, there is an explicit direction from Mr Collins to Mr Buchhorn to update the statement by removing any reference to a crime scene video.

Mr Edwards, Mr Collins and Mr Buchhorn all testified that they could not explain the note.<sup>31</sup>

Mr Edwards's statement on the brief refers to the crime scene video. As the original statement has not been located, it was not possible to identify the changes made to the statement or whether the changes had any significance to the prosecution of Mr Debs and Mr Roberts.

<sup>31</sup> Mr Edwards testified that he did not remember amending his statement, and that other than a spelling mistake his sergeants might have picked up, he could not recall ever having made amendments to any statement he had made.

### 3 Improper practices identified

FIGURE 8 – INSTRUCTIONS REGARDING PAUL EDWARDS'S STATEMENT FOUND IN MR COLLINS'S DAYBOOK

2	OPERATION LORIMER – BRIEF PREP. TASKS	
	3. Rifle and handgun book (Springfield) (SOL to B.-R.) 4. Rubber masks (Merrijig) 5. Newspaper clippings (Merrijig) 6. Disposable gloves (Merrijig)	include in brief.
	11. Update S/C Paul EDWARDS s/ment. Remove reference to the crime scene video.	Reformat - Buchholz.
	12. Search for glass in Jaguar CI. S/ments (DALE and ARGALL) <i>thing worth etc</i>	Dale + Argall include in s/ment.
	13. Blow-up of photo of jewellery worn by DEBS. KEIGHLEY is still working on this.	
	14. Follow up on the Boral bucket	Humphries
	15. Follow up on the guns from Sydney. <i>leave it for</i>	Humphries
	16. Negatives or extra sets (8) from NSW (For Lorimer only)	Humphries
	17. Witness list <i>Frank - cut + paste when final draft made.</i>	
	18. Exhibit list (Approx. 250 items on VFSC list and EMU lists. Also to include misc. items such as plans, documents from Superfinish Panels, DEBS and ROBERTS s/ments, etc.)	Buchholz + Argall
	* 19. Summary – to be updated and completed. Has only started on the DEBS and ROBERTS histories. Doesn't include the investigations, contacts, interviews, electronic results.	<del>EXA</del> - <i>Ritchie?</i> Humphries
	20. Check s/ment folder for followups still required.	GC
	21. To double check the continuity in s/ments against the exhibits highlighted.	Buchholz + dew.
	22. Numbering photos in the various sets. <i>Margaret?</i>	
	23. Inclusion of the photos from Korea, or should these form notes for Peter ROSS. <i>include in notes.</i>	
	24. Proof reading of additional s/ments	<i>Witschi + Dale or Jack.</i>
	25. Search database for s/ments re KLIMEK and if needs be get typed and proof read. To date there are a further 56 s/ments to be read. * <i>8 s/ments</i>	
	26. Property to EMU	Joek/Kenned - Monday
	27. Check the exhibit list and identify any exhibits that need to be photographed. (i.e KILMEK plastic bag and	Buchholz

NSW \*  
Keys

Decision re inclusion in brief

## B. DID SENIOR OFFICERS KNOW OF THE PRACTICE OF OBTAINING REPLACEMENT STATEMENTS?

The previous section set out the evidence that some Victoria Police officers were routinely taking replacement statements instead of supplementary statements. This section outlines how senior officers of the Lorimer Taskforce knew this was occurring.

As already stated, all police officers who gave evidence to IBAC acknowledged that the correct process for documenting additional information from a witness, or for correcting something in an earlier statement, is to take a supplementary statement which discloses that an earlier statement had been made. Both of the senior officers of the Lorimer Taskforce, Mr Collins and Mr Sheridan, acknowledged this as the correct process. They both testified that they would have expected members of the Taskforce to follow this procedure.

Mr Sheridan and Mr Collins both recognised the particular importance of the dying declarations of Senior Constable Miller and the omission of significant parts of the declaration from the statements of relevant first responders. They also recognised that each first responder's initial statement should have included what they had heard Senior Constable Miller say.

The omission of Senior Constable Miller's description of the offenders from the first responders' initial statements reflected the same practice that had been followed by members of the Armed Robbery Squad and other investigators in Operations Hamada and Pigout whereby descriptions of armed robbers were omitted from the initial statements of eye witnesses.

As senior officers, Mr Sheridan and Mr Collins would have appreciated that the absence of any reference to the parts of Senior Constable Miller's dying declarations concerning the number and description of the offenders from the original statements by some first responders was a glaring omission. The Lorimer Taskforce was aware of this relevant information as it had formed the basis for the police radio broadcast made whilst Senior Constable Miller's was making his dying declaration.

Mr Buchhorn initially denied he engaged in an improper practice that would result in the concealment of the original statement made by a witness and the disclosure only of a replacement statement.

When later confronted with considerable evidence that suggested otherwise in public examinations, he changed his position. He then gave evidence it was standard practice in any police investigation for the sergeant to send a memorandum to police witnesses listing required corrections to their statements, together with the original statement (signed or unsigned). The officer would then make the corrections and send a signed replacement statement back to the sergeant, together with the memorandum. The memorandum would be destroyed, and the replacement statement would be the only statement to appear on the brief.<sup>32</sup> Significantly, this practice was described by Mr Buchhorn as standard. Plainly, such a standard practice constitutes a serious impropriety as it involves the non-disclosure of the earlier statements. The evidence of Mr Buchhorn was that it remained a standard practice at the time of his retirement in 2014.

Mr Buchhorn said he applied this practice of correcting and replacing statements at the Lorimer Taskforce, including in relation to the statements of witnesses who heard dying declarations. He gave evidence his supervisors, Mr Collins and Mr Sheridan, would have been aware this process was being followed.

<sup>32</sup> Mr Buchhorn testified it was common, as part of that practice, to shred documents and materials which were no longer considered necessary for the brief. Mr Buchhorn asserted this occurred across Victoria Police because there was 'no real appreciation of how important [proper statement taking practices and record-keeping were] or what impact [shredding documents] could have down the track'.

### 3 Improper practices identified

Mr Collins agreed that the process followed by the case officers preparing the brief of evidence of clarifying information with witnesses in their statements is part of normal investigative procedure, although he said he was not aware of the memorandum process per se. Mr Collins agreed his daybook and diary suggested his attention was constantly on the collection and proofreading of statements and, where necessary, going back to witnesses for further information. For example, his diary entry from 21 October 1998 states: *'chase up Buchhorn re clarification of statements by Miller at scene. Queries identified in statements. Follow-up required re dying declarations.'*

Mr Collins gave evidence he did not know Mr Buchhorn was replacing signed statements with a new version of the statement which did not acknowledge the original statement. Mr Collins said he believed if a signed statement required amendment, the supplementary statement would include reference to the original statement. When presented with the fact of the frequency with which Mr Buchhorn had replaced signed statements with new ones containing additional evidence, he later said in evidence he could not recall whether he was aware Mr Buchhorn only put the second statement on the brief without disclosing the first statement.

Mr Collins was an experienced investigator, knowledgeable in brief preparation and the collection of statements, and monitored this process for the Taskforce. Mr Collins denied any recollection or knowledge that Mr Buchhorn was destroying or not retaining the original statements of first responders, or that there was any failure to disclose those original statements in the brief. However, with one exception,<sup>33</sup> none of the first responders' new statements on the brief purported to be a supplementary statement or made reference to any earlier statements.

Mr Sheridan also acknowledged in his evidence that he was aware of the process of statements being checked, and corrections being conveyed verbally or by memorandum. However, he maintained he expected the original statement to be kept, saying he had no knowledge of a practice in which earlier statements were returned to officers or destroyed. He acknowledged that the process which Mr Buchhorn said in evidence he followed would have been 'plainly wrong', given the absence of transparency to the prosecution and the defence.

Notwithstanding evidence to the contrary from Mr Collins, Mr Sheridan denied that he was aware of, or discussed concerns with, Mr Collins as to the practice that had been followed by Armed Robbery Squad investigators of omitting descriptions of offenders from the statements of eye witnesses in Operations Hamada and Pigout.

Mr Sheridan acknowledged he was involved in discussions regarding the enhancement of statements by first responders who had witnessed Senior Constable Miller's dying declarations. He also said he read every statement on the brief. Mr Sheridan acknowledged in his evidence that he 'would have thought' he would have become aware if Mr Buchhorn was correcting statements by replacing them. Despite that acknowledgement, Mr Sheridan otherwise denied that he was aware that Mr Buchhorn was not keeping the original statements. He said he relied upon his sergeants and senior sergeants to manage the Taskforce and report any issues and concerns they had.

Based on the totality of the evidence, it is likely that both Mr Collins and Mr Sheridan were aware that Mr Buchhorn was amending the content of original signed statements by the first responders who witnessed the dying declarations of Senior Constable Miller, and did so by creating a replacement statement rather than a supplementary statement. The replacement statement then became the witness's statement on the brief. Mr Collins's evidence at the committal hearing of Mr Roberts that there were no signed or unsigned statements which had not formed part of the brief or disclosure materials was incorrect.

<sup>33</sup> This supplementary statement was made by Mr Clarke. While another first responder, not named in this report, also made two statements, IBAC assessed that the second statement of this officer did not constitute a supplementary statement. This is because it did not focus directly on the murders and provided additional information to the events which occurred after Senior Constable Miller was taken to hospital.

Officers, including Mr Buchhorn, who obtained statements used by the Lorimer Taskforce followed this highly improper practice which resulted in the non-disclosure of the original statements made by a number of witnesses. The fact that Mr Buchhorn's senior officers raised no objection to his actions partially supports Mr Buchhorn's claim there was such a practice at that time. According to Mr Buchhorn, it remained a practice until his retirement.

It was recognised in evidence by senior police, such as Mr Collins, that the obligation of disclosure also applies to unsigned statements which are replaced at a later time by an amended signed statement. In short, he acknowledged all completed drafts of statements should be disclosed.

### C. CONCEALING REPLACEMENT STATEMENTS AS ORIGINAL STATEMENTS BY BACKDATING

Mr Bezzina gave evidence it was a common practice to backdate replacement statements when he was in the Homicide Squad from 1989 to 2009. All other witnesses in Operation Gloucester denied this practice. Subsequently, Mr Bezzina retreated somewhat from this position, saying he would not describe the practice as 'common', but it 'just occurs from time to time'. If there is a risk this practice is still employed, it must be addressed in training and education, and if this practice is detected it must be investigated.

It would be very difficult to identify when a statement has been backdated. It was only when Mr Pullin's original statement came to light in 2017, which on its face was made at the exact same date and time as the replacement statement on the brief, that it became apparent the statement on the brief had been backdated. There is also evidence to suggest the signed statement of Ms Poke witnessed by Mr Buchhorn was backdated.

The backdating of statements by the statement-maker or by the person taking the acknowledgement is completely unacceptable. All witnesses asked about the practice agreed this was the case.

A backdated statement by definition contains lies, as the jurat and the acknowledgement clause on the statement indicates the incorrect date and time at which the witness provided the information. There is no legitimate reason to backdate a statement, either as a statement-maker or as the person taking the acknowledgment. It also obscures the sequence in which information was provided.

## 3 Improper practices identified

### 3.3 Acknowledging a statement in the absence of the statement-maker

Mr Bezzina signed the acknowledgement clauses on both the first and second statements of Mr Pullin. However, the evidence of both Mr Bezzina and Mr Pullin indicates Mr Bezzina did not acknowledge the second statement in Mr Pullin's presence.<sup>34</sup> Mr Bezzina suggested this was an occasional practice. This is unacceptable and assisted in obscuring the fact that Mr Pullin's statement on the brief was a replacement statement. Further, this is conduct that could have serious implications for the administration of justice

The purpose of the acknowledgement is to witness the statement-maker's attestation that the information in the statement is true and correct, and is made in the belief that making a false statement in the circumstances renders the statement-maker liable to the penalties of perjury. The process of taking an acknowledgement impresses upon the statement-maker the importance of telling the truth in their statement. Taking an acknowledgement is an important and solemn function which must not be carried out in the absence of the statement-maker.

Victoria Police would be aware of the potential serious implications of taking short cuts in legal processes. The conduct examined here is similar in nature to the issue which has previously received judicial attention, namely police officers not following the correct process in swearing or affirming affidavits.<sup>35</sup>

### 3.4 Fabricating contemporaneous notes

The evidence received by IBAC highlighted issues with respect to note taking and record keeping by Victoria Police.

Contemporaneous notes should be made at the time of the incident (or as soon as practical thereafter) and dated at the time made. They should record investigation enquiries and observations as well as all information which may be used as evidence in court, as they are disclosable evidence for the prosecution and defence. Police officers often refer to their contemporaneous notes or other records (such as running sheets) when making a witness statement.

Note taking and record-keeping by officers during investigations may confirm other evidence in criminal cases and ensures officers' actions are transparent and accountable. It can also provide officers with protection for their actions and decisions should these be questioned at a later date. Note taking and record keeping can be time consuming and may be a low priority for officers working busy shifts and responding to violent and dynamic situations. However, it is often these types of situations where notes and records may become of utmost importance.

As outlined in section 3.2.2, the evidence of Ian Dunn and Janine Gleeson, both highly experienced police prosecutors, suggests that – at least until Mr Dunn's retirement in 2012 – it was a common practice within Victoria Police to make notes well after an event, but to portray them as contemporaneous notes made at the time of, or very shortly after, the event.

<sup>34</sup> Mr Pullin gave evidence that he never met Mr Bezzina again after the night of the murders, with the evidence making clear that the second statement was not made until at least 21 June 1999, when Mr Buchhorn attended the Major Fraud Squad where Mr Pullin worked, and noted that his statement was 'to be clarified'.

<sup>35</sup> In 2011, the prosecution of an individual for serious drug offences was jeopardised by the revelation that some affidavits were not being properly sworn or affirmed by Victoria Police officers (see *DPP v Marjancevic* [2011] VSCA 355). Failure to follow correct process risked evidence obtained under warrants, orders or summons supported by those affidavits being excluded from legal proceedings. In 2012, the *Evidence Act 2008* was amended to create an offence for making a false or misleading statement in relation to the swearing or affirming of affidavits.

During Operation Lorimer, first responders to the murders received correspondence from Mr Collins, then the detective senior sergeant of the Taskforce, concerning contemporaneous notes and 'points to consider' when preparing their statements.

The direction contained in the correspondence was last modified on 22 October 1998 which suggests it was sent to at least some officers around this date. Clearly, any notes made around this time would not be contemporaneous with the events of 16 August 1998.

The direction to these officers stated:

*'Details of any conversation had with alleged suspects at the scene or police station should have been recorded at the time. Your notes will be required for production at court. Retain your original notes (unless specifically requested) and forward a copy with your statement. Details of any conversations had with victim, if still alive, on police arrival. This conversation MUST [be] recorded contemporaneously and be a full and accurate account of what the victim stated.'*

*NOTE: All conversations should be recorded at first available opportunity, as they will be required at the subsequent trial and produced as original notes.'*

This correspondence may have been interpreted as a direction that notes which should have been made at the time of the incident could still be made, even though they would clearly no longer be contemporaneous with the events. Mr Collins denied it was his intention to encourage officers to create notes which would have the appearance of being contemporaneous. However, he acknowledged his direction could have been interpreted that way.

The matters considered by IBAC have demonstrated there is not rigorous compliance by some officers with the requirement that their notes or other records are truly contemporaneous.

### 3.5 Contamination of statements

Peter Morris, a detective senior constable at the time of Lorimer Taskforce, gave evidence that it was common at that time for police partners to assist each other in the making of their statements. Further, he thought it was still a common practice today.

There have been numerous recent investigations into police personnel misconduct by both IBAC and Victoria Police which have identified collaboration between police officers in the preparation of their statements. This suggests the practice of collaboration remains common. This is a serious concern as it can lead to police officers including information in their statements that is not their own recollection of the events and which therefore contaminates their evidence.

The issue of Victoria Police officers collaborating in the preparation of their statements was raised in a 2019 Victorian Supreme Court civil case related to an unlawful arrest and associated injury. One of the arresting officers provided their statement to another arresting officer prior to the second officer making their own statement. In their evidence, the first officer admitted it was not good practice for witnesses to exchange statements. The officers denied that their accounts of events were influenced by this sharing of statements. However, both admitted that the statements produced did not fully reflect the notes they had each written on the night of the arrest.<sup>36</sup> The trial judge did not accept the officers' explanations for sharing statements. Her Honour concluded their actions amounted to a calculated attempt to ensure their statements were consistent as to who was present at the time of the arrest in anticipation of a complaint being lodged as to the use of excessive force.<sup>37</sup>

IBAC has identified a number of other examples where officers, particularly in areas that use specialised police methodologies, have shared statements amongst themselves before they are finalised. This form of collaboration increases the risk of collusion and may result in the obscuring of misconduct that has occurred.

<sup>36</sup> *Cruse v State of Victoria* [2019] VSC 574 at [65]-[66].

<sup>37</sup> *Cruse v State of Victoria* [2019] VSC 574 at [96].

### 3 Improper practices identified

There is considerable evidence of police assisting each other in the making of their statements which were then used in Operation Lorimer. This occurred when preparing statements in each other's presence, by officers looking at other officers' statements or drafts before completing their own statement, or discussing their statements with one another. When partners' statements include almost identical wording, it strongly suggests statements were not created independently. Police witnesses must make their statements independently of other witnesses to ensure their account is not affected by knowing what other witnesses have said.

As stated earlier, Operation Gloucester also found evidence that during Operation Lorimer some officers spoke to witnesses to fix-up inconsistencies in their statements. This sometimes involved the compromise of the witness's independent recollection of events by showing the witness statements made by others. Reference has been made to the suggestion that a witness might be shown CCTV footage of a relevant incident or some other information before making their statement. This can alter the witness's recollection of the event. That contaminated recollection would then be recorded in their statement without disclosing the process that had been followed in obtaining the witness's account. Such practices may be convenient but they give rise to the risk of contamination, concoction or collusion.

#### 3.6 Failure to disclose relevant material

The non-disclosure of relevant material by police to the prosecution and defence is never acceptable.

All completed drafts of statements must be retained and disclosed by police even if they are not signed, and even when any alterations are so minor they do not alter the witness's account of what occurred. This is because minor alterations may assume significance for evidentiary reasons, including impacting on the admissibility of the evidence.

As stated earlier, in Operation Gloucester it appears there were as many as eight original statements that were made by witnesses that were never disclosed. Their existence was concealed by replacement and backdated statements.

The destruction of relevant material is particularly egregious. IBAC heard evidence the Lorimer Taskforce undertook the shredding of such material. It is likely Ms Poke's original statement was destroyed by the Lorimer Taskforce as it has never been located. In response to an OPP inquiry following the committal regarding the whereabouts of Ms Poke's initial statement, the Taskforce stated in a memorandum:

*'To prevent unnecessary papers being kept in the folders they were shredded' and that 'I believe I mistakenly thought the first [statement] was a typed copy of what Helen had brought in and simply shredded it.'*

While Mr Buchhorn did not draft this memorandum, the evidence before IBAC is that this information discussing the shredding of documents was directly quoting Mr Buchhorn.

Mr Sheridan denied being aware of statements or other documents being shredded at the Lorimer Taskforce. However, he assumed he would have asked Mr Buchhorn about the shredding of Ms Poke's statement, as he would have read the above memorandum sent to the OPP.

Mr Buchhorn said his normal practice was to return the first version of the statement together with his 'points for correction' memorandum to the officer making the statement. However, Mr Buchhorn also said it was his usual practice to shred documents no longer required for the brief.

If destruction of material is to occur, Victoria Police must ensure there are strict procedures in place to ensure the safe keeping and management of any documents which may constitute evidence.

The evidence established that witnesses' original statements were not disclosed by the Lorimer Taskforce to the prosecution and the defence as required. The most likely explanation for the absence of these records in the Lorimer Taskforce files is that they were destroyed once the witness had made a replacement statement.

### **3.6.1 Misunderstanding of the obligation to disclose relevant material**

Prosecutors in criminal proceedings have disclosure obligations under legislation and at common law. In brief, prosecutors are required to disclose all relevant evidence to the accused in a case. Prosecutors rely heavily on the delivery of all relevant material from police informants. At the time of Operation Lorimer these obligations were outlined in the *Magistrates' Court Act 1989*. Today these obligations are contained in the *Criminal Procedure Act 2009* and include the obligation to disclose all relevant evidence concerning the credibility or reliability of prosecution witnesses. The obligations were recently restated by the Court of Appeal in Mr Roberts's application for leave to appeal.

Victoria Police Operation Mothballing is an example of police failing to appreciate their obligation to disclose relevant material, irrespective of whether it assists or hinders the prosecution case. In March 2015, an aggravated burglary was committed by three armed offenders on a home in the eastern suburbs of Melbourne. Four people were at home. During the burglary, one occupant removed the balaclavas worn by two of the offenders and saw their faces. Two days later the occupant attended Victoria Police and assisted in preparing Facefits<sup>38</sup> of the three offenders. Victoria Police commenced Operation Mothballing which resulted in the charging of three men. There was no disclosure of the Facefits to the prosecution or defence.

During the trial in September 2016 it emerged that Facefits had been prepared. When the informant was asked for an explanation of this non-disclosure, it was stated that the duty to disclose material did not require disclosure of the three Facefits because they did not assist the prosecution. The jury was discharged.

In November 2016, a further jury was discharged and the matter adjourned (with no appointed date for resumption) after the presiding judge was satisfied Victoria Police had colluded with the witness who made the Facefits and withheld exculpatory evidence. Shortly after, the DPP requested Victoria Police to investigate the conduct of the police informant; that internal investigation concluded there was no evidence to support the allegation.

This matter highlights IBAC's ongoing concern with regard to improper statement taking practices and the disclosure of evidence by Victoria Police. A Facefit which bore no resemblance to the accused in Operation Mothballing was not disclosed to the prosecution or to the defence until its existence emerged by chance at the trial. The informant, a detective senior constable with more than eight years' experience and who had compiled briefs for summary offences as well as more serious indictable offences, apparently did not understand the obligation of disclosure. Specifically, the officer was not aware of the obligation that there be disclosure not only of material which supported the prosecution case, but also material which could help the defence case. This informant fundamentally misunderstood the meaning of 'relevance' and the obligation of disclosure.

<sup>38</sup> A Facefit is an image in the likeness of a suspect, recreated from the evidence of witnesses.

### 3 Improper practices identified

It would be naive to view this as an isolated case of a single officer misunderstanding their obligation. Operation Mothballing was conducted by a team of officers under the supervision of a sergeant. None of the officer's colleagues detected the failure to include relevant and potentially exculpatory evidence in the brief. This also reveals a fundamental defect in the brief-checking process.

Further, as the informant's supervisor acknowledged, the officer had been through the same training as their colleagues of the same rank. There is a significant risk other police officers similarly do not understand they must disclose all relevant material irrespective of whether it helps or hinders the prosecution case.

Evidence given by Mr Rapke to IBAC confirms this misunderstanding is not isolated. Mr Rapke told IBAC that as a prosecutor, he had to explain the obligation of disclosure to various officers throughout his career. As Mr Rapke said:

*If relevant material is not disclosed to the prosecution and defence – be it a Facefit, or a verbal description, or other material revealing the sequence and manner in which information emerged during an investigation – the administration of justice is impeded, and a miscarriage of justice may result.*

#### 3.6.2 A statutory duty of disclosure for law enforcement officers

Given the circumstances which emerged in Operation Gloucester and other examples to which reference has been made, the common law duty of disclosure should be reinforced by a statutory obligation in similar form to section 15A of the *Director of Public Prosecutions Act 1986* (NSW). This provision specifically clarifies that NSW law enforcement officers investigating alleged offences have an ongoing duty to disclose all relevant information that might reasonably assist the case for the prosecution or the accused, to the DPP. The officer must issue a 'disclosure certificate' to this effect. A very similar provision also exists in South Australia, in section 10A of the *Director of Public Prosecutions Act 1991* (SA).

The introduction of a similar provision would not materially change the current common law duty as it exists in Victoria but its statutory recognition would be a further means to ensure compliance with that duty. It would reinforce the obligations of law enforcement officers to disclose relevant material to the DPP, who then makes the final assessment on what must be disclosed onto the defence.

The Victorian Law Reform Commission (VLRC) is currently undertaking a review of the committals process, and is due to report in 2020. In the section of the VLRC issues paper concerning pre-trial process and disclosure obligations for this review, the adoption of a similar legislative provision to that in NSW and South Australia was canvassed.<sup>39</sup> This proposal has also been referred to favourably in a number of submissions including that of the DPP and Victoria Legal Aid.

<sup>39</sup> Victorian Law Reform Commission 2019, Committals: Issues Paper, June 2019, <[www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Committals\\_Issues\\_Paper-Web.pdf](http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Committals_Issues_Paper-Web.pdf)>.

## 4 Systems, controls and culture

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## 4 Systems, controls and culture

Operation Gloucester has highlighted how improper evidentiary and disclosure practices in the past appear to have been at least tacitly supported within Victoria Police by a culture of acceptance of these improper practices in some work areas, the command and control model which can discourage officers from questioning their senior officers, and a lack of clear policy and guidance on proper evidentiary practices. IBAC has found that significant gaps in policy and guidance remained at the time of Operation Gloucester. While it has agreed to, and commenced actioning, the recommendations arising from Operation Gloucester, Victoria Police must continue to address these deficiencies to ensure improper practices no longer exist.

These issues are explored in this section.

### 4.1 Cultural acceptance of improper processes around statements

Operation Gloucester identified there were different approaches to how police make statements or take statements from witnesses including other officers. Most of the police witnesses who testified during the Operation Gloucester examinations (both former and current officers) were aware witness statements should be made as soon as possible after the event and should include all available information from the witness – whether the information supported a potential prosecution or not.

However, some officers admitted this had not always been their practice. For example, some admitted to omitting certain information from their statements if so instructed by other police. Others admitted to destroying original statements and creating replacement statements rather than making a supplementary statement which referred to the original statement. Based on the improper processes identified around statement taking, it is clear there was a level of acceptance by some officers that departure from the correct procedure can be justified, particularly to strengthen a potential prosecution.

One of the key drivers of the improper evidentiary practices identified by Operation Gloucester was officers' concern about the reliability and admissibility of the information provided by witnesses, and that inaccurate or inconsistent evidence could jeopardise prosecutions. This was a particular reason for the omission of offender descriptions from statements and providing these descriptions at a later date once, or perhaps only if, they matched the suspect charged by police.

Victoria Police must address these issues in its current policies, procedures and training, and ensure all officers understand the importance of following proper process in investigations and when providing evidence in prosecutions in order to support the proper administration of justice.

#### 4.1.1 The gap between training and practice

On joining Victoria Police, all new recruits undergo 'foundation training' at the academy. This training addresses how to take witness statements and how to make a witness statement as a police officer. However, IBAC obtained conflicting evidence about exactly what officers had been taught at the academy in this regard. Most witnesses told IBAC they were taught proper statement taking practices but some said they were taught in the 1980s and 1990s not to include offender descriptions in witness statements.<sup>40</sup>

There was also some evidence correct practices had been taught but were discarded following deployment to certain stations, squads or taskforces that had their own way of doing things. This highlights the challenges in ensuring proper practices are repeatedly and consistently taught and applied within a large, geographically diverse organisation. Each station, squad and taskforce can have its own sub-culture which influences how well and how ethically officers perform their duties.

<sup>40</sup> Different witnesses had different views on whether descriptions were to be omitted for all statements, or just those where doubt existed about the reliability of the evidence.

There has been considerable research<sup>41</sup> into how police officers transition the skills they are formally taught when they first join, to their operational positions. This research has analysed how the transition impacts officers' ethics,<sup>42</sup> which in part is related to the willingness of officers to call out or report poor behaviour or misconduct of colleagues. The research generally accepts there is a wide gap in police (and other) organisations between formal rules and informal practices.<sup>43</sup> This gap was acknowledged by the former senior sergeant of the Lorimer Taskforce, Mr Collins, who gave evidence that building a Victoria Police culture which supports proper practice is as important as training to ensure officers apply what they are taught. Whenever informal practices become unethical, action needs to be taken.

Mark Butterworth, who worked in both the Armed Robbery Squad and the Lorimer Taskforce, gave evidence the practice of omitting offender descriptions from statements was not taught but was a well-known practice of certain police officers:

Mr Butterworth: *'... it was a common and accepted practice, but an individual one and not taught.'*

Commissioner: *'That ... raises the much broader question, and that is, what level of training ensures that a police officer puts all relevant information in a statement?'*

Mr Butterworth: *'It needs to be taught at the beginning, at the academy, and subsequently it needs reinforcement.'*

There is a significant risk some officers may disregard what they are taught at the academy due to a perception that the 'ends justify the means'. This is often referred to as process corruption or 'noble cause' corruption, and involves officers failing to follow proper process because of pressure to solve crime, frustration with the justice system or a belief they are doing what is needed to secure convictions and punish those who they are certain have committed serious offences.<sup>44</sup> In essence, it is the belief that the 'rules don't apply'.

'Noble cause' corruption was identified as a key theme in the 2014 report by The Honourable Murray Kellam AO QC following IBAC's 'own-motion' investigation, Operation Leven, into Victoria Police's management of human source information. Mr Kellam noted some officers who engage in 'noble cause' corruption could hold the view that solving serious crimes through '... improper conduct, despite any recognisable moral and legal barriers or other risks, would serve to justify the means'. The matters discussed in Mr Kellam's report are now the subject of the Royal Commission into Management of Police Informants, which has heard evidence, for example, of detectives assisting a lawyer to amend numerous witness statements of their client, without the client's knowledge.<sup>45</sup>

It is understandable that members of the Lorimer Taskforce felt pressured to solve the murders of their colleagues. Some witnesses spoke of this pressure, saying it was felt by police during all aspects of their duties. The work of the Lorimer Taskforce was complex and challenging, with officers working hard to find the offender or offenders who had murdered Sergeant Silk and Senior Constable Miller, and to assist a successful prosecution and bring the perpetrators to justice.

<sup>41</sup> For example, Marc Alain and Martin Grégoire 2008, 'Can ethics survive the shock of the job? Quebec's police recruits confront reality' in *Policing & Society*, vol. 18, no. 2, June 2008, pp 169–189; Jennett, Christine et al 2008, Occupational identity of police recruits, WACE Asia Pacific Conference, Work Integrated Learning: Transforming Futures, p 254.

<sup>42</sup> Crime and Misconduct Commission Queensland 2010, *The ethical perceptions and attitudes of Queensland Police Service recruits and first year constables 1995–2008*, November 2010.

<sup>43</sup> Tim Prenzler 1997, 'Is there a police culture?', *Australian Journal of Public Administration*, December 1997, vol. 56, issue 4.

<sup>44</sup> Government of the State of New South Wales 1997, Royal Commission into the NSW Police Service, Final Report Volume I: Corruption, May 1997, pp 68–69.

<sup>45</sup> Royal Commission into the Management of Police Informants 2019, Exhibit RC0480 – Transcript of Ms Nicola Gobbo, Officer 'White' and Officer 'Green', 4 August 2008, tendered 9 September 2019, accessed 28 May 2020, <<https://www.rcmpi.vic.gov.au/sites/default/files/2019-10/Exhibit%20RC0480%20Transcript%20of%20conversation%20between%20Ms%20Nicola%20Gobbo%2C%20Officer%20%27White%27%20and%20Officer%20%27Green%27%2C%204%20August%202008%2C%20tendered%209%20September%202019.pdf>>.

## 4 Systems, controls and culture

Cultural change is critical to ensure officers understand the evidentiary standards they are required to apply, why they are required to uphold those standards, and that all police personnel have a responsibility to discourage and report improper practices when they occur. The importance of developing a culture within Victoria Police which supports reporting improper conduct has been highlighted in the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) independent review of sex discrimination and sexual harassment.<sup>46</sup> The 2015 report noted that reporting this improper conduct was often regarded 'as an act of disloyalty to the team' in an organisation where one of its strongest cultural assets is the sense of family and loyalty among its personnel. VEOHRC also noted those who reported had been 'ostracised, shamed and physically and emotionally abused for making a report or not fitting in'.<sup>47</sup>

It is important officers are encouraged to follow proper evidentiary practices and to understand and comply with their obligations to report improper practices when they occur. They must understand the role they play in the administration of justice and recognise that improper practices reflect not only on individuals but also on Victoria Police. Effective reform depends on the commitment of police personnel to model good behaviour and the organisation's values, and to personally relate to Victoria Police's goals and outcomes.<sup>48</sup> However, it is also important officers understand there are potentially serious consequences if they do not follow proper process, including being held to account for misconduct or corrupt conduct, and jeopardising criminal prosecutions.

Transparency helps to build confidence in the rule of law. For Victoria Police, transparency around evidence gathering, achieved in part through proper and full disclosure, strengthens this confidence and facilitates the administration of justice.

Victoria Police needs to foster a culture in which its officers view themselves as custodians of the law and as critical to the fair administration of justice. This will assist in ensuring actual practice reflects the training delivered.

### 4.1.2 The command and control model

While the protections available to officers are designed to encourage reporting of complaints about the conduct of police officers and protective services officers, under section 167(3) of the *Victoria Police Act 2013* these personnel also have an obligation to report misconduct if they believe another is guilty of misconduct.<sup>49</sup> At the time of the Lorimer Taskforce, the obligation existed under section 86L of the *Police Regulation Act 1958*. Operation Gloucester is a reminder to all officers that they have a duty to report misconduct. It is also a reminder to Victoria Police to more broadly encourage a culture which does not tolerate misconduct or corruption.

Operation Gloucester highlighted how improper practices by police can be facilitated by the hierarchical nature of policing, including the command and control model.<sup>50</sup> In Victoria Police, hierarchy is dictated largely by rank but also by status associated with some specialised roles.

Victoria Police's command and control model (including its structures and processes) is critical to the proper and effective operation of the organisation. It relies on police personnel having an embedded respect for rank. This respect for rank is instilled at the academy 'as a cornerstone of operational policing'.<sup>51</sup> While Victoria Police has done some work to support the organisation and its personnel to operate more flexibly and make judgment-based decisions, more needs to be done to encourage officers to speak up and report more senior officers when integrity is at risk.<sup>52</sup>

<sup>46</sup> Victorian Equal Opportunity & Human Rights Commission 2015, Independent Review into sex discrimination and sexual harassment including predatory behaviour, in Victoria Police: Phase One Report, December 2015, <[www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1336-independent-review-into-sex-discrimination-and-sexual-harassment-including-predatory-behaviour-in-victoria-police-phase-one-report-2015](http://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1336-independent-review-into-sex-discrimination-and-sexual-harassment-including-predatory-behaviour-in-victoria-police-phase-one-report-2015)>.

<sup>47</sup> Ibid, p 12.

<sup>48</sup> Tim Prenzler 1997, 'Is there a police culture?', *Australian Journal of Public Administration*, December 1997, vol. 56, issue 4.

<sup>49</sup> Misconduct is defined by the *Victoria Police Act 2013* as being conduct which constitutes an offence punishable by imprisonment, conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it, or disgraceful or improper conduct (whether in the officer's official capacity or otherwise).

<sup>50</sup> "Command and control is the authority and capability of an organisation to direct the actions of its personnel and the use of its equipment. The principles of command and control are scalable." College of Policing United Kingdom 2019, Operations: Command and Control, 11 September 2018, <[www.app.college.police.uk/app-content/operations/command-and-control/](http://www.app.college.police.uk/app-content/operations/command-and-control/)>.

<sup>51</sup> Victorian Equal Opportunity & Human Rights Commission 2015, Independent Review into sex discrimination and sexual harassment including predatory behaviour, in Victoria Police: Phase One Report, December 2015, p 67, <[www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1336-independent-review-into-sex-discrimination-and-sexual-harassment-including-predatory-behaviour-in-victoria-police-phase-one-report-2015](http://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1336-independent-review-into-sex-discrimination-and-sexual-harassment-including-predatory-behaviour-in-victoria-police-phase-one-report-2015)>.

<sup>52</sup> This is not an issue unique to police. IBAC is aware that hierarchy is a feature of most, if not all, organisations and that employees may be reluctant to report more senior officers for fear of adverse consequences. All public sector agencies need to promote an environment in which employees feel confident to speak up and report suspected wrongdoing.

The detrimental impacts of the command and control model have been recognised in previous Australian inquiries into police corruption including the NSW Wood Royal Commission in the 1990s<sup>53</sup> and longitudinal studies of recruits in Queensland.<sup>54</sup> These inquiries found some officers would not report improper conduct, they witnessed due to concerns about the potential consequences of reporting, such as detrimental action and limiting career options. Some officers lack sufficient trust in senior officers to report improper conduct, and fear the elitism of certain squads or positions would protect the officer being reported.

Victoria has legislation<sup>55</sup> to protect whistleblowers. The *Public Interest Disclosure Act 2012* offers protection from detrimental action for Victoria Police personnel who make a disclosure about improper conduct. However, IBAC has found there is still a level of reluctance to report improper conduct or call it out.<sup>56</sup> This reluctance may be driven by factors including a lack of confidence in the protections offered, and perceived and actual repercussions for speaking out or reporting colleagues. Operation Gloucester suggests another factor is the power imbalance between, and the hierarchical nature of, police ranks and specialised roles, such as detectives.

There is a well-established perception that detectives are more elite than general duties officers. Detectives investigate more serious crimes and are less likely to be required to perform general duties or deal with everyday crime. The 1997 Wood Royal Commission into systemic corruption within the NSW Police Service found this perception of elitism contributed to a code of silence which contributed to officers, both detectives and other officers, not reporting or calling out corruption when it was witnessed.<sup>57</sup>

Perceived power imbalances between officers of different ranks was cited by one witness in a private examination in Operation Gloucester as a reason why he did not pursue his concerns about omitting offender descriptions from statements:

*‘... when I was a detective senior constable at the Armed Robbery Squad in the late eighties there was a practice where you didn’t include witnesses’ description of offenders, those descriptions were put on a separate piece of paper that was attached to the statement. And I remember having an argument with ... a detective sergeant at the time. I asked him, “Why don’t we put descriptions ... in statements?” And he said, “Well, when you arrest the offender he may not look like the description”.’*

*‘... As a detective senior constable I probably did [put descriptions on separate pieces of paper] because I was told to ... I did challenge it ... [but] I imagine I would have done what I was told...’*

This issue is further evidenced on the next two pages.

As discussed earlier, one of the first responders on 16 August 1998, then Senior Constable Graham Thwaites, made a statement immediately following the murders to Detective Senior Constable Kelly from the Homicide Squad. Mr Kelly instructed Mr Thwaites not to include descriptions of the offenders. Months later, Mr Thwaites was approached by Mr Buchhorn for a replacement statement, with words to the effect of ‘it needs to have some meat on the bones’. Mr Thwaites told IBAC:

*‘As a newly promoted senior constable, you generally don’t question a detective ... about what goes into a statement ... [Mr Kelly] asked me to make a statement, instructed me to make a statement. I made a statement. I don’t know where that statement ever went and at some stage later on, Mr Buchhorn asked me to make a statement regarding the matter...’*

When Mr Thwaites was asked why he did not insist on including everything he had witnessed in his statement, he indicated he was not in position to question a detective. Mr Thwaites perceived Mr Kelly as senior to him, even though they were of the same rank.

<sup>53</sup> Government of the State of New South Wales 1997, Royal Commission into the NSW Police Service. Final Report Volume I: Corruption, May 1997, p 53.

<sup>54</sup> Crime and Misconduct Commission Queensland 2010, The ethical perceptions and attitudes of Queensland Police Service recruits and first year constables 1995–2008, November 2010, p 89.

<sup>55</sup> Prior to 2020, these protections existed under the *Protected Disclosure Act 2012*. The *Public Interest Disclosure Act 2012* replaced the *Protected Disclosure Act 2012* on 1 January 2020.

<sup>56</sup> IBAC conducted a survey of Victoria Police personnel in 2017, which found 46 per cent of respondents indicated they would experience personal repercussions, and 18 per cent stated they could lose their jobs, if they reported corruption. IBAC 2017, *Perceptions of corruption: Survey of Victoria Police employees*, December 2017, <[www.ibac.vic.gov.au/docs/default-source/research-documents/perceptions-of-corruption-victoria-police.pdf?sfvrsn=482f7075\\_7](http://www.ibac.vic.gov.au/docs/default-source/research-documents/perceptions-of-corruption-victoria-police.pdf?sfvrsn=482f7075_7)>.

<sup>57</sup> Government of the State of New South Wales, 1997, Royal Commission into the NSW Police Service. Final Report, Volume I: Corruption, May 1997, pp 153–156.

## 4 Systems, controls and culture

Counsel Assisting: *'What I would like to know, if you can remember it, is whether as a consequence of [Mr Kelly] reading your statement, he directed you back to make another statement.'*

Mr Thwaites: *'He didn't make me – he didn't ask me to make another statement. He ... wanted me to delete lines in the original statement.'*

Counsel Assisting: *'And did you do that?'*

Mr Thwaites: *'I was – he's a detective. I'm a lowly senior constable. I do what I'm told.'*

### The role of a detective<sup>58</sup>

According to Victoria Police, the role of a detective includes preventing, detecting and investigating crime.

Detectives apprehend, charge and give evidence against people believed to have committed offences. They take reports and statements from victims of and witnesses to crime. They take control of crime scenes and coordinate staff, resources and specialist groups in the investigation of complex matters.

Detectives can specialise in various areas including Crime Command, Crime Investigation Units, Sexual Offence and Child Abuse Investigation Teams, Major Collision Investigation Group, Homicide, Organised Crime and Family Violence units.

Officers generally need to have completed three years of general duties policing before they are eligible for specialised detective training.

The title of detective is a designation and not a rank in Victoria Police. While there is no formal difference in rank between detectives and other officers, Operation Gloucester suggests a culture prevails that general duties officers, especially those at the more junior levels, are unwilling to question detectives. It is likely this is still an issue. It is important Victoria Police brings about cultural change by encouraging personnel, regardless of rank or designation, to report suspected misconduct or corruption by demonstrating that complaints will be handled appropriately and people making public interest disclosures<sup>59</sup> will be protected from detrimental actions. It is also important all Victoria Police personnel are encouraged to challenge directions which are contrary to policies, procedures and training, and know how to escalate concerns if they are not addressed.

Finally, the command and control model can also contribute to improper conduct motivated by the 'ends justifying the means' beyond the issues identified in Operation Gloucester. In May 2019, Victoria Police published the Taskforce Deliver report on its investigation into the falsification of preliminary breath tests (PBT) within Victoria Police. The investigation found the practice of PBT falsification by some officers was widespread, had occurred over a lengthy period of time and was generally motivated by the need to meet targets.<sup>60</sup> It also found those who admitted wrongdoing often justified their actions because of their workload and pressure to get the job done, and the need to take the easier (but improper) path due to pressure from more senior officers. Interestingly, this highlighted that many officers felt there was little scope to raise concerns about these pressures and the motivation to engage in improper practices.<sup>61</sup>

In responding to the PBT falsification issue, Victoria Police commissioned former Chief Commissioner Neil Comrie AO APM to conduct a review of the issue and prepare a report. Victoria Police has accepted, and is working on, a recommendation from Mr Comrie's report to develop a mechanism to allow officers to contribute to the implementation of systems and processes. It has also accepted a recommendation to provide mandatory, in-depth and comprehensive ethics-based training to all officers at least biennially.<sup>62</sup> IBAC encourages Victoria Police to consider the issues highlighted in Operation Gloucester when designing this training.

<sup>58</sup> Victoria Police 2019, Police – about the role, Victoria Police website, accessed 20 March 2019, <[www.police.vic.gov.au/police-about-role](http://www.police.vic.gov.au/police-about-role)>.

<sup>59</sup> On 1 January 2020, the Public Interest Disclosure Act 2012 came into effect, changing previous protected disclosure arrangements to public interest disclosures.

<sup>60</sup> Neil Comrie on behalf of Victoria Police, 2018, Taskforce Deliver: Investigation into the falsification of the Preliminary Breath Tests within Victoria Police, 9 November 2018, pp 10–12, <[www.police.vic.gov.au/sites/default/files/2019-05/TaskforceDeliverReport2018.pdf](http://www.police.vic.gov.au/sites/default/files/2019-05/TaskforceDeliverReport2018.pdf)>

<sup>61</sup> Ibid, p 69.

<sup>62</sup> Ibid, pp 10–12.

## 4.2 Poor understanding by Victoria Police officers of proper evidentiary practices

Operation Gloucester established that some officers adopted and promoted improper evidentiary and disclosure practices. This was partly due to a poor understanding of their obligations regarding the level of detail and information that should be included in a statement.

While rules of evidence are complex, there is no reasonable excuse for police officers not to have an adequate understanding of these issues to ensure they comply with their evidentiary and disclosure obligations under the *Criminal Procedure Act 2009* and the *Evidence Act 2008*. However, the lack of clarity has been exacerbated by inadequate policy and communication around proper practices and, in some cases, by improper practices having been historically taught at the academy. These two issues are explored separately in section 4.2.1.

Victoria Police has indicated to IBAC it is taking action to remedy training and policy for evidentiary and disclosure practices in response to Operation Gloucester and other inquiries, including the Royal Commission into the Management of Police Informants. This is a positive step with this report providing the evidence of why reform is necessary.

In its simplest form, a witness statement is a sworn statement outlining the evidence a witness is willing to give during a court hearing. At a hearing, a witness is asked to swear or solemnly affirm that their witness statement is true and correct.

The Commonwealth Government Investigation Standards mandate that witness statements must comply with the rules concerning admissibility of evidence pursuant to the *Evidence Act 1995* (Cth) or other law relevant to the jurisdiction.<sup>63</sup> In Victoria, this is the *Evidence Act 2008*. The rules of evidence can be complex; police are trained in these rules as recruits and later in their careers. For example, sergeants are required to complete the Brief Quality and Assurance Course. Detectives undertake a Crime Investigators Course which assumes a base knowledge of these rules and provides additional training on the specific detail which must be included in a witness statement, including detailed descriptions of offenders.

IBAC is confident that although many Victoria Police officers have a good understanding of the rules of evidence, Operation Gloucester and other IBAC investigations suggest the rules of evidence, and the legal and ethical reasons which underpin them, are not well understood by a large number of police. A significant risk is officers who do not properly understand proper practices are promoting poor processes to other officers, particularly less experienced ones. For example, senior constables may provide guidance to a more junior officer on witness statements and rules of evidence, without having received any of the specialised training available to sergeants and detectives.

IBAC located an undated version of the Victoria Police crime investigator course notes on interviewing witnesses<sup>64</sup> which states:

*'A major fault within the current structure of police training is a lack of instruction in the area of preparation of witness statements and indeed in the method of interviewing witnesses. Witnesses are a police person's greatest asset, it is not computers, LEAP, or other electronic tools that are the major source of evidence which obtains convictions against criminals, it is the evidence of people who appear before the courts as witnesses.'*

Despite the recognition there is a lack of training in statement taking within Victoria Police, action has not been taken to remedy this deficiency.

<sup>63</sup> Attorney-General's Department 2012, Australian Government Investigations Standards 2011, 9 March 2012, <[www.ag.gov.au/RightsAndProtections/FOI/Documents/AGIS%202011.pdf](http://www.ag.gov.au/RightsAndProtections/FOI/Documents/AGIS%202011.pdf)>.

<sup>64</sup> Course notes from the former Crime Courses Unit, which provided an earlier iteration of the Crime Investigators Course.

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Operation Gloucester suggests some confusion around what to include in witness statements arises from a lack of clarity around the rules of hearsay. Hearsay is a witness attesting to what they have heard another person say about facts although the witness did not observe those facts personally. While hearsay is generally not admissible, there are exceptions to this rule which likely creates confusion for police. One exception under the common law at the time of the murders of Sergeant Silk and Senior Constable Miller was dying declarations. This is particularly relevant to Operation Gloucester, where the content of the first responders' statements evidencing Senior Constable Miller's dying declarations, including descriptions of offenders, was altered or omitted.

The practice of omitting descriptions from statements may also be driven by confusion or uncertainty by junior officers around identification evidence.<sup>65</sup> Police are trained in the importance of identification of suspects by witnesses. However, witnesses can also easily be mistaken, and incorrect identification evidence is generally accepted to be a prime reason for wrongful convictions.<sup>66</sup> The Judicial College of Victoria has acknowledged this, stating identification evidence 'is seen to be inherently fragile' and has issued guidance on the care that must be taken with it.<sup>67</sup> One witness in Operation Gloucester, a former armed robbery detective, told IBAC a possible explanation for omitting descriptions from witness statements was to account for previous cases where offender descriptions were poor and later affected trials. He also said he had experienced difficulties in obtaining accurate or reliable descriptions from witnesses and this also affected how detailed a description he included in statements.

While the growing use of smart phones and CCTV,<sup>68</sup> as well as DNA evidence, has no doubt helped to improve the quality and quantity of identification evidence, prior to these technological advancements, police relied heavily on witnesses and victims for identification evidence. Consistency in identification evidence between witnesses is important in securing convictions, especially when CCTV or similar independent evidence is not available as was frequently the case in the 1990s at the time of Operations Pigout, Hamada and Lorimer.

It is likely the inherent vulnerability of identification evidence has led to confusion amongst officers about how and when this evidence is properly obtained and recorded so that it is admissible evidence. One officer who attended detective training school in the mid-1990s told IBAC that while identification evidence was a significant component of the course, he could not recall the final instruction about including descriptions in statements. However, this witness was aware that omission of descriptions in statements was practised by some detectives due to there being 'different schools of thought' on this issue.

In Operation Gloucester, some witnesses, including senior officers, acknowledged that descriptions were sometimes omitted from statements to help build witnesses' credibility. Graeme Collins told IBAC:

*'My understanding was in the early days when I was constable that – and I don't know whether I was taught this or this was a course of practice that was adopted – but there was some concern that witnesses who were involved in armed robberies were so traumatised that they couldn't provide detailed descriptions or accurate detailed descriptions ... [descriptions] were then recorded on a separate piece of paper and adopted by those witnesses and attached to the statement; I really couldn't see the point of it, to be honest.'*

<sup>65</sup> Identification evidence is evidence that is an assertion provided by witnesses, victims or those who know the suspect, and is used to support an inference a suspect did, or did not, commit an offence.

<sup>66</sup> Kristy Li 2010, 'Who did you see? An Evaluation of the Criminal Justice System's Response to the Danger of Eyewitness Identification' in Auckland University Law Review, no.16, 2010: 217–242, p 218. <[www.austlii.edu.au/nz/journals/AukULawRw/2010/10.pdf](http://www.austlii.edu.au/nz/journals/AukULawRw/2010/10.pdf)>.

<sup>67</sup> Judicial College of Victoria, 2018, Victorian Criminal Charge Book, Section 4.13 Identification Evidence, 22 August 2018.

<sup>68</sup> Christopher Dowling et al, 2019, How do police use CCTV footage in criminal investigations?, Australian Institute of Criminology: Trends and issues in crime and criminal justice, no. 575 April 2019, <[aic.gov.au/publications/tandi/tandi575](http://aic.gov.au/publications/tandi/tandi575)>.

Although the practice of omitting relevant information from a witness statement is improper, Operation Gloucester suggests officers, particularly less experienced officers, may have been confused about the correct process for statement taking, particularly in the absence of clear instructions or policy from Victoria Police. A number of witnesses in Operation Gloucester gave evidence they had never seen statements, or made statements, that deliberately omitted descriptions. One witness also told IBAC different sergeants gave different directions to their crews about what should be included in and excluded from statements. This highlights the lack of clarity in Victoria Police about witness statement practices.

And not surprisingly, some less experienced investigators who picked up improper statement taking practices continued the practice for many years. For example, Rosemary Eden, who was a detective senior constable on the Lorimer Taskforce, said she was told to omit offender descriptions from statements as early as 1984, when she commenced with Victoria Police at the academy. She said she was told to record descriptions elsewhere, including in daybooks or diaries, and denied that she did this for improper reasons or to conceal evidence. Ms Eden said she continued this practice until 2005 when she returned from a leave of absence and realised her colleagues were now including descriptions and hearsay in statements.

#### **4.2.1 Improvements required to informal and formal training processes in Victoria Police**

IBAC heard from a number of witnesses that the practice of omitting offender descriptions from statements was taught to them as recruits at the academy in the mid 1980s. Victoria Police submitted 'based upon a review of Victoria Police training materials from the 1990s and up to present time, it is clear the practices were never the subject of formal, documented training at the police academy or at detective training school'. It may be accepted that while this improper statement taking practice was not part of the formal curriculum, Operation Gloucester indicates this practice was taught at the academy, and as one witness suggested, most likely by one instructor. These practices were also taught informally 'on the job', and were insisted upon by some senior detectives in armed crime squads.

IBAC notes training, particularly around the conduct and management of investigations, is currently undergoing reform; this presents an opportunity for Victoria Police to address the issues identified in Operation Gloucester.

Recruits are taught about witness and informant statements approximately halfway into their foundation training at the academy. Additionally, probationary constables are required to complete police witness statements for an indictable offence, and to complete and submit contemporaneous notes and an informant statement compiled from those notes. This is practical and constructive but ongoing training and communication is needed to ensure all officers understand proper statement taking practices.

Victoria Police introduced a note-taking training package following a 2013 review which found 'note taking and statement taking skills were generally not at the level commensurate with the standards taught in police brief training'. This package is taught across a range of courses at the academy and is also available as an optional online learning package. A similar initiative could be considered to improve officers' understanding of and compliance with required statement taking practices.

## 4 Systems, controls and culture

Victoria Police has advised IBAC it is committed to implementing regular integrity training for all officers. It would be beneficial for this training to include a clear message around the importance of integrity in investigation methods and practices, including evidence gathering and disclosure.

In 2019, as part of Operation Gloucester, Victoria Police provided its curriculum and training materials related to briefs and disclosures of evidence, statement taking practices and note taking.

The materials provided by Victoria Police covered:

- the Diploma of Public Safety (Policing) (completed by recruits) lesson plan for introduction to briefs which outlines the structure and purpose of a brief of evidence and the supporting documentation
- Prosecutions Research and Training Unit – Taking Charge Course outlining the requirements for preliminary briefs and also pre-hearing disclosure
- Prosecutions Research and Training Unit – Brief Quality and Assurance Course, which forms part of the Sergeant Qualifying Program and educates participants on the purposes of a brief of evidence, the associated legislative requirements and the responsibilities of a sergeant during the brief authorisation process.

The materials provided to IBAC were either difficult to locate, or not able to be located, on Victoria Police's intranet. This means officers may have struggled to locate online guidance, and were more likely to seek advice from colleagues and supervisors who may have followed incorrect practices. IBAC acknowledges Victoria Police is now providing disclosure training across a wider range of courses delivered by its Centre for Crime Investigation, Centre for Law and Operational Development, the Promotional Programs Unit and the Research and Training Unit. This training provides the important and fundamental training that officers require to undertake their duties and should also be delivered in conjunction with on-the-job training.

### 4.2.2 Inadequate policy guidance on making, taking and disclosing statements

The VPM is the central reference used by Victoria Police personnel to clarify policies and processes. However, the VPM *Policy Rules for Interviews and Statements* lacks detail and direction on how to take or make a witness statement, and what type of detail should be included. At best, the policy can be described as high-level. There are no other VPM procedures or guidelines available to assist officers when they take or make witness statements.

The lack of policy around statements has serious implications for Victoria Police as it affects not only how statements are taken and made, but also may impact the course of an investigation and any resulting court process.

The lack of policy around statements can particularly impact officers who rely on the evidence gathered and provided by other officers when submitting briefs. Relying on their colleagues, these officers declare in good faith that they are disclosing all relevant evidence when submitting a brief.

Victoria Police must act to address inadequacies in policy and procedures around statement taking practices and clearly outline what proper practices are, and why these practices underpin the fair administration of justice. Figure 1 (on page 13) outlines key elements of proper evidentiary and disclosure practices which Victoria Police officers should adhere to. As a priority, Victoria Police should update the VPM to address the current deficiencies in policy, guidelines and procedures.

Consideration could also be given to embedding a high-level message about officers' evidentiary and disclosure obligations in the VPM or a similar documents. The 2018 UK Parliamentary Inquiry into the disclosure of unused material in criminal cases highlighted more needed to be done to improve police officers' understanding about their disclosure duties. It recommended the code of ethics issued by the UK College of Policing be amended to make it clear police have a duty to follow all lines of inquiry, even when they might point away from a particular suspect.<sup>69</sup> Victoria Police has a single sentence 'Code of Ethics' within the *VPM Policy Rules Professional and ethical standards*. IBAC understands there has been some support within Victoria Police to expand this to a more detailed code.

Victoria Police must address these issues in its policies and procedures, and ensure each officer understands the importance of complying with their evidentiary and disclosure obligations.

## 4.3 Failures of leadership in Victoria Police

Leadership is a Victoria Police organisational value. All officers are expected to show leadership, including by applying fair processes and guiding, trusting, developing and empowering colleagues. One way in which officers are required to demonstrate leadership is by complying with their obligation to report any suspected police misconduct or corruption pursuant to section 167 of the Victoria Police Act.

While Victoria Police provides training in evidentiary and disclosure practices, it is recognised a robust ethical culture and strong leadership is required to address issues identified in Operation Gloucester. A UK Parliamentary Inquiry has found while *'[d]isclosure errors were not designed to pervert the course of justice [...] they were consequences of inexperience, poor decision making and inadequate training, leadership and governance'*. It noted 'a shift in culture, driven by clear leadership' is required to address this.<sup>70</sup>

How Victoria Police responds to allegations of misconduct and corruption is fundamental to engendering a culture of integrity and professionalism. As stated earlier in section 3.2.2, in 1994 an experienced police prosecutor, Ian Dunn, reported allegations of improper statement taking practices and false contemporaneous notes to his commander and asked the allegations be forwarded to the then Assistant Commissioner of Operations. Mr Dunn believed these practices led to officers committing perjury when presenting their notes and statements as evidence in court. He raised these allegations again with the then Ethical Standards Department and the Assistant Commissioner Ethical Standards in 1996 and 1997 respectively. However, Mr Dunn told IBAC he believed Victoria Police Command had tried to avoid the problem. Senior command failed to act on these reports, and it obscured the seriousness of the allegations by limiting its actions to sending an all-staff email outlining officers' obligations around contemporaneous notes and statements.

<sup>69</sup> House of Commons Justice Committee 2018, Disclosure of evidence in criminal cases, July 2018, p 32, <[publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/859.pdf](https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/859.pdf)>.

<sup>70</sup> Ibid, p 71.

## 4 Systems, controls and culture

Given the seriousness of the allegations, Victoria Police should have taken stronger action at that time to ensure all officers understood proper evidentiary practices and identified the practices that were improper. At a command level an unequivocal statement was required that all improper evidentiary and disclosure practices, including amending statements to include false information or events that were not witnessed as well as fabricating contemporaneous notes, were to cease immediately. And further, if officers were found to be deliberately flouting those practices, it would be treated as misconduct.

An example of risks associated with improper evidentiary practice within Victoria Police was highlighted in a 2011 case, where the courts identified that Victoria Police officers had not properly sworn affidavits made in support of search warrants.<sup>71</sup> This resulted in the prosecution of an individual for serious drug offences being jeopardised. It subsequently came to light that this was a widespread procedural shortcut used within Victoria Police, which risked evidence obtained under warrants, orders or summons supported by those affidavits being excluded from legal proceedings.

This case illustrates how improper evidentiary practices can persist within Victoria Police for many years. The case was also an opportunity for Victoria Police to address improper evidentiary practices and to improve officers' understanding of the importance of their role in the criminal justice system. The failure to take advantage of this opportunity suggested a lack of commitment amongst some at a senior level to proper evidentiary practices. IBAC is hopeful that with the present support of Police Command there will be an unequivocal commitment at leadership levels to adherence to the correct evidentiary practices – a commitment which is essential if the poor practices identified by IBAC are to be brought to an end.

Sergeants and senior sergeants play a critical role in leading and supervising more junior officers. Eligibility for sergeant positions is dependent on successful completion of courses including the Brief Quality and Assurance Course. This course addresses the importance of sergeants being aware of their responsibilities in compiling briefs and supervising the compiling of briefs, including ensuring that all evidence and investigation materials that may be relevant are disclosed. Where there is uncertainty or doubt about whether a document or item may be relevant, it should be disclosed. However, the responsibility to ensure all initial statements and records of a matter requiring investigation are retained and disclosed, does not rest solely with the sergeant as each brief is the responsibility of the relevant case officer. The sergeant may not be immediately tasked with the brief following the incident as investigations can take many years; it is also acknowledged a sergeant may not be in a position to direct more senior officers.

IBAC found it was not only the officers named (on the following pages) who failed to discharge their duties as leaders by both modelling proper evidentiary and disclosure practices and reporting improper practices when they identified them. All Victoria Police officers, but particularly leaders of the organisation, are expected to demonstrate ethical leadership by addressing poor behaviour. Operation Gloucester heard evidence from many current and former officers, including the senior officers discussed previously, that they were aware of improper statement taking practices. With two exceptions, being the two police prosecutors referred to in section 3.2.2, none of these officers reported, or otherwise raised issue with these improper practices.

In areas where improper evidentiary practices were informally taught and practised, and later reported by police prosecutors, it is highly likely at least some members of Victoria Police Command in the 1990s knew these practices were occurring.<sup>72</sup> By not acting on this knowledge, these officers gave tacit approval for them to continue, and failed to appropriately report or manage these improper practices. This was a failure of leadership which potentially undermined the proper administration of justice.

<sup>71</sup> DPP v Marijancevic [2011] VSCA 355. The affidavits were signed by the deponent Victoria Police officers in the presence of the qualified person taking the affidavit, but without the deponent verbally swearing to the truth and accuracy of the affidavit's content.

<sup>72</sup> Operation Gloucester heard evidence from two witnesses, Ian Dunn and Janine Gleeson, reporting these practices to the former Ethical Standards Department and Victoria Police Command.

Mr Buchhorn played a significant role in compiling the brief for the prosecution of Mr Debs and Mr Roberts. He was responsible for requesting statements from police witnesses present on the night of the murders and he told IBAC he returned these statements to the witnesses requesting more information or deletions as he saw fit. This occurred even if the statements were signed. Mr Buchhorn explained this as the normal 'brief checking process' universally applied across stations and units of Victoria Police. Mr Buchhorn, as the officer responsible for collating and overseeing the brief preparation, failed in his duties as a senior officer of Victoria Police by including backdated and replacement statements in the brief.

Mr Buchhorn gave evidence that over his career he observed many different methods for completing statements and submitting briefs, depending on the supervisor. Mr Buchhorn said it was common for officers to change their approach to satisfy their supervisors. This highlights the need for unequivocal organisational policy and guidance in relation to statement taking and brief compilation to ensure officers have clear and correct guidance on how to produce adequate statements. There also needs to be clear guidance for sergeants and senior sergeants to understand their obligation to consistently apply that policy and to support their teams to comply with the requirements.

Mr Buchhorn told IBAC his supervisors would have been aware of the process he followed in compiling the statements for the brief. Mr Buchhorn and his then supervisor, Mr Collins, compiled the brief using and following up on many of the witness statements from the armed robberies investigated under Operation Hamada. Both Mr Buchhorn and Mr Collins should have recognised the systemic improper statement taking practices being followed in the Armed Robbery Squad. They did recognise that the Armed Robbery Squad practice of witnesses omitting offender descriptions from their statements meant witnesses needed to make a supplementary statement setting out or adopting that description. Neither of them reported or challenged the improper behaviour. However, they did follow up on inconsistencies in statements by sending officers to speak to witnesses to identify if any information not contained in their original statements was relevant. Officers then took supplementary statements and later disclosed these with the previous witness statements including the separate descriptions and questionnaires as evidence.

## 4 Systems, controls and culture

In evidence to IBAC, Mr Collins originally denied being aware of the process Mr Buchhorn was following, including his practice of replacing signed statements. However, when presented with the frequency with which this had occurred, Mr Collins became less certain. Mr Collins, as an experienced investigator, appreciated the importance of the dying declaration evidence given by Senior Constable Miller to some first responders, and as Mr Buchhorn's direct supervisor would have known some original statements made by these first responders were not included on the brief. As a senior officer, Mr Collins should have addressed this when finalising the brief. His failure to do this was an abrogation of his responsibilities as a leader.

Mr Sheridan, as detective inspector of the Lorimer Taskforce, had ultimate responsibility for the brief. He acknowledged in his evidence to IBAC he was aware of statements being checked and witnesses followed up on for further information and that he read every statement on the brief.

According to Mr Collins, and his diary confirmed this, he and Mr Sheridan became aware of the practice of excluding descriptions from witnesses' initial statements. Mr Sheridan was not, however, prepared to concede, in his evidence or by way of his response to the draft Operation Gloucester findings provided to him, that this practice was obvious from the fact that multiple supplementary statements were obtained which set out a description of the armed robbers which the witness said had been supplied at the time the initial statement was taken. Mr Sheridan's claim that he did not know of this practice was further contradicted by Mr Collins' admission that he and Mr Sheridan were concerned about the practice of investigators having failed to record the descriptions by the witnesses in the witnesses' initial statements. He proffered the explanation that they were probably too preoccupied with putting the brief together to escalate the matter.

The evidence of both Mr Sheridan and Mr Collins was that they recognised the particular importance of the dying declarations of Senior Constable Miller and how those declarations were recorded in the statements of relevant first responders. As already stated, the first responders' initial statements did not include the highly important information conveyed in the declaration made by Senior Constable Miller about the number of offenders and their descriptions, which had been immediately broadcast over the police radio. The absence of that information from the first responders' statements was an obvious and serious omission from the first responders' statements. Hence Mr Collins gave Mr Buchhorn directions, as recorded in both of their diaries, to return to the first responders and obtain that additional information. Mr Sheridan acknowledged his awareness that this process was underway; that statements of the first responders concerning the declarations of Senior Constable Miller required enhancement. Yet, on the brief of evidence for the prosecution, with one exception, there were no supplementary statements made by first responders. The only statements on the brief, which purported to be the initial statements taken, now included the additional information Mr Buchhorn had obtained concerning Senior Constable Miller's declaration.

The conclusion is inescapable that Mr Sheridan was aware of the content of the prosecution brief. He testified that he read every statement on the brief. Contrary to his response to the draft of this report, the misconduct of Mr Buchhorn was not concealed. IBAC does not accept the contention raised in his evidence and written response that he could not have been aware of the method which Mr Buchhorn employed. The task of Mr Buchhorn seeking additional information from the responders was undertaken with Mr Sheridan's knowledge and support. The method Mr Buchhorn employed of adding the new parts to the responder's statements was evident from the statements which Mr Sheridan read and which were the only statements on the brief of evidence from those responders. Mr Sheridan would have seen that the new statement now contained the information that he knew was missing from the original statement. Mr Sheridan at one point in his evidence did acknowledge that if Mr Buchhorn was correcting statements by replacing them, he thought he would have become aware of that fact. IBAC agrees.

Mr Sheridan and Mr Collins unequivocally acknowledged in their evidence that the evidentiary practice followed by Mr Buchhorn was improper. Having regard to the seriousness of the conclusion being reached, IBAC is satisfied that it is likely that both Mr Sheridan and Mr Collins were aware that replacement statements, purporting to be original statements, then became witness statements on the brief. Mr Collins's evidence at the committal hearing of Mr Roberts that there were no signed or unsigned statements which had not formed part of the brief or disclosure materials was incorrect. The conduct of both constituted a failure in leadership.

Mr Bezzina was an experienced investigator who led a crew of detectives and formed part of the senior management of the Homicide Squad. He conceded he had signed acknowledgement clauses on statements without the witness being present. He also backdated replacement statements, stating this was a common practice for the Homicide Squad. As a senior investigator, Mr Bezzina would have been expected to comply with his evidentiary and disclosure obligations, and to have held his colleagues and less experienced officers to the same standard. In the case of the trial brief for Mr Debs and Mr Roberts, he failed to do this which obscured the fact that replacement statements had been used.

## 4 Systems, controls and culture

### 4.4 Prosecution's role with respect to improper practices

The trial brief for Mr Debs and Mr Roberts included a number of supplementary statements containing additional descriptions from armed robbery witnesses, where the witnesses' original statements taken by the Armed Robbery Squad had deliberately omitted the inclusion of the offender descriptions. Those descriptions had been recorded elsewhere. Those supplementary statements explicitly stated that the descriptions had been provided to the investigator at the time the initial statements were taken. Those witnesses subsequently gave evidence to that effect. It appears that despite that practice becoming evident on the face of the statements and from the evidence the witnesses then gave, the danger and impropriety of such a practice did not assume any relevance or receive any attention during the trial.

Those legal practitioners examined by IBAC stated they would have taken action if they had been aware of such a practice or detected its impropriety. This suggests that despite the procedure followed by the investigators in taking those statements being self-evident, the focus of all involved at the trial was only on matters relevant to the issues at trial and it was not recognised at the time that the statements and evidence revealed a practice for which there was unlikely to be any legitimate purpose.

As part of Operation Gloucester, the OPP provided IBAC with its current training and policies regarding disclosure practices. These materials were comprehensive and mitigate much of the risk of the improper practices identified in Operation Gloucester not being detected or acted upon today. IBAC encourages the OPP to review its policy and practices to ensure its officers and those engaged on its behalf fully understand that, where on the face of the material in their possession it is apparent that a particular practice has been followed for which there is no apparent legitimate explanation and which could give rise to impropriety, such as that detected in Operation Gloucester, the officers should raise concerns about those practices as part of the discharge of their duties and functions. The OPP is then able to make inquiry of Victoria Police about the legitimacy of such a practice. IBAC will explore with the OPP what steps can be taken to address this issue.

## 5 Conclusion and Recommendations

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## 5 Conclusion and Recommendations

Operation Gloucester investigated alleged improper evidentiary and disclosure practices within the Lorimer Taskforce investigation of the 1998 murders of Victoria Police officers Sergeant Silk and Senior Constable Miller.

Operation Gloucester exposed that improper statement taking practices occurred in Victoria Police's Lorimer Taskforce as well as the Armed Robbery and Homicide Squads in the late 1990s to the early 2000s. In some instances, these practices resulted in relevant evidence being withheld from the prosecution, the defence and the courts, as well as impacting the manner or the order in which evidence had been obtained. These practices can have significant adverse impacts on the proper administration of justice, the accused's right to a fair trial and can cause criminals to be acquitted due to failings in process. The consequences of these improper practices are felt by the victims of crime, the taxpayer and the community whose safety may be compromised. These practices also erode Victorians' confidence in our justice system and police.

IBAC found evidence to suggest some of these improper practices had been formally taught at the Victoria Police Academy as well as 'on the job'. There was also evidence the Armed Robbery Squad normalised at least one of these improper practices into its everyday procedures, namely omitting offender descriptions from statements and recording them elsewhere. Victoria Police's lack of definitive action to eliminate these improper practices when they were first evident and reported, may have contributed to a culture where reporting improper practices with respect to statement taking and speaking up against poor behaviour has not been encouraged, enabled or sufficiently valued.

IBAC remains concerned there is an ongoing risk of officers failing to uphold their obligations around the gathering and disclosure of evidence. IBAC has also identified instances of improper statement taking and record-keeping in recent matters. These practices risk damaging Victoria Police's reputation and the community's confidence in the police and the administration of justice.

Victoria Police has significant work to do to ensure its officers are trained in and are applying evidentiary and disclosure practice to the standard the courts and the community require. The recommendations made to Victoria Police by IBAC require Victoria Police to determine how it can strengthen its evidentiary and disclosure practices, and effectively embed the required standards into policies, procedures and training – and most importantly, practice.

IBAC looks forward to Victoria Police's response to the recommendations, and to an ongoing commitment to the establishment and maintenance of the highest standards of evidence gathering and disclosure to support the fair and impartial administration of justice.

Finally, we again extend our thanks to the families of Sergeant Silk and Senior Constable Miller for their understanding during Operation Gloucester. We also thank the first responders who were required to give evidence during IBAC's investigation. IBAC appreciates it was a difficult time for all involved, and we are grateful for the assistance provided.

Pursuant to section 159(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, IBAC makes the following recommendations:

## Recommendation 1

Victoria Police reviews and amends the Victoria Police Manual (VPM) and its training to ensure police officers fully understand and comply with their obligations regarding evidence gathering and disclosure practices in investigations of criminal conduct, with a focus on statements and record keeping. The VPM and training should include the elements of proper practices in the making, taking and disclosure of a witness statement, and contemporaneous notes. These are highlighted in Figure 1 in section 1.2 of this report. Additionally, Victoria Police's review should consider:

- a. the guidance and direction provided in other jurisdictions with a view to identifying other good practices
- b. officers' obligations regarding evidence and disclosure under the *Criminal Procedure Act 2009*
- c. how to most effectively communicate to all officers, including those who do not receive regular formal training, the obligations in recording evidence and the obligations of disclosure
- d. the role of supervising and senior officers in ensuring officers understand and comply with their evidentiary and disclosure obligations, and how this may be improved to address the concerns identified by Operation Gloucester
- e. how to achieve understanding by officers that non-compliance with the rules of evidence and the obligations of accurately recording and disclosing relevant evidence may affect the administration of justice and constitute misconduct or corruption.

It is recommended Victoria Police provide a progress report to IBAC on this review in nine months and full report on the outcome of this review within 18 months.

## Recommendation 2

Twelve months after amending its policies, procedures and training to ensure police officers understand and comply with their evidentiary and disclosure obligations, Victoria Police conduct an audit of statement making, taking and disclosure practices, and record keeping practices across the organisation to assess compliance. Victoria Police to report to IBAC on the outcome of this audit and any action taken to address deficiencies by June 2022.

## Recommendation 3

That the Victorian Government introduce a statutory obligation of disclosure, in similar terms to section 15A of the *Director of Public Prosecutions Act 1986* (NSW), to reinforce the common law duty of disclosure.



## 6 Appendices

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## Appendix A: Scope and purpose of public examinations

1. The Lorimer Taskforce investigation of the murders of Sergeant Silk and Senior Constable Miller, concerning:
  - a. the taking of witness statements
  - b. the preparation of the brief of evidence for the trial
  - c. whether there was full disclosure of witness statements or other relevant information prior to or during the trial.
2. Witness statement taking practices by Victoria Police.
3. Compliance with the obligation to disclose evidence by Victoria Police.

## Appendix B: Natural justice requirements and responses

Some parts of this special report were considered to be covered by section 162(4) of the IBAC Act which requires that a non-adverse comment or opinion about any person be showed to them in advance. Persons who were named in the report but were not the subject of any adverse comment or opinion were extended the opportunity to inspect relevant parts. To the extent that persons are identified in the report and are not the subject of adverse comment or opinion, IBAC is satisfied in accordance with section 162(7) that:

- it is desirable to do so in the public interest
- it will not cause unreasonable damage to any such person's reputation, safety or wellbeing
- each such person is not the subject, nor for that matter intended to be the subject, of any adverse comment or opinion.

To the extent that public bodies and persons are identified in the report and are the subject of adverse findings<sup>73</sup>, comment or opinion<sup>74</sup>, they have been given a reasonable opportunity to respond to those comments or opinions by being shown a draft version of the material parts of the report relating to them.

In accordance with sections 162(2) and (3) respectively of the IBAC Act, responses that did not result in material relevant changes between the draft report and this report – to the extent they are of the kind provided for in the IBAC Act – are set out on the following pages.

### Mr Greg Pullin's response

In response to IBAC's conclusions on the statements made by Mr Pullin, Mr Pullin referred to the medical reports he provided to IBAC at the time of his examination and said that as a result of what occurred on the night of the murders, he has suffered significant harm to his mental health and has been diagnosed with post-traumatic stress disorder, which has compromised his memory of events surrounding the murders.

Mr Pullin maintains that he does not recall:

- meeting with Mr Buchhorn in June 1999 or discussing replacement statements with him at the committal hearing in approximately 2001
- making two statements.

Mr Pullin says this has been his position in both the 2015 and 2019 hearings and that he has never deliberately misled IBAC.

In relation to the authorship of the second statement, Mr Pullin says that he was not the author of the second statement and that, 'The circumstances surrounding the creation of a second statement are clearly not at my instigation and nor did it seem likely I would type the entire document, with amendments from scratch'.

In relation to the backdating of the second statement, Mr Pullin says:

*'With regards to backdating the second statement, the report continually infers it was I who backdated this statement. That is not the case.'*

*IBAC has found that the second statement was signed around 21 June 1999 by Mr Bezzina attesting that it was made, witnessed and signed on 16 August 1998.*

*Both of the statements were dated by Mr Bezzina in the acknowledgement on those statements - and this issue is canvassed again in [section] 3.3.*

*The actual dating of that acknowledgement is thoroughly out of my hands. It is a fact that I did not date, or backdate, either of the statements.'*

<sup>73</sup> In relation to public bodies.

<sup>74</sup> In relation to persons.

## Appendix B: Natural justice requirements and responses

### Ms Helen Poke's response

#### *Ms Poke's statement (section 3.2.2)*

Ms Poke states:

- Any inconsistency in accounts given by her as to what she heard Senior Constable Rodney Miller say shortly before he died, is properly and fully explained by the passage of time. With the passage of time, her recollection of the words used by Senior Constable Miller became dependent upon refreshing her memory from her notebook.
- She recorded notes in her Police Notebook (Exhibit 85) between 1.40 am and 2.10 am whilst in the divisional van at the scene of the murders, at the first opportunity after having parted from the side of Senior Constable Miller. These notes contain a record of what Senior Constable Miller said while she was with him and she wrote them of her own initiative.
- After the morning of Senior Constable Miller's death, her notebook was in her locker. It was then used on another occasion for an unrelated matter, and then when she moved stations it was thrown in a box and ended up in her locked shed. When in April 2000 she was asked by Detective Sergeant George Buchhorn to provide a statement, she located the notebook and wrote the statement over several days.
- She used her notes to assist her to write that first statement (dated 11 April 2000). She then forwarded the notebook to the Lorimer Taskforce, upon request, with her statement.
- She was shown the notebook again when she attended Lorimer Headquarters on 12 January 2001 and signed the second statement, which had been edited to include the description '6'1", dark hair'. At committal she amended this to read: '...6 foot, 1 with dark hair...', which, she said, was her interpretation of the short-hand in her notes.
- She did not see her notebook again until she was at the committal hearing in October 2001. When she had the notebook placed before her, whilst being cross-examined, she provided a detailed account of what those notes meant, that was consistent with the amended statement she provided.

- Initially when questioned in a private IBAC hearing in 2015, she applied different words to those uttered by Senior Constable Miller, but at the time, she did not have access to her notes. She said: 'I'm pretty sure without referring to my notebook that was – that's close enough to what he said'. When later shown her notes, she corrected her account of what Senior Constable Miller had said, consistent with the evidence she had given at the committal.
- All accounts provided by her, as to what was said by Senior Constable Miller, at times when she had access to her notes, have been consistent. All accounts, either with or without access to her notes, have included reference by Senior Constable Miller to there being two offenders.

In relation to the existence of two statements by Ms Poke, Ms Poke says:

- There were only ever two statements signed by her: the original statement was signed on 11 April 2000 and witnessed by Sergeant Nigel Atkins; and the second was signed on 12 January 2001 and witnessed by Mr Buchhorn. The only difference between the two statements was the inclusion of the detail in her notes of the description '6 foot 1 dark hair'.
- Any inconsistency in accounts given by her as to what particular words were added or deleted from her original statement is properly and fully explained by the passage of time. With the passage of time, her recollection of the words altered from the original statement (11 April 2000) to the second statement (12 January 2001) is dependent on comparison between the two statements.
- During cross-examination at committal, when Ms Poke agreed that the whole passage: 'The two of them, one on foot, checked shirt, six foot one, dark hair, dark Hyundai' was omitted from the first statement, she said 'I think it was...' and 'It might have been...' and 'I can't one hundred per cent tell you if it was omitted...'. The committal transcript reflects that she did not have a copy of that statement at the time. She was being asked to remember which details were included in a statement that she did not have access to.

- It was her evidence that enlivened the defence's awareness about the existence of different statements and about the practice of detectives to omit offender descriptions from statements. There are no other reasons, but the passage of time, as to any inconsistencies in accounts given by her as to differences between the two statements.

Regarding the divergence of proper procedure at the direction of superior officers, Ms Poke says:

- Any divergence from proper procedure in the making of her statements was at the direction of superior officers, and in circumstances of significant stress. The two practices identified in the report as relevant to her conduct are:
  - a. omitting an offender's description from a witness statement
  - b. providing a second statement (a replacement statement) without reference to the original statement, rather than a supplementary statement which does reference the original statement.
- She was directed to omit the offender's description given by Senior Constable Miller, by Homicide Squad detective Grant Kelly. Once back at Moorabbin station, after leaving the murder scene, she and Mr Thwaites were told by Acting Superintendent Cooper that Senior Constable Miller had died and that they were to provide a statement to the detective who was set up in the highway patrol sergeant's office. Mr Thwaites first typed up his statement at the computer and together they attended upon Mr Kelly. Mr Kelly told them that the description of the offenders should not be in their statements and to remove it. She and Mr Thwaites were very upset about this direction, angry words were exchanged between them and Mr Kelly and she refused to write a statement that day. She did ultimately write a statement, in April 2000, following a request by Mr Buchhorn.
- In January 2001, she was directed to write a second statement by Mr Buchhorn. She was called into Operation Lorimer Headquarters and asked to sign an amended statement, which included the offender description, recorded in her notes, which had been omitted from the first statement.

Ms Poke says the report ought to acknowledge evidence given by her in IBAC's examinations that: 'In investigations, as a senior constable ... the detective asks you to do something in a major investigation, you basically do it'. And further that, the Police Force is a rigidly hierarchical organisation, in which junior members are routinely imposed upon by the demands and practices of senior members, regardless of whether they conform to proper methods taught in training – 'They're detectives ... You do what they say. They don't care about us blue shirts...'

## Appendix B: Natural justice requirements and responses

### Mr Lou Gerardi's response

Mr Gerardi says that he made one and only one statement, on 25 October 1998, and denies that he made a 'replacement statement'. He identified the following issues in support of that position:

- What contemporaneous notes made on 16 August 1998 were provided to investigators at the time? Copies of those notes would have been returned to Mr Gerardi for the purpose of making a statement and the statement was compiled from those notes.
- No other statement has been located.

Mr Gerardi says the evidence of another statement seems to flow from analysis of metadata of a Lorimer Taskforce spreadsheet that indicates a statement had been made by him prior to 9 October 1998. It may be that there was an error in the compilation of the spreadsheet thereby incorrectly recording that a statement was made by Mr Gerardi prior to 25 October 1998. Mr Gerardi notes that Ms Rosemary Eden gave evidence that she would not necessarily see every statement that was obtained, i.e. that she would 'tick a statement off the list as being received' if she was informed by someone else it had been obtained.

### Mr Paul Edwards's response

Mr Edwards could not recall the circumstances in which he made his statement and he did not believe or recall that he had ever updated his statement. He gave evidence that as a videographer, '... the usual protocol with any job was to receive instructions from the investigating homicide member, and then from the actual crime scene examiner in charge of the scene, and we would be shown - or I would be shown through as to what areas I need to videotape, I'd do that as directed'.

Mr Edwards also said that his statements 'were fairly sort of almost like a pro forma statement ... There was no - the statement's no different to every other homicide I've attended to'.

Mr Edwards was not a lead officer in the investigation and was not a 'first responder'.

In relation to the extract from Graeme Collins's day book headed 'Operation Lorimer, Brief Prep. Tasks', when specifically asked what would have been meant by the note in the Collins Day Book Entry 'Remove reference to the crime scene video' in relation to updating his statement, Mr Edwards replied 'no idea, never.'

Mr Edwards also said that it is not possible to conclude whether the entry 'reformat - Buchhorn' was a reference to this note or if it related to reformatting in the usual sense of the word.

In relation to the date on his acknowledged statement of 11 January 2001, the committal brief version dated '2000' and the entry in Mr Collins's day book, Mr Edwards's evidence was that 'I can't explain it, no. That's the first time I've seen that in, you know, obviously 19 years, and I don't have access to my diary'.

Mr Edwards said he did not believe that multiple versions of his statement had been made, saying, 'Well, it's not something I've ever practised in my career, so. You know, I can't explain why it's - the date is.'

Mr Edwards also did not believe he would have complied with a request to change his statement: 'I don't believe so, I've never - I don't - because I don't ever remember being asked that by any homicide detective'.

## Mr Paul Sheridan's response

*The risk of 'the ends justify the means' and 'noble cause' corruption (section 1.2)*

Mr Sheridan acknowledged there is always a theoretical risk of correct procedures being subverted and that the 'ends justify the means' or the occurrence of 'noble cause' corruption. But he strongly rejected that this existed within the Lorimer Taskforce. He said from the very beginning of this investigation it was known that any charges would most likely be contested and the investigation would be vigorously scrutinised. It was always known that the highest standards of integrity were required of the investigation.

Mr Sheridan said the Lorimer Taskforce existed, in one form or another, for a period of in excess of four years. It included at least 30 detectives. It reviewed over 5700 information reports; conducted over 2600 vehicle inspections; investigated over 3000 persons of interest; took approximately 3100 statements; listened to over 21,000 hours of listening device recordings and over 18,000 intercepted phone calls. The brief of evidence comprised approximately 8000 pages, 177 compact discs and included 484 witnesses. A committal hearing ran for seven weeks, followed by a trial of 115 days where 157 prosecution witnesses gave evidence.

Mr Sheridan fully acknowledged that the subject matter of Operation Gloucester is of paramount importance and the improper practices uncovered constitute a serious threat to the administration of justice. However, he maintains that the improper practices, whilst extremely serious, were an aberration and constitute a small portion of the vast amount of work performed by many detectives over a number of years. Mr Sheridan said this comment is not directed at the assessment of the seriousness of the conduct, but at the extent to which conclusions can be drawn about the overall conduct of the investigation and its leadership.

## *Improper practices identified (section 3)*

Regarding the improper practices identified in Operation Gloucester, Mr Sheridan agreed with the propositions that:

- such practices are wrong
- they result in the concealment of potentially relevant evidence
- they interfere with the administration of justice
- there is no legitimate purpose for these practices.

Mr Sheridan says he stated in evidence the clear belief that these practices are counter-productive in that they are likely to become unravelled when tested in the court process.

Mr Sheridan says he emphatically denied in evidence that such practices are common practices within Victoria Police, within the Homicide Squad or within the (former) Lorimer Taskforce. Mr Sheridan says he seriously doubts such practices were taught at the Victoria Police Academy, but to the extent that they may have been, they too are an aberration and would never have been part of any formal syllabus.

Mr Sheridan says to the extent that these practices occurred within the Lorimer Taskforce, they were an aberration carried out by a small number of individual police officers. He says he does not suggest that the fact that they were an aberration is relevant to the assessment of the seriousness of the matter, or the need to take action to prevent these practices from occurring again – but is relevant to broader conclusions and comments that are made about the operation and functioning of the Lorimer Taskforce and its leadership.

Mr Sheridan says his evidence before Operation Gloucester was that the culture at the Homicide Squad, at all times, was one of attention to detail and a 'warts and all' approach to investigation, the collection of evidence and disclosure to prosecution and defence.

## Appendix B: Natural justice requirements and responses

Operation Gloucester identified four members who engaged in the above practices. Mr Buchhorn was a Detective Sergeant and a senior member of the taskforce. Mr Kelly was a junior Homicide Squad detective but not a member of the Lorimer Taskforce. Mr Kennedy was a junior and inexperienced detective within Lorimer, as was Ms Eden.

Mr Sheridan questions the reliability of the evidence given by these members before Operation Gloucester that these were common practices at the time. Mr Sheridan says where it is uncovered that a person has engaged in an improper practice themselves – and that person, upon questioning, asserts that it was common practice; others were doing it; their superiors were aware of it – there is the potential that such evidence is self-serving and designed to shift the blame and responsibility away from themselves.

*'Mr Sheridan told IBAC the purpose of re-approaching Operation Hamada witnesses was to enhance the case against Mr Debs and Mr Roberts.'* (section 3.1.2)

Mr Sheridan accepts this but says the following matters must also be borne in mind:

- This is a legitimate process (so much was acknowledged by the Commissioner in Operation Gloucester), particularly in light of the fact that these investigations escalated from armed robberies (Hamada) and police were now investigating the double murder of two police officers.
- Consequently, use of the word 'enhance' should not be taken to imply that the enhancement sought was improper.
- The statements from Operation Hamada were taken by Armed Robbery Squad detectives, or by uniform police under the direction of Armed Robbery Squad detectives, before the creation of the Lorimer Taskforce. Whatever practices were employed in the taking of those statements, Lorimer was working with what it inherited from Operation Hamada.

- The examples of Witness A and Witness B demonstrate that when Lorimer detectives took supplementary statements, they did so with transparency and disclosure of the previous practice by way of the witness stating: 'I have previously made a statement to police...'
- The report notes that the follow-up of Operation Hamada witnesses by the Lorimer Taskforce would not have been required if the full descriptions provided by those witnesses had been included in their first statements. It is important to note that the primary deficiencies lay in the practices of Operation Hamada and the statements that were then inherited by the Lorimer Taskforce.

*Awareness of deliberately omitting witness statements and recording them elsewhere (section 3.1.1)*

Mr Sheridan says he was not aware that such practices occurred in the Lorimer Taskforce, and would not have condoned any such practices nor allowed them to occur if he had known about them.

He says IBAC seems to be contemplating two propositions:

- a. that it is likely that he was aware of such practices
- b. that the fact that such practices were undetected demonstrates a failure in leadership.

Mr Sheridan says he strenuously disputes both of these propositions and suggest that they both overlook a number of realities of the operation of the taskforce and the nature of the improper practices themselves. Mr Sheridan states:

- The hierarchical nature of an operation such as the Lorimer Taskforce means that there were several levels within the chain of command, and there was a vast array of tasks assigned to the different levels.
- As head of the taskforce he was not directly involved in the 'hands on' process of taking statements.
- He was reliant on senior and experienced police officers, below him in the chain of command, to perform their roles competently and according to proper processes, and to supervise those below them.
- He had a legitimate expectation that such experienced police officers would perform their role competently and properly.

- Mr Buchhorn did not report or disclose any such practices to him.
- He disputes the evidence of Mr Buchhorn to IBAC – that his supervisors *would have* been aware of the process he followed in compiling statements for the brief – as vague, lacking in detail, it involves an assumption, it is self-serving and, with respect, should not be accepted.
- Given that the conduct in question was (a) improper and (b) by definition an act of concealment, it follows that a police officer engaging in such conduct is also likely to conceal it from anyone who would be perceived to disapprove of it, particularly senior officers and supervisors.
- It also follows that once a police officer has been discovered to have engaged in such improper conduct, it is likely that he will seek to shift responsibility for it by suggesting that it was common practice; others also engaged in it; his supervisors were aware of and condoned it. Mr Sheridan denies the extent to which these assertions are made.
- Given the nature of the improper conduct, it is beyond the scope of leadership *within a taskforce* to detect such conduct. It is not practical to conduct an investigation within an investigation to ensure that all officers are complying with expected standards – particularly when those practices are concealed and conducted out of sight. Mr Sheridan notes that an initial IBAC inquiry in 2015 failed to uncover the improper witness statement taking practices. Mr Sheridan says he was not in a position to undertake an inquiry into witness statement taking practices whilst also heading a very large investigation with a vast array of tasks. He says that is not to say that his attention was diverted to other priorities in a simplistic way, but that he had a legitimate expectation that senior and experienced police officers such as Mr Buchhorn would perform their jobs properly.
- The same principle applies to the ‘dying declaration’ statements. Once a replacement statement is taken that purports to be an original statement, that is an act of concealment and unless an extraneous event occurs that brings it to his attention, it would be impossible to detect the change in the statement and the improper practice.

- In his view, this problem was substantially the result of Mr Buchhorn acting independently and on his own. It was not a problem that emanated from the top down as a result of culture dictated or condoned from above.
- It was unauthorised and, in his view, inexplicable. It defies logic and the law, both of which, with Mr Buchhorn’s seniority and experience, he would reasonably have expected his compliance.
- Nor was it a problem that was amenable to detection from above in the ordinary course of leadership within a taskforce.

Mr Sheridan says he accepts Victoria Police has to take responsibility for the conduct of its officers, as does he, as head of the taskforce. But Mr Sheridan disputes the criticism that is levelled at him and the failure of leadership that is suggested in this report.

Mr Sheridan says if experienced police officers in positions of responsibility below him in the chain of command were adopting the practice of not including certain information in witness statements, or of amending the content of signed statements, then there is every prospect that those higher up the chain of command would never know. The Commissioner acknowledged this during the course of evidence at the hearing:

Commissioner: *‘One of the difficulties, Mr Sheridan, is if an investigator in taking a statement from a witness determines that some information provided by the witness should not be included in the statement, there’s every prospect that you, higher up the chain of command, might never know.’*

Commissioner: *‘But all I’m positing with you is that, unless one shines the light on an investigation, it’s very difficult to see how a person in your position would ever know, in a particular investigation, whether or not an investigator exercising what they think is a discretion leaves something out.’*

## Appendix B: Natural justice requirements and responses

Mr Sheridan states:

*'I have been a member of Victoria Police since 1975. I became a Detective Senior Constable in the Homicide Squad in 1980. I have been a member of the Homicide Squad at every level for approximately 15 years. I have been a commissioned officer for over 25 years. I have been involved in countless Homicide investigations. I have reported corruption and malpractice in the past. I have charged police officers with criminal offences, resulting in their termination as police officers. I have prided myself on maintaining the highest standards of policing at all levels.'*

Mr Sheridan says whilst IBAC has shone a light very brightly on one aspect of the conduct of some members of the Lorimer Taskforce, it seems to him that in making the findings and comments, IBAC is ignoring a number of matters that would be relevant to such findings and comments.

Mr Sheridan says it does not appear to him that IBAC has sought evidence of his character and reputation within Victoria Police, of his conduct and performance over many years, involved in countless investigations. It does not appear to him that IBAC has sought evidence more broadly from Homicide Squad detectives about how detectives conducted themselves in this squad and what were and were not common practices, or about the culture as dictated from those in senior leadership positions.

### *Failures of leadership (section 4.3)*

Regarding statements that IBAC considers it likely that Mr Sheridan and Mr Collins were aware of the replacement statements purporting to be original statements and then became witness statements on the brief, Mr Sheridan says the use of the word *likely* is problematic. It implies there is a lack of certainty about the matter, but IBAC is prepared to make the assertion anyway. Mr Sheridan also says if this assertion were true, the implication is that he condoned these practices, allowed them to occur, and did not take steps to remedy or disclose them. He says that is a very serious allegation that is both wrong and damaging to his reputation.

Mr Sheridan says IBAC is making this statement about his conduct without having made any real enquiry about his character, reputation and past conduct as an investigator and senior manager within Victoria Police. Mr Sheridan says IBAC has made this statement without considering whether it is likely that he would do such things. And without considering what impact these matters would have on the assessment of whether it is likely that he was aware of such practices and allowed them to stand without remedy.

Mr Sheridan says a failure to raise these issues implies that he knew about them and did not act to raise them. Mr Sheridan denies that he knew about them and disputes that there is a proper evidentiary foundation for IBAC to conclude that this was likely. Mr Sheridan considers this a serious allegation against him that is damaging to his reputation.

Mr Sheridan also says the criticism about not detecting these issues is, in his view, misplaced and unfounded for the reasons stated above. He says, to suggest that the non-detection of the practices demonstrates a failure of leadership suggests that the problem was one that was amenable to detection by leadership within the taskforce. It ignores the fact that the improper practices by their very nature involved concealment and were likely to have been concealed from those above. Mr Sheridan states that, once concealed, detection would be virtually impossible, as the passage of time has largely demonstrated.

Mr Sheridan states he does not dispute that Victoria Police carries responsibility for the conduct of its officers, and he shares that responsibility as a senior officer. Mr Sheridan says he does not dispute the seriousness of the subject matter of Operation Gloucester and the need for Victoria Police to implement changes to ensure that these practices do not occur. He does dispute the specific comments that are made about his leadership in the taskforce.

## Mr Ron Iddles's response

Mr Iddles states that it was his understanding that he was authorised to conduct his review of the case against Mr Jason Roberts by both the DPP and Victoria Police.

## Ms Rosemary Eden's response

Regarding Mr Francis Adams's statement, Ms Eden reiterated she has no recollection of taking a statement from Mr Adams, and believes that she may have collected the completed statement and that the notation in her daybook is a reference to this.

Ms Eden says she believes she was taught the practice of omitting offender descriptions from statements at the Victoria Police Academy. While she concedes that in hindsight this practice should not have occurred, she denies she did this for improper reasons or to conceal evidence. Ms Eden says on her return to Victoria Police in 2005, when she learnt the practice of omitting descriptions had changed and that descriptions were included in statements, she immediately adopted this practice.

## Appendix B: Natural justice requirements and responses

### Mr Jeremy Rapke QC's response

In relation to IBAC's finding that the practice of omitting witness descriptions in statements was evident from the statements on the committal brief, Mr Rapke observed that the evidence of both the prosecution and defence lawyers, including senior counsel with a combined experience of over 90 years in the criminal law, is that the improper practice that has now been exposed by IBAC was not identified by either the defence or the prosecution.

Mr Rapke said:

*'In considering whether such a finding is justified and fair, useful reference could be made to the judgment of the Court of Appeal in Roberts v The Queen [2020] VSCA 58 ("Roberts") which catalogues a litany of malpractices in which various members of Victoria Police engaged during its investigation of the murders of Silk and Miller. Those malpractices remained undetected for more than 20 years; it took the expertise and resources of IBAC and private and public examinations of police said to be implicated in the improprieties to uncover them. In Roberts, the Court noted the various deceptions, manipulation of evidence, destruction of documents and lies (perhaps, even perjury) used by some police investigators to hide their misconduct and conceal the truth. Is it to be seriously suggested that I had any inkling as to what had taken place, or that I could have and should have been aware of any of the identified malpractices? The Court in Roberts, when dealing with the process of revising original statements, observed – "This process of revision was concealed to a material extent by the destruction of original documents" [98]. In dealing further with this process of statement revision, the Court noted – "...Buchhorn requested revision of statements... and only those revised statements were included on the hand-up brief. The existence of the original statements was, by that practice, unknowable to both the prosecution and defence" [116]. Whilst accepting that in these extracts the Court was dealing with a different practice to that which I am addressing in this submission, they nevertheless underscore how the deliberate manipulation of evidence may be unknowable to both defence AND prosecution.*

*At the conclusion of the Gloucester hearings the Commissioner issued a media release (dated 1 March 2019) containing this sentence – "Improper practices by Victoria Police in preparing witness statements and non-compliance with their obligations to make full disclosure to prosecution and defence during the Silk-Miller murder trials has emerged during IBAC's hearings". The prosecution was deceived as much as the defence.*

...

*No uniform pattern of recording or handling offender descriptions was discernible on examination of witness statements in the Hamada and Pigout robberies. Many, if not most, witnesses recorded some descriptions of the offenders in their initial statements. The quality and detail of the descriptions was quite variable: some described heights and build, hair, eye colour, others accent or ages or vehicles or guns or clothing or speech and mannerisms and disguises. Some gave no descriptions at all. There were many instances of police investigators seeking clarification in further statements, particularly after the witness had been shown identification videotapes or photographs of persons, guns, masks or cars. In a very small number of cases, witnesses made second or further statements that contained good descriptions of the offenders and made it clear that they had earlier given those descriptions to police or had compiled a [F]acefit of one of the offenders or had otherwise purported to identify one or more of the robbers but that information had been omitted from their initial statements (see, for example, these Hamada witnesses: Olivia Coffman, Linda Lee, Lee Lochai, Shirley Ng, Nevy Suganda, Leong Ling), and these Pigout witnesses: Paul Hunter, Steven Chenh, Nhi Vong, Martin Hall, Vony Barta, Michelle Stephens, Leroy Sharrock). That, of course, is problematic as has been conceded by all who were asked to consider it. Most witnesses to the armed robberies were also victims in those crimes and usually were called upon to make a statement to police on the night of the robbery or within a few hours of it.*

*It is little wonder that many, still traumatised by being held-up at gun point and then tied up and assaulted by two very violent masked armed men, failed to pass on information when dictating their statements, but later remembered those details and sought to include them in supplementary statements or documents. It is surely possible to accept that lawyers preparing the case for trial might readily conclude that omissions and additions to witness statements were more likely to be attributable to those lapses in recall and distress than to some previously unheard-of nefarious police practice regarding the recording of a victim's account of the crime. Further, there is no discernible pattern to either the type of witness who provided supplementary descriptions (age, gender, role in the premises robbed), or the type of robbery (for example, the nature of the premises or the money or jewellery stolen), or the manner in which the additional information was recorded (in some instances in a supplementary statement, and in others on a nondescript piece of paper, or on an official Victoria Police form actually attached to the original witness statement). One example should suffice to identify the issue. Dennis Mavropoulos, a witness in the Pigout series of robberies made a statement in a shopping centre approximately 90 minutes after the robbery (27/9/1992). It contained some descriptions of the offenders. Nearly 8 years later, after Debs and Roberts became suspects for the Silk/Miller murders, Mavropoulos made a second statement (20/3/2000) to a police member investigating the murders which commenced – "I have previously made a statement to police regarding my involvement in an armed robbery ... I wish to add a few things to that statement". What safe conclusions can one draw from that sequence of events? Did the police member who took Mavropoulos's first statement have the witness's more detailed description of the offenders at the time of the first statement? Or, once Debs and Roberts became suspects for the murders in or around 2000, did police investigators return to Mavropoulos to enquire if he could provide better descriptions of the robbers? Both statements were on the Pigout brief, and thus available to both prosecution and defence. How would a prosecutor, preparing the case for hearing, know what information was available to the police member who took the first statement and, importantly, why would that prosecutor even think to enquire about it? No impropriety is apparent on the face of the two documents.'*

In relation to the expectations on prosecutors to raise concerns about improper practices they observe, Mr Rapke said:

*'I know of no counsel who has prosecuted on behalf of the Crown who has led evidence that he knows to be false or improperly obtained. That such evidence may have been led inadvertently is more likely to have been the product of concealment or something worse by an investigator or an investigating agency, rather than connivance in the wrongdoing by counsel. Unless the defence attacks the process by which evidence has been obtained, reviewing a brief before taking the case into court seldom requires prosecuting counsel to acquaint themselves with the evidence gathering process. At the stage at which prosecuting counsel reviews a brief before a hearing, the focus is usually on whether there is sufficient evidence to prove the case and, except for the rare case where it is clear beyond doubt that evidence has been obtained by an obvious impropriety or illegality and, therefore, unlikely to survive a challenge to its admissibility it is not, as the Commissioner put to me during my evidence, part of counsel's brief to concern himself with process nor is it likely to be the focus of his attention (unless the defence has made it an issue).*

*Requiring prosecutors to be, in effect, guarantors of the integrity of the investigative process and overseers of police practices is a novel and, I contend, an unworkable addition to traditional prosecutorial obligations. The size and complexity of modern criminal investigations has expanded exponentially in recent years with the use of digital technology. It is now common to encounter police briefs brimming with the product of electronic surveillance, data obtained from smartphones and forensic science analyses; even the process of taking a witness statement has changed. What used to be done with a pen and paper is now performed on a computer and it has become increasingly popular for police investigators to draft statements on a computer. Saving the drafts and making them available to prosecutors and defence counsel so that the process by which the final statement was created is transparent sounds simple. However, requiring prosecuting authorities to be the guarantors of disclosure of material they do not possess and of which they may be unaware will not necessarily ensure full disclosure of all relevant material.'*

## Appendix B: Natural justice requirements and responses

### Ms Kim Voulanas's response

In relation to IBAC's finding that the practice of omitting witness descriptions in statements was evident from the statements on the brief, Ms Voulanas says that she did not receive or see the original versions of the statements on the committal brief.

*'The original statements are produced at the committal by the informant. It may be that if they are served as the balance of the brief, I never see the original document. I recall that at this committal the informants maintained control of the original statements at all times until the completion of the committal, at which time they were provided to another section of the office to prepare the depositions.*

*When the brief is served on the OPP and defence prior to committal, we are both served with a copy of the statements and other evidence. That copy should be complete. However, I was not provided with any copies of the handwritten notes that are now Exhibit 80 and Exhibit 81.*

*As I said in my evidence at T 898.24 – 899.11:*

*"So, they might have been observed by you, or did someone else carry out this sort of work you'd refer to? You would go through and read the statements?--  
-I would read the statements on the brief, yeah.*

*If this was attached to a statement, no doubt you would read this too?--Was that attached to the statement on the brief or the original statement or?*

*This is attached to the original statement in the box?--  
-Oh, there, I don't look at the original statements in the box; that's tendered at the committal.*

*So, you don't look at that?--No, because there –  
copies are all on the brief.*

*So, you would be unaware of this attachment to the statement?--Yes.*

*And that goes for what we saw previously with Mr Morris, unaware of that attachment?--Correct, yeah, I'd not seen that."*

In relation to the prosecution's awareness of an improper practice and expectations on prosecutors to raise concerns about improper practices they observe, Ms Voulanas denied any knowledge that an improper practice was occurring at the time and said that, 'Had I been aware of any improper practice I would have disclosed it'. Ms Voulanas also said that:

*'With the benefit of hindsight, and a second thorough investigation by IBAC, a practice, described as improper by at least one member of Victoria Police, has been identified.*

*On the question of whether there was a practice, it seems clear that initial descriptions were not included in the first statements of many (if not all) the witnesses in Operation Hamada (and possibly Operation Pigout). However, the fact of those earlier statements and the process was disclosed.*

*On my reading of the statements it was clear what steps had been taken to obtain the statement. Those facts alone did not reveal any improper practice that warranted investigation, or communication to my superiors. Given the process was apparent on the face of the statement, it was transparent and permitted defence to explore the way in which those statements were taken. The motivation for the practice was not apparent on the face of those documents.'*

Ms Voulanas also adopted the response of the OPP set out on this page.

## Response of the Office of Public Prosecutions

In relation to the prosecution's awareness of an improper practice and expectations on prosecutors to raise concerns about improper practices they observe, the Director of Public Prosecutions stated:

*'Prosecuting authorities accept briefs and information from investigating police in good faith. They do not conduct secondary desk-top investigations of the material. Nor do they second guess the bona fides of the investigation or the investigators unless something arises which cause them to do that. Should all briefs be treated in this way, then the resources available to prosecute serious indictable crime in this State would dry up and the criminal justice system grind to a halt.*

*That is not to say that OPP solicitors and prosecutors are expected to be mere conduits of police theories or reduced to being little more than an extension of the police investigators. They do, and are expected to, bring independent skill and judgment to the assessment of cases for prosecution and trial. Where they become aware of anomalous or questionable practices, they are to address them consistently with their duties as officers of the Court and of the Crown.*

*IBAC has conducted Operation Gloucester through two phases. As cited in the Draft Report, IBAC closed the investigation in early 2016. It was not until further information was proffered that Operation Gloucester recommenced.*

*With the benefit of thorough investigation, including the presentation of previously undisclosed material (e.g. the first Pullin statement) and through the use of compulsory powers, IBAC has revealed a most concerning practice, apparently adopted by several members of Victoria Police over an extensive period of time.*

...

*I expect OPP employees and Crown Prosecutors to discharge their functions, consistent with their roles, oaths and the principles and policies which apply to them. Interrogating briefs to search for impropriety as a matter of course is not consistent with their function nor required by the principles which apply to them.'*

## Appendix B: Natural justice requirements and responses

### Victoria Police's response

In relation to IBAC's findings of improper practices being used in the Lorimer, Hamada and Pigout investigation, the Chief Commissioner of Police (CCP) accepted IBAC's findings but stated:

*'[F]or the most part, it is not possible to ascertain the extent or prevalence of such practices within the Homicide and Armed Robbery squads in the late 1990s or within Victoria Police more generally during any time period...'*

*'IBAC should not find that these practices were or remain widespread, commonplace or entrenched within Victoria Police.'*

In relation to whether any of the practices identified in Operation Gloucester remain in use, the CCP says:

*'[T]here is insufficient evidence on which to base a finding that some of the practices remain ongoing and/or widespread; specifically, the practice/s of omitting relevant information from witness statements, influencing witnesses to remedy inconsistencies in their statements and acknowledging statements in the absence of the statement maker. Whilst the CCP notes the inherent difficulty in firmly establishing either the eradication or ongoing use of these practices because, by their very nature, they involve non-disclosure and concealment, the CCP notes IBAC's acceptance of an absence of evidence that a particular improper practice is current and that none of the improper practices are currently taught at the academy.'*

In relation to IBAC's conclusions about cultural acceptance of improper practices, the command and control model, failures of leadership and a lack of clear policy and guidance on proper evidentiary practices, the CCP says:

*'[I]t has not been established that a culture of acceptance of improper practices was widespread at any time. However, the CCP acknowledges IBAC's likely finding that the command and control model may be conducive to the occurrence of improper practices in some cases. It is important to emphasise, however, that that model is critical to the proper and effective operation of the police force, particularly in an operational context.'*

*'Where there is a gap between training and practice, or a lack of clarity/adequacy in policy, Victoria Police is committed to identifying such issues and addressing them to ensure that officers have a thorough understanding of proper evidentiary and disclosure practices and apply proper practices in their work.'*

## Appendix C: Previous IBAC special reports

Publication date	Report title
<b>November 2013</b>	Special report concerning certain operations in 2013
<b>February 2014</b>	Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information
<b>April 2014</b>	Special report following IBAC's first year of being fully operational
<b>October 2014</b>	Operation Fitzroy: An investigation into the conduct of former employees of the Department of Transport/Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and others
<b>August 2015</b>	Special report concerning police oversight
<b>April 2016</b>	Operation Ord: An investigation into the conduct of officers at the Department of Education and Early Childhood Development
<b>May 2016</b>	Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police
<b>October 2016</b>	Operation Exmouth: An investigation into the conduct of former Victorian public servant, Carmine Petrone
<b>November 2016</b>	Operation Ross: An investigation into police conduct in the Ballarat Police Service Area
<b>December 2016</b>	Special report concerning illicit drug use by Victoria Police officers: Operations Apsley, Hotham and Yarrowitch
<b>January 2017</b>	Operation Dunham: An investigation into the conduct of officers of the Department of Education and Training, including Darrell Fraser, in connection with the Ultraneet project and related matters
<b>March 2017</b>	Operation Liverpool: An investigation into the conduct of two officers of Bendigo Health, Adam Hardinge and John Mulder
<b>April 2017</b>	Operation Nepean: An investigation into the conduct of former employee of Dame Phyllis Frost Centre, Jeff Finlow
<b>September 2017</b>	Operation Tone: Special report concerning drug use and associated corrupt conduct involving Ambulance Victoria paramedics
<b>December 2017</b>	Operation Lansdowne: Special report concerning allegations of serious corrupt conduct at South West Institute of TAFE, Bendigo Kangan Institute and V/Line
<b>December 2017</b>	Special report on IBAC's first five years
<b>September 2019</b>	Special report on corruption risks associated with procurement in local government: Operations Dorset, Royston and others
<b>May 2020</b>	Operation Betka: An investigation into alleged corrupt conduct by a former contractor of the Department of Education and Training





