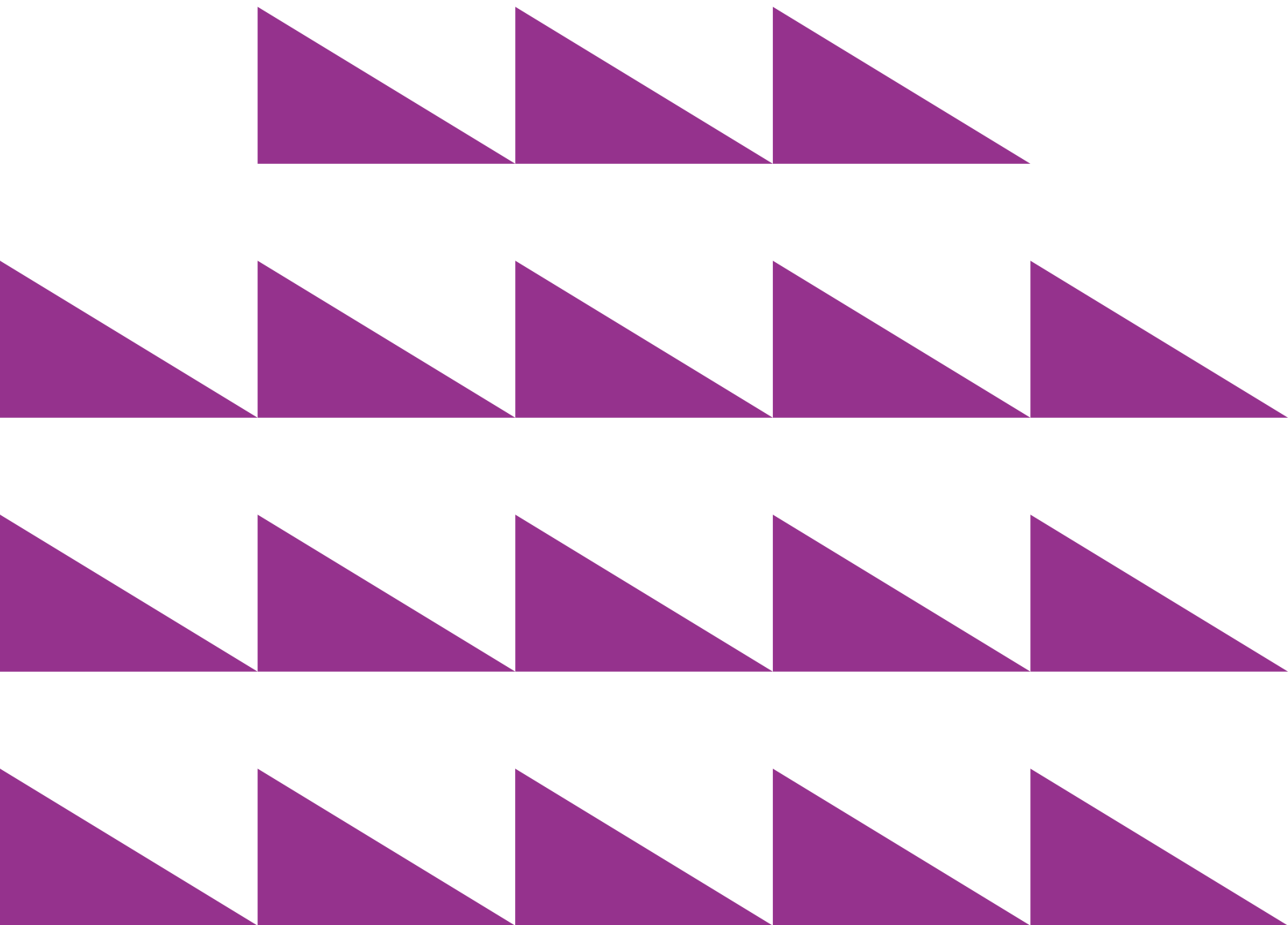


# Special report concerning police oversight

Pursuant to section 162 of the *Independent Broad-based Anti-corruption Commission Act 2011*

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August 2015





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## Letter of transmittal

To

**The Honourable President of the Legislative Council**

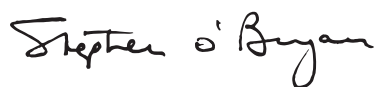
and

**The Honourable Speaker of the Legislative Assembly**

This report dealing with certain IBAC operations and strategic initiatives concerning Victoria Police is presented to Parliament pursuant to section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*.

The principal purpose of this report is to outline IBAC's oversight of Victoria Police since IBAC became fully operational in February 2013, including the outcomes of some important investigations and reviews. This report also describes some of IBAC's prevention and education-related projects concerning Victoria Police.

Yours sincerely



**Stephen O'Bryan QC**  
Commissioner

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## Foreword

All Victorians should have confidence in the integrity of Victoria Police.

The Independent Broad-based Anti-corruption Commission (IBAC) plays a vital role in building community confidence by providing independent oversight of police operations. This report provides a focused account of IBAC's key police oversight activities since becoming fully operational in early-2013.

Under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act), IBAC is responsible for preventing, exposing and investigating police misconduct and corruption. Prevention work includes research and education, both of which are critical to preventing police misconduct and corruption. Our report describes a range of significant strategic projects and initiatives, including an audit IBAC has initiated of Victoria Police's local complaint handling processes.

IBAC also reviews the outcomes of certain investigations of Victoria Police matters. Some of these reviews are routine; others are sensitive and complex.

In most cases, the outcomes of our reviews show no evidence of deficiencies in how Victoria Police has conducted its investigation; however, that does not diminish the importance of our doing this work.

In cases where a deficiency is noted, the community can be confident that IBAC has made recommendations for redress or other action. Where no deficiency is noted, IBAC can play a vital role by giving feedback to Victoria Police on how to strengthen its processes to maintain integrity.

Investigations are often the public face of our oversight role. IBAC conducts investigations in response to complaints as well as conducting 'own motion' investigations. As this report shows, our investigations can involve considerable resources – one investigation alone involved the analysis of five and a half thousand documents. Where necessary, IBAC refers cases to independent, eminent former judges to ensure the utmost rigour and integrity. Such inquiries can extend for many months.

This report highlights some key achievements by IBAC in oversighting Victoria Police.

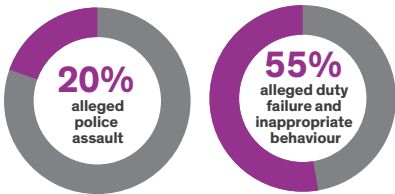
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# IBAC's police oversight

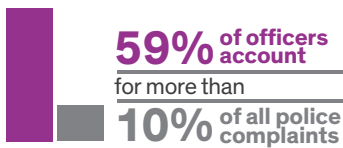
## Snapshot of key activities and outcomes

### RESEARCH AND PREVENTION

Analysed **1313** allegations for emerging trends and risks from 1 January – 30 June 2015



Analysed complaints data to reveal officers with problematic complaints histories



**31** training sessions provided for Victoria Police officers and recruits

**6** strategic projects underway

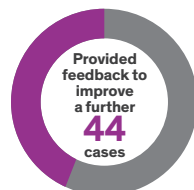
**85%** of Victorians feel police corruption impacts them personally while a higher

**96%** believe corruption impacts on the state as a whole

### REVIEWS

Reviewed **114** Victoria Police Investigations, increasing police reviews completed by 44% compared to 2013/14

Identified concerns in more than **half** of these reviews



### INVESTIGATIONS

Received **1,600** complaints and notifications involving Victoria Police personnel

Assessed **2,960** allegations relating to Victoria Police personnel

**36%** IBAC investigations were related to Victoria Police

Investigations resulted in **20 recommendations** to Victoria Police to improve its policy, systems and practices to prevent police corruption and misconduct



Finalised inquiry into police management of human sources

Resulting in **14 recommendations** to Victoria Police



Announced public examinations for Operation Ross

NOTE All are 2014/15 figures, except for historic review of police histories.

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# 1 Introduction

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# 1 Introduction

Police officers are the holders of significant powers that can be exercised, often with discretion, over their fellow citizens. They have the power to detain, search and arrest, use force, enter premises, and seize property.

The exercise of these and other powers can be vulnerable to misuse, adversely impacting on both individuals and the broader community. Independent, external oversight is a critical mechanism to help ensure police officers act fairly, impartially and in accordance with the law. As well, independent, external oversight supports community confidence in police integrity and accountability.

## 1.1 IBAC and Victoria Police

IBAC plays a vital role in providing independent oversight of Victoria Police. Under the IBAC Act, the Chief Commissioner of Victoria Police is required to notify IBAC of complaints about corrupt conduct or police personnel misconduct, and must report to IBAC on Victoria Police investigations into police misconduct.<sup>1</sup>

### 1.1.1 Extent of IBAC's oversight of Victoria Police

Importantly, IBAC's powers enable independent oversight in relation to all matters it refers to Victoria Police. IBAC can request a review of a Victoria Police investigation and, pursuant to that review, may recommend that Victoria Police take action. IBAC may withdraw the referral and decide to investigate the matter itself.<sup>2</sup> In 2014/15, IBAC completed 114 reviews of Victoria Police complaint investigations (discussed further in chapter 3).

The Victorian police oversight model also enables IBAC to focus strategically on investigating matters that primarily involve systemic, serious and/or sensitive issues. As an added means of assuring the independence of IBAC investigations into police, IBAC applies a general policy of excluding former Victoria Police officers from conducting investigations into Victoria Police matters.

IBAC's oversight role includes the following activities:

- receiving complaints and notifications about corrupt conduct and police personnel conduct (including complaints received by Victoria Police and mandatorily reported to IBAC)
- assessing those complaints and notifications to determine which will be referred to Victoria Police for action, which will be dismissed, and which will be investigated by IBAC
- reviewing investigations of selected matters referred to Victoria Police to ensure those matters were handled appropriately and fairly
- conducting 'own motion' investigations about police personnel conduct or corrupt conduct
- conducting private and public examinations to assist investigations into police personnel conduct and corrupt conduct and, in the case of public examinations, exposing systemic issues, encouraging people with relevant information to come forward and to serve as a deterrent to others
- ensuring police officers have regard to the Charter of Human Rights (discussed further in section 2.3.5)
- undertaking research and other strategic initiatives to inform Victoria Police and the public on particular systemic issues and risks to help prevent misconduct and corruption.

<sup>1</sup> Section 57 of the *Independent Broad-based Anti-corruption Commission Act 2011* and sections 169 and 170 of the *Victoria Police Act 2013*

<sup>2</sup> Section 79(2) of the IBAC Act

### 1.1.2 Victoria Police's responsibilities

The Chief Commissioner of Police rightly has primary responsibility for ensuring the integrity and professional standing of the organisation. Within Victoria Police, the Professional Standards Command (PSC) is the central unit responsible for receiving, assessing and referring police complaints for appropriate action across the force. As well, PSC investigates the most serious matters directly itself.

The majority of complaints assessed by IBAC are considered appropriate for direct action by Victoria Police. This means that police managers are responsible for dealing with most complaints, particularly customer service or behaviour-related matters (such as rudeness or poor communication) and lower-level misconduct.

It is appropriate that police retain this responsibility for complaint investigations.<sup>3</sup> Victoria Police has immediate access to information, and has expert and current knowledge of its systems and people. For example, PSC is able to quickly access relevant documentation such as work rosters, emails and running sheets to enable timely initial assessment of complaints. Direct action by Victoria Police also drives improved staff and organisational performance.

Evidence shows that internal police investigations can and do result in effective outcomes, including dismissals. During 2014/15, 20 Victoria Police officers were dismissed following investigations undertaken by Victoria Police. Of those investigations, only four were conducted by PSC. Most were investigated at the regional, departmental or command level.

## 1.2 About this report

This report provides a focused account of IBAC's key police oversight activities since becoming fully operational in early-2013. The report details:

- strategic projects and initiatives to assist in preventing police misconduct and corruption, including an audit IBAC has initiated of Victoria Police's local complaint handling processes
- reviews of Victoria Police investigations – both reviews of individual cases and reviews that highlight systemic issues
- the status and outcomes of certain investigations conducted by IBAC of Victoria Police matters.

<sup>3</sup> The importance of police retaining responsibility for the majority of complaints has been recognised in a number of reports and expert reviews including for example: South Australia Independent Commissioner Against Corruption, *Review of Legislative Schemes*, 2015; Deborah Glass, Commissioner UK Independent Police Complaints Commission, *Towards greater public confidence*, March 2014, p 29; Wood Royal Commission into the New South Wales Police Service, *Interim Report*, February 1996, p 91

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## **2** Strategic initiatives: research and prevention

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## 2 Strategic initiatives: research and prevention

### 2.1 Introduction

IBAC has important functions under the IBAC Act to prevent corruption and police misconduct. In relation to Victoria Police, this function is underpinned by a range of strategic initiatives, including research into key trends and issues, projects that highlight opportunities for improvements in systems and practices, and targeted education programs.

### 2.2 Research into key trends and issues

In 2014/15, IBAC received 1600 complaints and notifications involving Victoria Police. Within that total number of cases, IBAC assessed 2960 allegations relating to Victoria Police officers.

#### 2.2.1 Trends

IBAC conducted a detailed analysis of the assessment of 1313 Victoria Police allegations over a six-month period (1 January 2015 to 30 June 2015). The analysis revealed:

- duty failure and inappropriate behaviour account for 55 per cent of complaints (721 allegations over the six-month period). Inappropriate behaviour includes customer service matters such as rudeness, insensitivity or an alleged failure to investigate
- assault accounts for 20 per cent of complaints (267 allegations)
- most complaints are made against lower-ranked officers, which includes all categories of constables and sergeants. This reflects the composition of Victoria Police (90 per cent of officers hold those ranks) as well as the fact that those officers are most likely to interact with the public.

#### 2.2.2 Issues

IBAC also conducts regular strategic assessments of the operating environment to identify key public sector corruption and police misconduct risks. Drawing on analysis of IBAC's data holdings, as well as information and analysis conducted by Victoria Police, the following issues have been identified:

- **Off-duty illicit conduct (particularly illicit drug use)** by Victoria Police officers is an issue of significant concern. Such conduct can be an indicator of corruption and may make officers vulnerable to cultivation by criminals. Of particular concern is information that some officers consider illicit drug use in their private lives to be distinct from their professional obligations and responsibilities.
- **Unauthorised data access and disclosure** continues to be an issue among police officers, Protective Services Officers and unsworn staff. An ongoing challenge for Victoria Police is to provide employees with the information and intelligence they need to perform their roles while ensuring sensitive information is protected.
- **Integrity vulnerabilities** exist in the context of mass recruitment of police over the last four years. These vulnerabilities include a potential dilution of the quality of recruits, accelerated promotion resulting in less experienced supervisors, and increased pressure to deliver training both on and off the job.
- **Allegations of racism** continue to be levelled against police. In response to significant concerns raised by the community and oversight bodies, Victoria Police has prioritised this issue in recent years. Initiatives have been introduced around training, monitoring, and community consultation and outreach.

### 2.2.3 Public perceptions of police corruption and misconduct

In April 2015, IBAC surveyed approximately 1000 Victorians about their perceptions of corruption and police misconduct.

Seven out of 10 respondents said they would report police corruption or misconduct if they saw it. The main reason for not reporting was fear of reprisals, specifically in the form of fabricated offences (such as speeding), intimidation, arbitrary arrest and generally being 'hassled'. Many also felt that they would not be believed, that the matter would not be investigated, or feared that they would be embroiled in a long investigatory process.

Eighty-five per cent of respondents believe that police corruption impacts on them personally. Victorians consider the following behaviours as corruption or misconduct:

- accepting bribes
- removing drugs from a crime scene to sell or for personal use
- racist behaviour
- being under the influence both on and off duty.

These findings will help IBAC shape its community engagement activities, aimed at increasing the community's awareness of police misconduct and corruption, and how to report any concerns.

## 2.3 Strategic projects

Consistent with our functions under the IBAC Act to assist in preventing police misconduct and corruption, IBAC conducts a range of strategic projects relevant to Victoria Police. These projects involve an examination of systems and practices in the public sector to assist Victoria Police to increase its capacity to prevent police misconduct and corrupt conduct. They also help fulfil IBAC's function to provide information to police and the community about the detrimental impacts of police misconduct and corruption – and how to prevent it.

The following selected projects reflect the breadth of our work in this area.

### 2.3.1 Audit of Victoria Police local complaints handling processes

An effective system for handling complaints is an essential component of a police force which seeks to maintain the confidence of the community it serves. Complaints are one way in which police can be held accountable for the way they exercise their powers, as well as a valuable tool to identify service deficiencies, systemic issues and opportunities for improvement.

In its December 2013 report, *Equality is not the same*, Victoria Police committed to improving the timeliness, accountability and accessibility of its complaint handling processes. One new approach being trialled is local management resolution, which aims to resolve minor customer service issues within seven days.

IBAC is conducting an audit of Victoria Police's local complaint handling procedures commencing in Southern Metro and Western Regions, to identify issues in complaint handling processes and to determine potential areas of improvement. IBAC is examining, inter alia:

- the timeliness of responses to complaints
- the impartiality (and perceived impartiality) of the investigation
- the appropriateness of the investigative process
- record keeping.

Following completion of the audit, IBAC will consult with Victoria Police on the identified issues and opportunities for practice improvements.

IBAC expects to publish a report on the audit later this financial year.

## 2 Strategic initiatives: research and prevention

### 2.3.2 Predatory behaviour by Victoria Police employees

Predatory behaviour refers to the misuse of police authority and power to sexually exploit vulnerable people, who may include victims of domestic and family violence and other crimes, young people, sex workers, people with drug and/or alcohol dependency, and people with a disability.

Following identification of predatory behaviour as a significant police misconduct issue, Victoria Police has partnered with the Victorian Equal Opportunities and Human Rights Commission to examine the nature and extent of sexual harassment and predatory behaviour within the force – that is, predatory behaviour by some police against other police personnel.

Victoria Police has also established Taskforce Salus. This is a three-year, twenty-strong taskforce investigating and profiling predatory behaviour and sexual harassment within Victoria Police.

In 2014/15, IBAC conducted a focused assessment of predatory behaviour by some police officers against vulnerable people in the community. In March 2015, the IBAC Commissioner and Victoria Police's then Acting Chief Commissioner, Tim Cartwright APM, met to discuss the identified issues. A copy of IBAC's assessment was provided to Victoria Police.

Our assessment recommended ways that Victoria Police could identify, investigate and prevent predatory behaviour by its officers. It also identified a number of serving officers who were alleged repeat offenders of predatory behaviour. Victoria Police has indicated it is monitoring and investigating these officers and developing detailed risk mitigation strategies where appropriate.

### 2.3.3 Organised crime cultivation of Victorian public servants, including police

IBAC's intelligence, research and investigations have identified an emerging risk with organised crime groups targeting Victorian public servants – including Victoria Police officers – to gain access to information and systems or to influence behaviour.

IBAC has identified multiple case studies where organised crime groups have developed relationships with Victoria Police officers based on illicit drug use, use of performance and image-enhancing drugs, common interests such as bodybuilding, or historical social ties. Organised crime groups have demonstrated that they are creative and flexible when targeting public sector employees and will use platforms such as social media to identify and cultivate vulnerable individuals.

IBAC has also identified that when public bodies conduct risk assessments they need to be aware of the threat posed by organised crime groups. Responses to this threat will vary (different work areas face different risk levels) but could include changes to policies and practices relating to recruitment, vetting, revalidation, auditing, conflicts of interest, declarable associations, and training. Victoria Police has been proactive in many of these areas to address the threat posed by organised crime groups.

IBAC will publish a report on this issue this year.

### 2.3.4 Management of Victoria Police high-risk officers

An examination of the Victoria Police Register of Complaints Serious Incidents and Discipline database indicates that around five per cent of the total sworn workforce is responsible for over 20 per cent of all complaints made against police. Further, that five per cent of officers have accumulated nine or more complaints individually during their careers. By way of contrast, 59 per cent of officers account for 10 per cent of all complaints.

In light of this analysis, IBAC is examining identified high-risk police officers and the effectiveness of the systems and processes that Victoria Police has in place to manage them.

IBAC has found that Victoria Police has a number of approaches in place to manage problematic employees including counselling and formal discipline processes; however, these systems tend to be disjointed, onerous and reliant on administratively burdensome processes. They also rely on the use of proactive management actions as the impetus for action, while no specific process or system is apparently available to deal with the highest risk employees.

IBAC's review will identify areas of potential improvement and we expect to report on this issue in 2016.

### **2.3.5 Trends in use of force by and against Victoria Police**

In Victoria, police are empowered to use force – including lethal force – if they consider it necessary to prevent a serious offence, to lawfully arrest a person suspected of committing an offence, or to prevent a suicide. The use of force must be proportionate. This means that police must use no more force than is necessary and reasonable to the level of threat.

Victoria Police officers are also obliged to exercise their powers to use force in a way that is compatible with human rights as outlined in the *Charter of Human Rights and Responsibilities Act 2006*. A perception in the community of police using force excessively and disproportionality can significantly undermine confidence in policing.

The excessive use of force by Victoria Police officers was the highest recorded allegation type in the assault category in IBAC's complaint data for the period February 2013 to December 2014. IBAC will undertake further data analysis using the Victoria Police Use of Force Register to identify trends and issues. This work will establish baseline data on when and how force is used by and against police officers. The data will assist in ongoing monitoring and will also help identify emerging issues that may inform more targeted reviews into use of force practices by Victoria Police.

IBAC expects to report on this work in 2016.

### **Charter of Human Rights**

IBAC has a legislative obligation to ensure Victoria Police officers have regard to the *Charter of Human Rights and Responsibilities Act 2006*.

All complaints and notifications received by IBAC relating to Victoria Police are assessed to determine whether the matter should be investigated by IBAC or referred to Victoria Police for action, or dismissed. Part of the assessment process involves considering whether an individual's Charter rights may have been breached.

The identification of potential Charter rights breaches is an important factor to consider when determining whether a matter should be investigated by IBAC, or if IBAC should review a matter it has referred to PSC for investigation.

## 2 Strategic initiatives: research and prevention

### 2.3.6 Analysis of Victoria Police drink driving patterns

Over the last five years, Victoria Police has made it clear to its officers that those detected drink driving will be subject to serious disciplinary outcomes. In 2012, Victoria Police amended its disciplinary process for drink driving offences to require all such cases to proceed to a more serious 'level two' discipline hearing. This allows the hearing officer to consider demotion and dismissal as sanctions. In 2014, the then Chief Commissioner of Police, Ken Lay APM, said that a member convicted of drink driving would most likely have his or her employment terminated.<sup>4</sup>

IBAC is conducting an analysis of drink driving trends among Victoria Police employees from 2000 to 2014. Our analysis will determine if disciplinary outcomes associated with drink driving reflect the messaging that drink driving will not be tolerated. In addition, the analysis will examine trends in the number of drink driving incidents involving Victoria Police officers, the average blood alcohol concentration readings detected, and whether the officer was driving a police or personal vehicle when detected drink driving.

This project will review the adequacy of Victoria Police's response to officers caught drink driving.

IBAC expects to publish a report in 2016.

### 2.4 Targeted education programs

In addition to conducting research and other strategic projects to help prevent police misconduct and corruption, IBAC has partnered with Victoria Police to contribute to its established education and training programs. IBAC has had a particular profile in courses for new recruits and discipline investigators.

### 2.4.1 Foundation Phase program for new recruits

The Foundation Phase program is delivered by Victoria Police to new police recruits (probationary constables) over a 33-week period. The program includes on-the-job training, theory and practice to equip probationary constables with the skills and information they need to undertake professional policing.

Over the last 18 months, IBAC has presented an information session to probationary constables as part of this program. Our sessions have been delivered fortnightly to accommodate the increased number of police recruits over this period. The session is deliberately scheduled at the end of the program so IBAC officers can remind probationary constables of their obligations to report any suspected police misconduct or corruption as they prepare for the realities of policing.

The session content was developed in consultation with Victoria Police to ensure alignment of key information around expected behaviours and attitudes. The objectives of the session are that probationary constables:

- understand IBAC's role, function and powers as well as the role of police oversight
- can identify conduct that could constitute police personnel misconduct
- know how and where to report police personnel misconduct
- understand their obligations to report, and the protections provided by the *Protected Disclosure Act 2012*.

In December 2014, IBAC evaluated the sessions and found they were successful in meeting these objectives. Participants considered the sessions to be of value.

Since May 2015, IBAC has also delivered training to Protective Services Officers who are transferring to the Foundation Phase program.

<sup>4</sup> Quoted in an internal Victoria Police publication

## **2.4.2 Discipline Investigators' Course**

Until May 2015, Victoria Police conducted a one-week Discipline Investigators' Course. The program was delivered monthly and supported senior police to undertake assigned or local discipline investigations in a manner consistent with the expectations of PSC and IBAC. Areas covered in the course included applying objective investigation skills, addressing conflicts of interest, ensuring thoroughness of investigations, addressing human rights issues and ensuring findings were appropriate.

IBAC delivered an information session to participants as part of this program. The key objectives were to ensure discipline investigators understood IBAC's complaints management and review functions, and IBAC's expectations of a discipline investigation.

IBAC received positive feedback on these sessions including very high levels of satisfaction.

In May 2015, Victoria Police initiated a new, two-day Integrity Management Program. IBAC is currently working with Victoria Police to determine the best way to contribute to the new program format.

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### **3** IBAC reviews of Victoria Police investigations

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## 3 IBAC reviews of Victoria Police investigations

### 3.1 Introduction

Reviews are an important component of IBAC's oversight of Victoria Police as they help to determine if a matter has been handled fairly and investigated thoroughly.

Reviews are also a source of intelligence – they enable a strategic assessment of corruption and misconduct risks. They inform strategic initiatives to prevent police misconduct and corruption. Agencies use the findings of our reviews to build their capacity in responding to complaints, ensuring that systemic issues raised by complaints are identified and addressed. IBAC reviews also assist investigations.

This chapter demonstrates how IBAC's reviews of Victoria Police investigations range from complex and sensitive matters to relatively routine files that have been selected because they involve an issue of particular strategic interest.

#### How does IBAC decide what to review?

Victoria Police matters are selected for review based on a consideration of whether the case involves an issue that has been identified by IBAC as a specific area of focus or risk, such as use of force.

IBAC also considers the individual circumstances of a case to identify other issues that may warrant review. For example, it may be considered to be in the public interest to review a matter because it involves serious allegations of corrupt conduct, or it has generated significant public concern.

IBAC maintains an 'own motion' interest in deaths, serious injury or risk of death or serious injury associated with police conduct. This includes injuries in custody, non-fatal shootings and deaths associated with police contact.

### 3.2 Overview of completed reviews

During 2014/15 IBAC completed 114 reviews of complaint investigations undertaken by Victoria Police.

Table 1: Outcome of completed IBAC reviews of Victoria Police matters 2014/15

Outcome	Number	%
Reviews completed	114	100
Deficiencies identified	19	17
No deficiency identified	95	83
<i>No deficiency identified but feedback provided</i>	44	38
<i>No deficiency identified and no feedback provided</i>	51	45

As Table 1 shows, IBAC was satisfied with the way in which Victoria Police dealt with matters in 83 per cent of cases. This is consistent with outcomes in other Australian jurisdictions. For example, the Queensland Crime and Corruption Commission reported it was satisfied with 91 per cent of matters reviewed in 2013/14,<sup>5</sup> and the NSW Ombudsman reported he was satisfied with 82 per cent of NSW Police Force investigations reviewed over the same period.<sup>6</sup>

Where IBAC identified deficiencies, our concerns included the adequacy of the investigation process as well as issues about the investigation finding. IBAC also raised issues around confidentiality and complainant liaison.

Where IBAC did not identify any deficiency but gave feedback to Victoria Police, issues raised included potential conflicts of interest in relation to an investigator, inadequate record keeping, inaccurate classification of matters, training opportunities, and concerns around the welfare of subject officers.

<sup>5</sup> Queensland Crime and Corruption Commission, 2013–14 Annual Report, p 19

<sup>6</sup> NSW Ombudsman, 2013–14 Annual Report, p 41

### **3.3 Major review into police conduct towards Corinna Horvath**

In October 2014, IBAC initiated an own motion review of the handling of Corinna Horvath's complaints alleging police assault, and the resulting Victoria Police disciplinary action against officers. Ms Horvath was punched and injured during an alleged trespass by a group of police into her home in 1996.

#### **3.3.1 This matter has been the subject of various legal proceedings**

In 2001 civil proceedings, the County Court of Victoria awarded damages in favour of Ms Horvath for assault and other serious wrongs against her by members of Victoria Police. While the behaviour by police was sternly criticised by the Court of Appeal, it is understood that only internal disciplinary charges were laid against the officers.

In August 2008, Ms Horvath's lawyers submitted a Communication to the United Nations Human Rights Committee (the Committee) concerning Ms Horvath's allegations of police assault in 1996. In March 2014, the Committee recommended that Ms Horvath receive an effective remedy, including compensation, and that relevant legislation be reviewed to ensure its compliance with the International Covenant on Civil and Political Rights, to which Australia is a signatory.

Following publication of the Committee's Views (their term for panel rulings), the Chief Commissioner of Police announced that compensation would be paid to Ms Horvath on an *ex gratia* basis. By way of legislative response, Division 8 of Part 4 of the *Victoria Police Act 2013* now allows the victims of police misconduct to claim compensation from the State of Victoria in certain circumstances.

#### **3.3.2 IBAC's review of the assault and subsequent investigation**

Having reviewed the circumstances of the alleged 1996 assault and its subsequent investigation, IBAC considered that certain matters remained outstanding and warranted IBAC's consideration as to possible serious police personnel misconduct.

In October 2014, the IBAC Commissioner appointed former Supreme Court Justice The Hon Bernard Teague AO to lead IBAC's review of this matter. At the time, the Commissioner said publicly that the review was initiated to help ensure public confidence that the matter had been handled thoroughly and fairly.

Ms Horvath's lawyers (with Ms Horvath) met with Mr Teague to discuss the scope of his review. The Chief Commissioner of Victoria Police was subsequently advised of the review, following which relevant information was gathered from Victoria Police and the former OPI files for Mr Teague's consideration.

#### **3.3.3 Outcome of the review**

This review is ongoing. IBAC will report further on this matter in due course.

## 3 IBAC reviews of Victoria Police investigations

### 3.4 IBAC reviews

IBAC reviews not only consider how individual matters have been handled (as in the case of Ms Horvath), they aim to promote systemic changes in an agency's practices. This is to improve the overall quality of decision making and to improve policies and procedures.

The following selected reviews reflect the breadth of our work in this area.

#### What do we look for during a review?

An IBAC review of a matter is based on an assessment of the following:

- Was the investigation **adequately resourced** and did the investigator have appropriate skills/expertise?
- Was all **relevant** evidence considered and irrelevant evidence disregarded?
- Was **natural justice** afforded to the complainant and witnesses by providing the substance of any allegations or concerns, and giving the person the opportunity to address these?
- Was there any **actual or perceived conflict of interest or bias** exhibited by the person/s conducting the investigation towards the complainant and subject/s of the complaint?
- Was the investigation conducted in a **timely** manner?
- Was the investigation process and outcome **proportionate to the issues** involved and did it appropriately consider organisational issues and/or lessons learned as a result of the investigation?

#### 3.4.1 Inappropriate behaviour

IBAC conducted a review of a 2009 incident in which eight Victoria Police officers were involved in apprehending, arresting and detaining suspected juvenile offenders in Williamstown.

IBAC identified a range of deficiencies in the way that Victoria Police handled this matter. As well, IBAC identified racist statements in emails between some officers involved in this matter, which indicated systemic issues relating to racism.

PSC acknowledged the inappropriate behaviour of the officers involved (who have since been provided with workplace guidance and training in the Charter of Human Rights and Responsibilities). Victoria Police has also outlined its commitment towards better community engagement and cross cultural awareness through its 2013 *Equality is not the same* report.

Further details about this review are available in an earlier IBAC report.<sup>7</sup>

#### 3.4.2 Conflicts of interest

PSC refers the majority of complaints to Victoria Police regions so that matters can be addressed locally and quickly.

Having reviewed a number of matters involving conflicts of interest, IBAC highlighted that this approach is not appropriate where the senior officer undertaking the investigation is deemed to be part of the complaint. Moreover, many complainants do not feel their case is being given proper consideration when it is being investigated by an officer from the same police station who may be perceived as a close associate or friend of the subject officer.

PSC has acknowledged IBAC's concerns regarding perceived conflict of interest and has indicated it will consider requests for cases to be referred to another region.

This issue will be explored further as part of IBAC's audit of Victoria Police's local complaint handling processes (described in section 2.3.1).

<sup>7</sup> IBAC, *Special report following IBAC's first year of being fully operational*, April 2014, pp 15–16

### 3.4.3 Death of a Victoria Police officer – identifying inappropriate emails

In September 2011, a Victoria Police officer took her own life. Following the incident, information provided to Crime Stoppers raised concerns that she had been bullied in the workplace. Victoria Police's subsequent investigation included an audit of police officers' email records, which disclosed pornographic, racist and violent content. Discipline action was taken against nine officers.

IBAC reviewed this case and determined that the investigation was adequately conducted. However, issues were identified with Victoria Police's Email Assessment Matrix (EAM), a tool used to assess whether an email is inappropriate and which aims to apply a consistent standard during investigations. The EAM involves an examination of individual emails to assess the cumulative risk of an officer's behaviour.

The review also disclosed that some officers were unaware of Victoria Police email policies.

In February 2014, IBAC made a number of recommendations to Victoria Police to improve the EAM and address these concerns.

In March 2015, Victoria Police informed IBAC that PSC had conducted additional training in relation to the emails policy and that a full review of the EAM tool had been undertaken.

### 3.4.4 Alleged police assault of a vulnerable person

In 2013/14, IBAC reviewed a matter in which the complainant raised concerns about the manner in which police dealt with her mature-aged son who has an intellectual disability. The complaint concerned an incident in which the son approached the driver of a parked vehicle, not knowing that it was an unmarked police car. The complainant alleged that her son was assaulted by police, who pulled him through the window of the patrol car during the subsequent arrest and used OC spray (capsicum spray) on him.

On review, IBAC noted that while the police conduct was found by the Victoria Police investigation to be lawful, the police finding of the matter as 'conciliated' was not appropriate for a matter such as this, which involved formal investigation. In addition, IBAC noted that Victoria Police breached privacy provisions under the *Protected Disclosure Act 2012* by identifying the complainant in the finalisation letter sent to the subject officer.

PSC accepted IBAC's recommendations. As a result, Victoria Police changed its finding and provided additional training to PSC officers who manage and coordinate responses to complainants and subject officers. Victoria Police also revised the relevant correspondence, spoke with the investigating member, and confirmed that the local Superintendent spoke with the complainant and apologised for the disclosure.

## 3 IBAC reviews of Victoria Police investigations

### 3.4.5 Injury in custody – Ballarat cells

An internal Victoria Police investigation was conducted into a matter involving an intoxicated man held in custody in cells at Ballarat Station in October 2013. The man was found to have fallen and hit his head on the concrete floor. While the custody officers observed the fall, the man did not receive any assistance for nine minutes, at which time an ambulance was called and the man was taken to hospital and placed in an induced coma. This case was classified as an ‘injury in police custody’ and therefore considered a ‘serious incident’ warranting oversight by PSC. IBAC reviewed the investigation in 2014.

IBAC’s review included concerns at the inadequate treatment and attention given to a prisoner. It called into question the general demeanour of the police officers on duty and in charge, and their apparent lack of concern for the prisoner’s basic human rights. The review also identified deficiencies with the scope and conduct of the police investigation. In particular, IBAC was concerned that the investigation involved a conflict of interest as it was undertaken by local officers without any oversight by PSC, even though this is required for a serious incident. IBAC was also concerned that the custody officers failed to undertake a medical and welfare assessment or a detainee risk assessment before lodging the prisoner in the cells.

Victoria Police provided a comprehensive response to this issue but failed to acknowledge IBAC’s concerns regarding human rights and conflict of interest. IBAC has raised its further concerns with Victoria Police, particularly deficiencies in police processes and the inherent safety risks involved.

At the time of writing, this matter is outstanding.

As outlined in section 4.2, Operation Ross is now examining allegations of excessive use of force involving officers at Ballarat Police Station.

### 3.4.6 Inappropriate behaviour towards a 13-year-old girl

In 2014, IBAC reviewed a Victoria Police investigation relating to an allegation of assault against a 13-year-old girl by police at Carrum Downs in late-2012. The girl was drug affected and living in a residential care unit. There was an altercation between the police and girl, which resulted in the leading senior constable slapping the girl.

IBAC’s review highlighted concerns that the officer was an experienced male whose instinct to slap rather than subdue the girl (who was not a serious physical threat) was inappropriate. The review also took issue with the police finding of ‘not substantiated’ in regard to the assault allegation.

In mid-2014, IBAC communicated its concerns to Victoria Police – in particular the finding of ‘not substantiated’ – and requested that Victoria Police take further action pursuant to section 160 of the IBAC Act.

Victoria Police subsequently advised that the allegation of excessive force against a leading senior constable had been altered to ‘substantiated’ and appropriate management intervention had been undertaken. They also advised that, in future, Operational Safety Tactics and Training will focus more on dealing with situations involving drug-affected persons.

### 3.4.7 Inappropriate release of personal information by Victoria Police to VicRoads

This complaint related to the 2013 release by Victoria Police to VicRoads of a criminal record check and charges against the complainant. This was contrary to Victoria Police policy stating that a police record or criminal history may only be provided to an individual or external agency if required by (or in accordance with) legislation or a memorandum of understanding, or if the individual involved gives consent.

Following this review, IBAC raised a number of issues with PSC regarding compliance with policy and procedures relating to the release of information, as well as the investigation itself. As a consequence, PSC acknowledged IBAC’s concerns and is currently undertaking a fresh investigation.

### 3.4.8 Echuca police station's implementation of telephone contact rules beyond the apparent scope of section 464C of the *Crimes Act 1958*

The complainant in this case was an overseas national arrested at a fast food outlet in late-2013 on the basis that she was intoxicated. A complaint was lodged by the Loddon Campaspe Legal Service with allegations regarding the mode of arrest, treatment in the divisional van, failure to acknowledge and address the complainant's mental health, and restrictions imposed on the use of a telephone while in custody.

Following our review, IBAC raised a range of issues with PSC including:

- concerns that the case was investigated by a particular member despite the complainant's request that the member not be involved
- concerns as to the placement of the complainant in the divisional van given allegations she was thrown in and suffered bruising
- concerns as to why the complainant was not contacted during the investigation
- concerns about the Echuca prisoner rules for use of telephones (which include that police will make one call for the prisoner) and why this policy is inconsistent with section 464C of the *Crimes Act 1958* (which provides for the prisoner to make a call).

Victoria Police has provided satisfactory explanations in response to these issues. Echuca Police Station procedures applying to prisoners' use of telephones have been revised to comply with the *Crimes Act*.

#### Nassir Bare matter

In 2010, the former Office of Police Integrity (OPI) received a complaint from Nassir Bare, a young African-Australian man who alleged he was assaulted and racially abused by Victoria Police officers in February 2009. At the time of the alleged incident, Mr Bare was 17 years old.

After assessing the complaint, the OPI referred the matter to Victoria Police for investigation. Mr Bare objected to Victoria Police investigating his complaint and in 2010, filed proceedings in the Supreme Court of Victoria claiming that police had discriminated against him and treated him in a cruel, inhumane and degrading manner in breach of the *Charter of Human Rights and Responsibilities Act 2006*.

This matter was heard in 2012. Mr Bare's legal representatives argued that there was an implied procedural right within the Charter Act for claims of cruel, inhumane and degrading treatment to be investigated effectively. It was argued that this required investigation of Mr Bare's complaint by a body hierarchically, institutionally and practically independent from Victoria Police – namely OPI. In 2013, Mr Bare's case was dismissed. However, he subsequently filed an appeal with the Court of Appeal which was heard in 2014.

In July 2015, a majority of the Court of Appeal ruled in favour of Mr Bare and remitted Mr Bare's complaint to IBAC for a fresh decision. All three judges of the Court of Appeal were in agreement that the Charter Act did not contain an implied right to an investigation of a police complaint by a body independent of the police. IBAC is considering its response to the judgment.



## 3 IBAC reviews of Victoria Police investigations

### 3.4.9 Inappropriate use of OC spray (capsicum spray) and firearm

In May 2014, police were called to a hotel in Werribee following a report that a male customer was being aggressive and refusing to leave the hotel.

One police member arrived alone and was observed exiting the police vehicle shaking his can of OC spray. He approached the man in question and after a short conversation sprayed him in the face. The man fell to the ground due to the debilitating effects of the spray. The hotel manager warned the member that two patrons (one of whom was the complainant) were approaching him inside the hotel. The friend of the man (the complainant) yelled obscenities at the member who then drew his firearm and pointed it at the complainant, telling him and his friend to back off. The abuse continued. Two additional officers arrived at the scene, at which time the officer re-holstered his firearm.

Essentially the complaint related to the officer inappropriately pointing his gun at the complainant and the officer's response being disproportionate to the threat posed. IBAC's review considered these issues including the deployment of OC spray.

Closed-circuit television (CCTV) footage showed the officer shaking the can as soon as he stood on the pavement after exiting the police vehicle. The man, while unsteady on his feet, showed no form of threat. Given this, the member did not adhere to the Victoria Police 2014 OC policy, which states that OC spray should only be used in situations of violence or where serious physical confrontation is imminent, but is not to be used for compliance.

In relation to the use of his firearm, the officer initially denied pointing the gun. He subsequently retracted this when the CCTV footage was viewed. He claimed to be embarrassed that he had drawn his firearm at an early stage.

IBAC therefore requested that PSC reconsider the investigation in light of these concerns and respond as to the final outcome. At the time of writing, this matter is outstanding.

### 3.4.10 Assault by police off duty

A complaint was received regarding a member of the public being allegedly assaulted by an off-duty police officer at a Lakes Entrance hotel in 2009. The initial investigation was significantly delayed and resulted in an assault charge being laid against the member of the public. The police officer was not charged with any offence.

In 2011, a senior sergeant from the region re-investigated this matter and the police officer was charged over the incident, but not charged with unlawful assault as the statute of limitations had expired. The officer was acquitted in court and no disciplinary action was taken. The officer who failed to properly investigate the incident in the first instance only received minor workplace guidance.

IBAC identified deficiencies in this investigation, and asked Victoria Police to clarify a number of matters including the handling of the complainant's further allegations and the reasoning behind the disciplinary outcomes.

IBAC is awaiting the outcome of the further action taken by Victoria Police.



## 4 IBAC investigations

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## 4 IBAC investigations

### 4.1 Introduction

IBAC can investigate matters relating to corrupt conduct or police personnel conduct on its own motion, as well as in response to complaints or notifications.<sup>8</sup>

This chapter highlights the outcomes of some of IBAC's investigations of Victoria Police matters. Some investigations are significant and ongoing, and IBAC expects to report further on them over the next year.

### 4.2 Operation Ross

#### 4.2.1 Background

In March 2015, IBAC commenced Operation Ross in accordance with its police personnel misconduct investigative function. Operation Ross investigated the alleged conduct of members of Victoria Police stationed at Ballarat towards certain vulnerable people with whom they had physical contact in the course of their duties.

In part, the investigation was based on PSC's notification of issues concerning the arrest and detention of a vulnerable person at Ballarat Police Station. The notification occurred after PSC reviewed CCTV footage of the vulnerable person who was in police custody earlier in the year.

Other matters under investigation included incidents of alleged unnecessary and/or excessive use of force at Ballarat Police Station in recent years, which IBAC became aware of through previous complaints regarding three other vulnerable people. These incidents were also captured, at least in part, on CCTV footage.

On 1 April 2015, as part of Operation Ross, IBAC announced it would hold public examinations to be presided over by an IBAC Deputy Commissioner, Andrew Kirkham AM RFD QC. The examinations were to focus on:

- allegations that officers at Ballarat Police Station used excessive force towards four vulnerable persons
- whether any human rights had been violated by such conduct
- the sufficiency and appropriateness of internal reporting by Victoria Police members involved in, or associated with, such alleged conduct
- the way Victoria Police handles complaints and responds to trends relating to alleged excessive use of force by its officers.

The public examinations were scheduled to commence on 15 April 2015 to run for approximately one week and to examine up to 15 Victoria Police members. At this time, two witnesses (police officers from Ballarat Police Station) sought an injunction in the Supreme Court to prevent the examinations proceeding.

On this basis, Mr Kirkham adjourned the public examinations until the determination of the Supreme Court applications.

In its judgment in August 2015, the Court dismissed the applications thereby allowing IBAC to reset the date for the commencement of public examinations.

Operation Ross is ongoing.

<sup>8</sup> *Independent Broad-based Anti-corruption Commission Act 2011*, ss 60(1) and 64(1)

## 4.3 Inquiry into Victoria Police management of human sources

### 4.3.1 Background

In April 2014, Victoria Police notified IBAC of certain matters in relation to its management of human source information.

In May 2014, IBAC's Commissioner delegated all relevant duties, functions and powers to The Hon Murray Kellam AO QC to fully deal with this matter.

In July 2014, after a preliminary inquiry, Mr Kellam determined to conduct an investigation into police personnel conduct in relation to the handling of human source information between late-2005 and early-2009. This determination was made pursuant to section 64(1)(c) of the IBAC Act. Mr Kellam was assisted principally by IBAC Deputy Commissioner Andrew Kirkham AM RFD QC.

During the inquiry more than 5500 documents were examined and 14 witnesses gave sworn evidence in coercive private examinations.

### 4.3.2 Inquiry findings and recommendations

In his final report, Mr Kellam found negligence of a high order in the management of human source information by Victoria Police and he concluded that Victoria Police had failed to act in accordance with appropriate policies and guidelines. Mr Kellam further found that Victoria Police failings had the potential to have adversely affected the administration of justice in Victoria; however, he did not find that any unlawful behaviour had occurred.

Mr Kellam's report, containing 16 recommendations, was provided to the then Acting Chief Commissioner of Victoria Police, Tim Cartwright APM. Copies of the report were also provided to the Minister for Police, The Hon Wade Noonan MP, as well as the Victorian Inspectorate. Mr Kellam's recommendations primarily concerned changes to improve Victoria Police policies and procedures.

In accordance with another of Mr Kellam's recommendations, IBAC determined that the report should not be released publicly as it would:

- potentially breach an injunction obtained by the Chief Commissioner of Victoria Police from the Supreme Court in relation to a human source
- reveal details of the internal management of human sources by Victoria Police
- likely increase risks to the safety and wellbeing of individuals providing information to Victoria Police.

In June 2015, advice was received from the Acting Chief Commissioner that Victoria Police has adopted all of Mr Kellam's recommendations. Changes have been made to Victoria Police policies and procedures to ensure police personnel better recognise and address risks associated with the management of human sources. Victoria Police has also strengthened its governance arrangements for the management of human sources, including the introduction of a regular audit regime.

### 4.3.3 Director of Public Prosecutions: internal assessments

On Mr Kellam's recommendation, Victoria Police provided a copy of the report to the DPP.

It is IBAC's understanding that the DPP subsequently conducted an internal assessment of each of the prosecutions it had conducted that were outlined in the report. This was to assess whether any involved a miscarriage of justice.

Soon after the completion of Mr Kellam's report, IBAC received correspondence from or on behalf of certain persons who were seeking information about the consequences of the report on their convictions. As Mr Kellam did not consider any such consequences because that topic was outside the scope of his inquiry, IBAC has referred this correspondence to the DPP to consider in the context of their internal assessment.

IBAC understands that the DPP's assessment is yet to be concluded.

## 4 IBAC investigations

### 4.4 Operations Styx and Bannister, and review of Victoria Police's Taskforce Keel

#### 4.4.1 Background

Victoria Police set up Taskforce Keel to explore links between some police personnel and criminals, including members of outlaw motorcycle gangs. Victoria Police and IBAC conducted a series of inter-connected investigations and reviews associated with Taskforce Keel. These were conducted both independently and jointly.

Issues of particular concern in relation to Taskforce Keel included an apparent unlawful disclosure of a large number of sensitive police documents to criminal elements by at least one member of police personnel. Some documents contained the names of police informants in other police investigations into serious unlawful activities.

It was a matter aptly described by former Chief Commissioner Ken Lay APM at the time as involving some of the worst corruption in the history of Victoria Police.

Taskforce Keel involved over 30 experienced Victoria Police investigators, as well as members of Victoria Police's PSC. The Taskforce arose out of Victoria Police's Operation Clinique, an investigation into allegations that certain former members of a Melbourne police station, including former Senior Constable David Branov, had engaged in corrupt activities including the theft of drugs, cash and other valuables from drug dealers on multiple occasions.

This investigation resulted in Mr Branov pleading guilty to 15 charges, including two counts of misconduct in public office, three counts of theft, attempting to pervert the course of justice and various weapons and drugs charges. Mr Branov was sentenced in December 2014 to over four years in jail. Proceedings relating to other police officers involved are currently before the courts.

#### 4.4.2 Operation Styx

IBAC's Operation Styx concerned an alleged leak by a member of PSC to another police officer being investigated as part of Operation Clinique. This investigation was mentioned in IBAC's *Special report concerning certain operations in 2013*, though further detail could not be provided at that time for operational reasons.

This allegation had emanated from Mr Branov while he was being interviewed as part of the Clinique/Keel investigations. Mr Branov said that during 2012 another police officer had given him information that enabled him to discover he was under investigation by PSC.

In the course of witness interviews and private coercive witness examinations<sup>9</sup> the evidence from those directly concerned supported an IBAC finding that the now former member of PSC (who has since been promoted to another area of Victoria Police) had improperly leaked the highly sensitive information in question.

The former PSC member was an unsatisfactory witness, stating that he could not remember the incident but was not prepared to deny it may have occurred – even though this is something an officer working with PSC would be expected to remember had it occurred.

As a result of IBAC's investigation, Victoria Police took disciplinary action, admonishing the former PSC member.

<sup>9</sup> IBAC's authority to conduct such examinations is contained under Part 6 of the *Independent Broad-based Anti-corruption Commission Act 2011*

### 4.4.3 Operation Bannister

In March 2014, PSC requested IBAC's assistance in Operation Clinique by way of a coordinated investigation. This request, made pursuant to section 72 of the IBAC Act, was acceded to.

IBAC arranged for coercive examinations to be conducted of nine witnesses.

The witnesses included serving and former police members as well as civilians, all of whom were considered likely to have knowledge of events relevant to Victoria Police's investigation. Some police members gave evidence that they had communicated in clandestine ways to avoid detection and investigation of their activities.

At the conclusion of IBAC's investigation, IBAC determined that it would be more appropriate for the ongoing matter to be handled by PSC. Evidence from IBAC's examinations was provided to PSC to assist their continuing inquiries.

IBAC understands that PSC is currently assessing the evidence obtained in the course of Operation Bannister, along with the evidence obtained in Operation Clinique. IBAC has requested that PSC report back any outcomes in these matters.

### 4.4.4 IBAC review of Police Taskforce Keel

In April 2013, Victoria Police executed a series of search warrants in the context of Operation Clinique. This resulted in many thousands of Victoria Police documents being located at the private premises of Mr Branov, as well as at the premises of two of his criminal associates.

Of grave concern to both police command and IBAC was that many documents contained personal details of persons who had been in contact with Victoria Police, potentially putting a number of those people at a high level of personal risk.

Taskforce Keel's primary purpose was to ascertain the level of risk to the personal safety of people whose personal details were on the documents found at Mr Branov's home. It involved the development and implementation of comprehensive risk assessment, investigation and management processes.

Over 200 civilian persons of interest and 90 Victorian police employees were identified from a safety risk assessment point of view, and were notified accordingly. A smaller number of persons of interest were either regarded as not appropriate to be, or could not be, spoken to for various reasons. Upon its review of Taskforce Keel's activities, IBAC considered that the risks in relation to such persons had been investigated to the extent reasonably possible.

The principal offenders regarding the improper access and release of police documents were Mr Branov and two of his criminal associates. All three were charged with relevant offences and pleaded guilty, with Mr Branov receiving a custodial sentence in December 2014.

This police investigation also identified four serving police members who had inappropriately provided their internal computer system passcodes to other members, including Mr Branov. These members faced disciplinary sanctions for such conduct, but did not otherwise appear to be involved in providing sensitive police information to criminals.

Finally, Taskforce Keel identified a broad range of offences not related to the inappropriate release of documents. This led to the processing of a further 15 offenders for a range of matters, including high-level drug offences. Concerns about property thefts by one or more members within a suburban police station were also investigated.

IBAC will review the outcome of Taskforce Keel once disciplinary and criminal processes have been finalised.

## 4 IBAC investigations

### 4.5 Operation Oldfield

In early 2014, IBAC commenced an investigation into allegations that a Victoria Police officer improperly used his position as a prosecutor to withdraw a serious motor traffic charge that was likely to succeed, and to accept a guilty plea to the lesser charge.

IBAC provided the results of its investigation to PSC. The officer was then suspended on full pay pending the outcome of a further criminal investigation by Victoria Police into the same matter.

This matter highlighted a systemic issue: the significant authority granted to often junior police prosecutors operating with little or no oversight. In these circumstances the prosecution mechanisms within Victoria Police were inadequate.

The justification for such broad authority being granted to prosecutors to withdraw charges appears to be based on high workload: prosecutors are responsible for a very high throughput of cases. In many cases, Victoria Police must balance the need to thoroughly prosecute criminal charges against the requirement to expedite the resolution of such matters. Additional layers of oversight, such as requiring police prosecutors to obtain the approval of a sub-officer to withdraw a substantive charge, are likely to add delays to case resolutions, As such, they are seen (internally at least) as undesirable.

The only measure currently in place is a requirement to submit a withdrawal report to explain and justify the withdrawal of a substantive charge, which the member allegedly did not do in this case.

As a result of this investigation, IBAC recommended that Victoria Police inter alia:

- review policies governing court processes, including the authority granted to police prosecutors to withdraw substantive charges and processes to proactively oversight such decisions
- report to IBAC on how Victoria Police ensures police prosecutors have the required standard of integrity and judgement.

Victoria Police has been asked to respond to the recommendations by late-January 2016.

IBAC understands that the police officer has been charged with the offence of perverting the course of justice. This matter is now before the courts.

### 4.6 Operation Hotham

Operation Hotham commenced in October 2014 and was an IBAC 'own motion' investigation. The investigation centred on allegations that a serving police officer of approximately four years' experience was involved in using and supplying illicit drugs and was closely associating with persons involved in the supply of illicit drugs. It was further alleged that this officer was assisting and protecting drug suppliers in their trade.

The officer is currently on suspension and Victoria Police has commenced a disciplinary investigation. IBAC is preparing a brief of evidence for possible criminal charges.

## 4.7 Progress on recommendations arising from previous investigations

### 4.7.1 IBAC recommendations under section 159 of the IBAC Act

Under section 159 of the IBAC Act, IBAC can make recommendations in relation to any matter arising out of an investigation. To date, IBAC has made twenty section 159 recommendations to Victoria Police.

Fourteen of these recommendations were made by The Hon Murray Kellam AO QC in his report into Victoria Police's handling of human sources. As outlined in section 4.3, Victoria Police has responded to all of Mr Kellam's recommendations.

A separate section 159 recommendation arose from IBAC's investigation of a complaint made to the former OPI by Theo Theophanous. IBAC has reported on this matter in detail previously.<sup>10</sup> One issue of concern to both OPI and IBAC was the failure of Victoria Police to fully comply with a subpoena issued by the Magistrates' Court requiring the production of various classes of documents. Although the failure was considered an innocent oversight, IBAC recommended that Victoria Police review this matter to minimise the risk of any recurrence.

Victoria Police has acted on this recommendation, advising that appropriate amendments have been made to policies, guidelines and training that address the issues identified in the OPI and IBAC investigations.

A further section 159 recommendation was made as a result of Operation Cobalt, an investigation that has also been reported previously.<sup>11</sup> IBAC recommended that Victoria Police review its policies and procedures to address concerns identified with the alleged improper involvement of police in applications to the Victims of Crime Assistance Tribunal (VOCAT).

Victoria Police reviewed and modified relevant policies, clarifying when officers may assist victims of crime with applications to VOCAT and introducing an independent review process of police applications for victims of crime assistance.

The remaining four recommendations relate to Operation Oldfield, outlined in section 4.5.

Section 159(1) of the IBAC Act enables IBAC to make recommendations to principal officers (including the Chief Commissioner of Police), the responsible Minister and/or the Premier. The principal officer, Minister or the Premier must then advise IBAC whether or not the recommendation has been accepted.

Section 161 requires the Chief Commissioner of Police to adopt a recommendation made by IBAC or take action requested under section 160, or otherwise provide a report to IBAC stating the reasons for not doing so.

### 4.7.2 Office of Police Integrity recommendations

Following the proclamation of the IBAC Act, IBAC received 18 outstanding OPI recommendations concerning Victoria Police. The OPI had made these recommendations as a result of various own motion investigations and reviews into systems and practices. IBAC seeks regular progress reports from Victoria Police on these outstanding OPI recommendations.

Currently, seven OPI recommendations are pending implementation. These include recommendations to review existing policies and to develop new policies, procedures and training. This work will address specific integrity and corruption risks around management of property and exhibits, the execution of search warrants, and engagement with Aboriginal people.

Victoria Police has indicated it is committed to implementing the outstanding OPI recommendations. IBAC will continue to monitor action by Victorian Police on these matters.

<sup>10</sup> IBAC, *Special report concerning certain operations in 2013*, November 2013, pp 13–15

<sup>11</sup> IBAC, *Special report following IBAC's first year of being fully operational*, April 2014, p 15

## 5 Appendix 1 – previous IBAC reports

Report title	Publication date
Annual report 2012–13	September 2013
Special report concerning certain operations in 2013	November 2013
Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information	February 2014
Special report following IBAC's first year of being fully operational	April 2014
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	October 2014
Annual report 2013–14	October 2014



## 6 Abbreviations

CCTV	Closed-circuit television
DPP	Director of Public Prosecutions
EAM	Email Assessment Matrix
IBAC	Independent Broad-based Anti-corruption Commission
OPI	Office of Police Integrity
PSC	Professional Standards Command (Victoria Police)
VOCAT	Victims of Crime Assistance Tribunal

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