



Case study – Operation Yalgar

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IBAC's Operation Yalgar investigated allegations that in March 1996, officers from Hastings Police Station unlawfully entered the residence of Ms Corinna Horvath, assaulted her and other occupants, and unlawfully arrested and detained her. This case study summarises the incident, the allegations, actions taken by a number of bodies including by IBAC, and the outcomes, of this long-running matter.

Background

The incident

On 9 March 1996, two Victoria Police officers attended the then residence of Ms Horvath and her partner in Hastings, south east of Melbourne. The officers had issued an unroadworthy certificate for Ms Horvath's vehicle the previous day, and attended her residence to inspect the vehicle as they suspected it had since been driven.

The officers approached Ms Horvath's house, however she ordered them to leave on the basis that they did not have a search warrant. A struggle ensued between Ms Horvath and her partner and the officers, before the officers left.

After calling for assistance, the two officers were met by six other Victoria Police officers nearby. Following a discussion, the senior officer in charge (a sergeant) decided to return to the premises. This senior officer determined that the officers could lawfully enter the premises to arrest Ms Horvath and her partner for serious indictable offences committed during the earlier struggle with the first two attending officers.

The eight Victoria Police officers travelled to the property where Ms Horvath was present along with her partner, five other adults and two children. Upon arrival, the police officers were denied entry. It was alleged that the police officers then forcibly entered the premises and assaulted Ms Horvath, her partner and two of their adult friends. Ms Horvath and her partner were arrested and taken to Hastings Police Station. It was alleged that Ms Horvath and her partner were further assaulted at the police station.

Ms Horvath received medical assistance at the police station and was taken by ambulance to Frankston Hospital where she was treated for a broken nose, and significant facial bruising. She was readmitted to Frankston Hospital on 16 March 1996 for further treatment.

Both Ms Horvath and her partner were charged by police with a number of offences, including recklessly causing serious injury and assault police (Ms Horvath), and assault police (her partner). The charges were heard at Frankston Magistrates' Court on 7 November 1996; all matters were dismissed.

Complaint to Victoria Police

Shortly after the police officers left Ms Horvath's residence on the night of the incident, one of the adults present (who had alleged that they had also been assaulted) contacted Victoria Police's then Internal Investigations Department (IID) to complain about the actions of the attending officers.

On 15 March 1996, the Victorian Ombudsman (VO) was notified of the complaint by Victoria Police. At that time, the VO had some responsibility for independent police oversight,¹ and over the following months sought updates on the matter from Victoria Police.

IID investigated the complaint and in October 1997, charges were laid against two officers for breaches of discipline: one of the original attending police officers was charged with disgraceful conduct and the senior officer in charge was charged with negligence. These charges were 'dismissed (not proven)' at disciplinary hearings in August 1998. No disciplinary action was taken in relation to any of the other police officers involved in the incident.

In May 2004, Ms Horvath made a complaint to the VO that the police officers had lied at their disciplinary hearings. This complaint was transferred to the Office of Police Integrity (OPI),² which referred the matter to Victoria Police. Victoria Police concluded the allegation was unable to be determined.

Civil proceedings

In June 1997, Ms Horvath and her partner filed civil proceedings in the County Court of Victoria for damages against a number of the police officers involved in the incident. Their two friends who had also made allegations of assault filed for damages in August 1998.

In February 2001, the County Court found against the police officers and the State of Victoria, ordering the police officers and the State to pay damages to Ms Horvath, her partner and their friends.

The State of Victoria appealed this decision, and in November 2002 the Victorian Court of Appeal found that the State was not vicariously liable for the police officers' actions, and overturned the County Court's decision. In June 2004, the High Court of Australia refused leave for Ms Horvath, her partner and their friends to appeal the Court of Appeal's decision.³

Other proceedings

In August 2008, Ms Horvath submitted a claim to the United Nations Human Rights Committee (UNHRC) alleging breaches of her human rights under the International Covenant on Civil and Political Rights, to which Australia is a party. In April 2014 the UNHRC found that:

- Ms Horvath's rights were breached and she was entitled to an effective remedy
- Australia should take steps to prevent similar violations in the future.

In September 2014, Victoria Police issued an apology and made an ex gratia compensation payment to Ms Horvath. The Victorian Government reformed the *Victoria Police Act 2013* (Division 8 of Part 4), to allow the victims of police misconduct to claim compensation from the State of Victoria in certain circumstances.

Victoria Police stated that it could not consider further disciplinary action against the officers involved because the matter had already been decided on the available evidence.

¹ In 1996, Victoria Police was subject to limited oversight by the VO, which had limited ability to conduct investigations of police conduct where the Deputy Ombudsman (Police Complaints) considered it to be in the public interest for the VO to investigate, rather than Victoria Police.

² The OPI assumed responsibility for independent police oversight upon its creation in 2004. The OPI ceased operations in 2013 when IBAC became fully operational.

³ *State of Victoria v Horvath and Ors* (2002) 6 VR 326

What did IBAC do?

IBAC commenced an 'own motion' review of the matter in October 2014, following the UNHRC's determination and Victoria Police's statement that it would not consider further disciplinary action, and because the incident was of significant public interest. IBAC appointed former Supreme Court Justice Bernard Teague AO to examine the matter. Mr Teague examined relevant Victoria Police records, medical records, documents from the civil proceedings, and the findings of the UNHRC.

Based on Mr Teague's review, IBAC concluded there were sufficient grounds to further investigate the allegations, which included assault, unlawful entry, and unlawful imprisonment. IBAC investigators spoke with Ms Horvath and civilian witnesses who were present at the incident; Ms Horvath and the witnesses reiterated their statements made in 1996. IBAC also offered the opportunity to be interviewed to seven of the eight officers involved.⁴ One officer agreed to be interviewed and made 'no comment' responses to all questions asked.

⁴ One of the eight officers is now deceased.

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What were the outcomes?

In November 2016, IBAC charged one of the police officers with one count each of:

- intentionally causing serious injury
- recklessly causing serious injury
- intentionally causing injury
- recklessly causing injury.

The police officer pleaded not guilty to all four charges, arguing that his use of force was lawful, appropriate and in self-defence.

In December 2018, a County Court jury found the police officer not guilty of the four charges.

IBAC's police oversight role

Although Operation Yalgar has concluded, use of force by Victoria Police officers continues to be an area of focus for IBAC.

IBAC is responsible for independently overseeing Victoria Police to ensure it acts with impartiality and accountability, and in accordance with the law. This oversight is critical because of the significant powers exercised by police officers including use of force, and powers to detain, search and arrest.

IBAC's work aims to build Victoria Police's capacity to address corruption and police misconduct to help prevent incidents such as those investigated in Operation Yalgar.