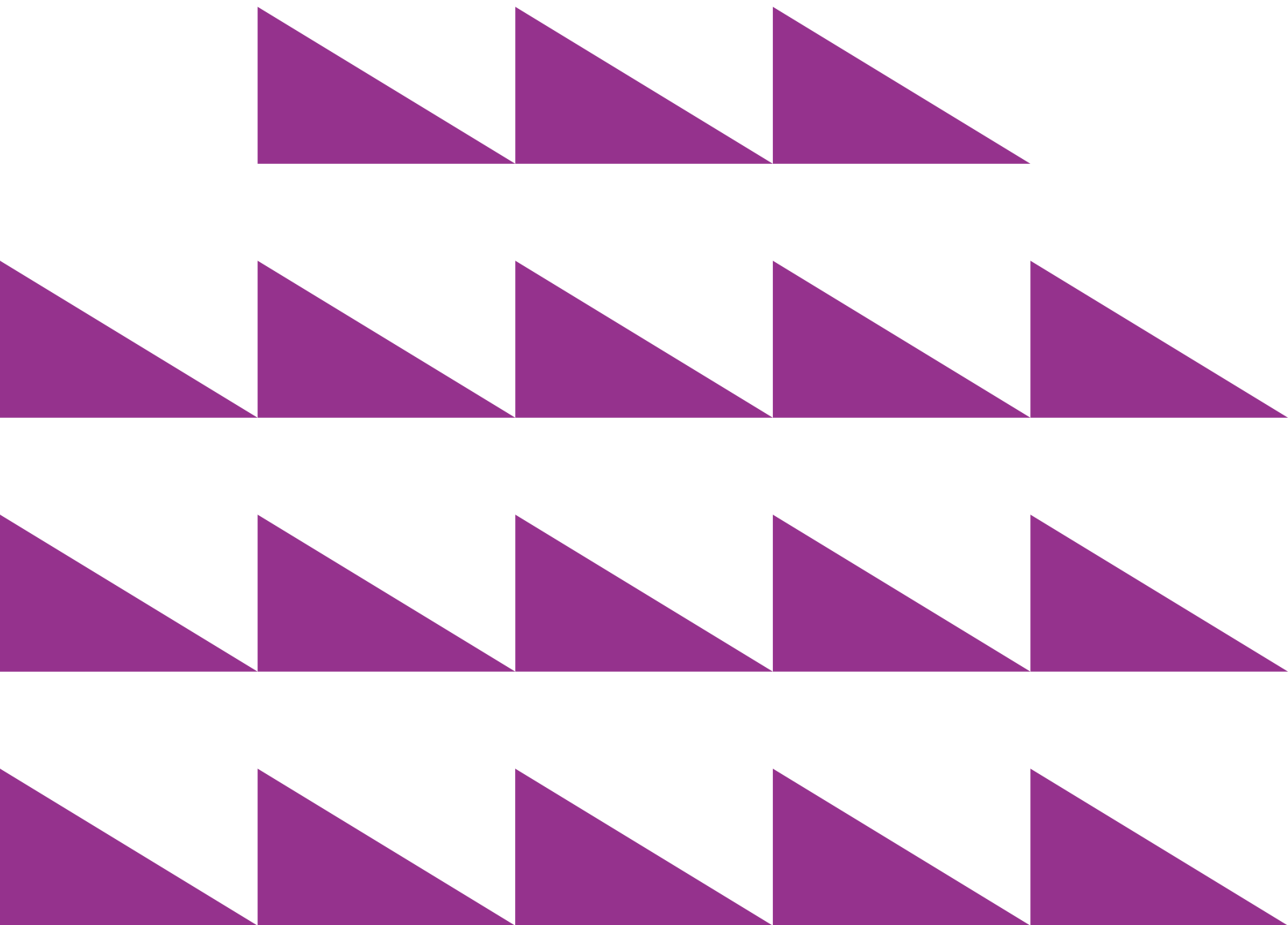


Special report concerning illicit drug use by Victoria Police officers

Operations Apsley, Hotham and Yarrowitch

December 2016



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December 2016

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Letter of transmittal

To

The Honourable President of the Legislative Council

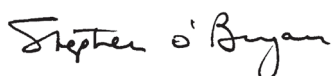
and

The Honourable Speaker of the Legislative Assembly

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's report concerning illicit drug use by Victoria Police officers: Operations Apsley, Hotham and Yarrowitch.

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

Yours sincerely



Stephen O'Bryan QC

Commissioner

List of abbreviations

AFP	Australian Federal Police
IBAC	Independent Broad-based Anti-corruption Commission
LSD	Lysergic acid diethylamide
MDMA	Methylenedioxyamphetamine (commonly known as ecstasy or MD)
PIC	Police Integrity Commission (NSW)
PSC	Professional Standards Command (Victoria Police)
VIFM	Victorian Institute of Forensic Medicine

1 Overview

1 Overview

This report presents the findings of key investigations by the Independent Broad-based Anti-corruption Commission (IBAC) into serious police misconduct involving the use of illicit drugs, and broader consideration of Victoria Police's systems and practices to detect and prevent illicit drug use by its officers. IBAC's Operations Apsley, Hotham and Yarrowitch raise serious concerns about illicit drug use by sworn police officers and also highlight potential systemic weaknesses in Victoria Police's approach to this issue.

Any illicit drug use by police is a serious problem with significant ramifications not only for the individual officers involved, but also for their colleagues, and the police force as a whole. Importantly, police use of illicit drugs adversely impacts the safety of the community and undermines the community's level of trust and respect for police and the law.

In summary, illicit drug use by police is clearly unacceptable because:

- Illicit drug use, possession and trafficking are criminal offences which contravene the oath or affirmation sworn by all police officers, as well as contravening the professional and ethical standards and values they are required to uphold.
- Illicit drug activity exposes individual officers to compromise and corruption. An officer who procures and uses illicit drugs is by definition engaging in criminal conduct. This not only seriously compromises the officer but also leaves them vulnerable to blackmail or coercion and at real risk of engaging in other serious forms of misconduct or corruption. As previously reported by IBAC,¹ organised criminals seek to exploit risk taking behaviour such as illicit drug use to compromise and corrupt public officials, especially police.
- Victoria Police's authority to uphold the law, and maintain the community's respect for the law are eroded by police using illicit drugs. An individual officer using illicit drugs lessens their authority to enforce the law, and diminishes the collective authority of Victoria Police in the community.
- Illicit drug use by police officers also presents a serious health and safety issue for individual officers, their work colleagues and the broader community. It is imperative that an officer's judgement and performance are not impaired by illicit drugs, particularly when police are exercising a range of lethal and non-lethal force options, making decisions about arrest and the exercise of other powers, driving in unpredictable situations, or dealing with difficult and challenging situations.

¹ IBAC, *Organised crime group cultivation of public sector employees*, September 2015.

1.1 IBAC's investigations

1.1.1 Operation Apsley

In June 2015, IBAC commenced Operation Apsley, an investigation into allegations a police officer was involved in the use, possession and trafficking of illicit drugs. Operation Apsley proved to be one of IBAC's most intensive and complex investigations into police personnel misconduct to date. See page 15 for a summary of the powers IBAC utilised in this investigation.

Operation Apsley identified a group of interconnected police officers for whom illicit drug use was an accepted and regular part of their social lives. The drugs involved included cocaine, ecstasy, methamphetamine, lysergic acid diethylamide (LSD) and ketamine.

Operation Apsley found these officers were aware they were engaging in illegal conduct incompatible with the role of a police officer, but rationalised their off-duty criminality as being separate to their obligations as police officers.

Operation Apsley obtained evidence of:

- the use and possession of drugs of dependence by six police officers
- the trafficking of drugs of dependence by four police officers
- positive drug tests returned by four officers to drugs of dependence including cocaine, ecstasy/MDMA and methamphetamine
- direct interaction with criminal drug traffickers by two officers, including a failure to declare associations with these individuals to Victoria Police.

As a result of Operation Apsley, one officer has been dismissed from Victoria Police, two resigned under investigation, one has been admonished and allowed to return to work, and two remain suspended awaiting criminal and/or discipline proceedings.

IBAC has also charged one officer with the offence of inciting a witness to mislead IBAC during Operation Apsley. A second officer has been charged by Victoria Police in relation to drug offences.

1.1.2 Operations Hotham and Yarrowitch

IBAC's Operation Hotham (2014) and Operation Yarrowitch (2016) also investigated the alleged use, possession and trafficking of illicit drugs by police officers. Both investigations examined the police officers' subsequent associations with criminal figures.

The officer who was the subject of Operation Hotham resigned from Victoria Police under investigation while awaiting a discipline hearing. The officer who was the subject of Operation Yarrowitch has been charged with perjury and misleading IBAC, and is currently suspended awaiting court proceedings.

1 Overview

1.2 Systemic issues

IBAC has identified a number of systemic deficiencies in Victoria Police's current approach to preventing and detecting illicit drug use by Victoria Police officers, as a result of Operations Apsley, Hotham and Yarrowitch. These deficiencies are briefly outlined below.

1.2.1 Policy and awareness

- Victoria Police has not adopted an unequivocal policy on illicit drug use by its officers, or clearly communicated the associated risks and consequences. Policies and other information regarding illicit drug use by officers and drug testing do not consistently highlight the integrity risks inherent for police using illicit drugs, as well as issues of impairment and safety.
- Victoria Police does not conduct mandatory periodic integrity-related training for all employees to reinforce awareness and understanding of key integrity policies and standards, including those relating to illicit drug use and drug testing.

1.2.2 Recruitment and vetting

- Victoria Police does not provide dedicated information to potential recruits outlining on and off-duty conduct expectations, including around illicit drug use.
- There appears to be little or no consequences for applicants who lie about their illicit drug use on their application to join Victoria Police. In part, this may reflect that an offence under section 257 of the *Victoria Police Act 2013* (obtaining appointment as a police officer by false representation or documents) is a summary offence with a statute of limitations.
- Applicants to join Victoria Police are not asked specific questions regarding illicit drug use until the latter stages of the recruitment process.

- There does not appear to be a standard methodology to consistently and objectively assess declared illicit drug use and other integrity risks associated with sworn policing applicants.
- Victoria Police does not conduct a final pre-employment program in which on and off-duty behavioural standards and conduct – including specific content on illicit drug use – are reiterated to all applicants prior to them accepting offers of employment.
- Professional Standards Command (PSC) and the Recruitment Branch do not have arrangements to facilitate real time information sharing and liaison around integrity risks associated with police recruits.

1.2.3 Drug testing

- Currently, only around five per cent of Victoria Police officers are subject to random drug testing per year, which would appear to have little or no deterrent effect. At the current rate, a Victoria Police officer is likely to be randomly drug tested once every 20 years.
- Under current arrangements, police recruits may or may not be subject to random drug testing. Drug testing at random points during recruit training would reinforce to recruits the organisation's expectations regarding their on and off-duty conduct.
- The period of advance notice provided to work units undergoing random or designated work unit testing can adversely affect the effectiveness of that testing.
- The current positive result thresholds for hair testing by Victoria Police is inconsistent with the organisation's stated intolerance of illicit drug use.
- There is a potential lag between Victoria Police receiving an allegation of illicit drug use and the conduct of a drug test, which can allow a drug to leave a police officer's system.
- Victoria Police does not conduct follow up drug testing to monitor officers who have been the subject of allegations of illicit drug use.

1.3 Conclusions and recommendations

IBAC considers the investigations detailed in this report are likely to represent only snapshots of a more widespread and serious problem for Victoria Police. Based on the prevalence of illicit drug use across the broader community,² the experience of other police and law enforcement agencies, and Victoria Police's own internal investigations, there is evidence to suggest illicit drug use is a significant concern beyond the individual officers and work groups exposed through IBAC's Operations Apsley, Hotham and Yarrowitch.

Illicit drug use by police officers is a complex matter. IBAC recognises that such conduct is likely to be influenced by a range of factors including the social groups that individuals mix in, their age and maturity, and personal issues, including relationship or financial concerns. In some circumstances, the challenging and at times traumatic nature of frontline operational policing may also be a factor. Indeed, Victoria Police's recent *Mental Health Review* found exposure to operational incidents (particularly cumulative exposure) is an important contributory factor to mental health issues experienced by police, as well as substance abuse.³ Based on such factors, illicit drug use is also not necessarily a constant feature of an individual police officer's career, but rather can be associated with specific circumstances or phases in their lives.

Given the complex and serious nature of the issues concerning illicit drug use by police as highlighted by IBAC's Operations Apsley, Hotham and Yarrowitch, pursuant to section 159(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act), IBAC makes the following recommendations to Victoria Police:

Recommendation 1

The Chief Commissioner of Victoria Police undertake a comprehensive review of the use of illicit drugs by Victoria Police officers, as well as associated policies, systems and practices to inform the development and implementation of a more robust framework to prevent and detect police illicit drug use. This review should consider, among other things:

- the development of clear policy on the use of illicit drugs and the consequences of such use by officers, with reference to contemporary best practice
- strengthening recruitment processes and policies to more effectively identify and manage risks
- the adequacy of the current drug testing regime and how it can be improved
- improving training and communication to clearly and regularly reinforce Victoria Police's position and response to illicit drug use by its officers
- appropriate welfare and support arrangements for officers detected using illicit drugs, including those who voluntarily disclose their use of illicit drugs.

Recommendation 2

The Chief Commissioner of Victoria Police to provide IBAC with a progress report by 30 June 2017 and final report by 30 June 2018 on development and implementation of a more robust framework to prevent and detect police illicit drug use. These reports will be published on IBAC's website.

Victoria Police has accepted these recommendations and acknowledges that illicit drug use by its officers is 'of grave concern'. The full Victoria Police response to this report is provided at Appendix A.

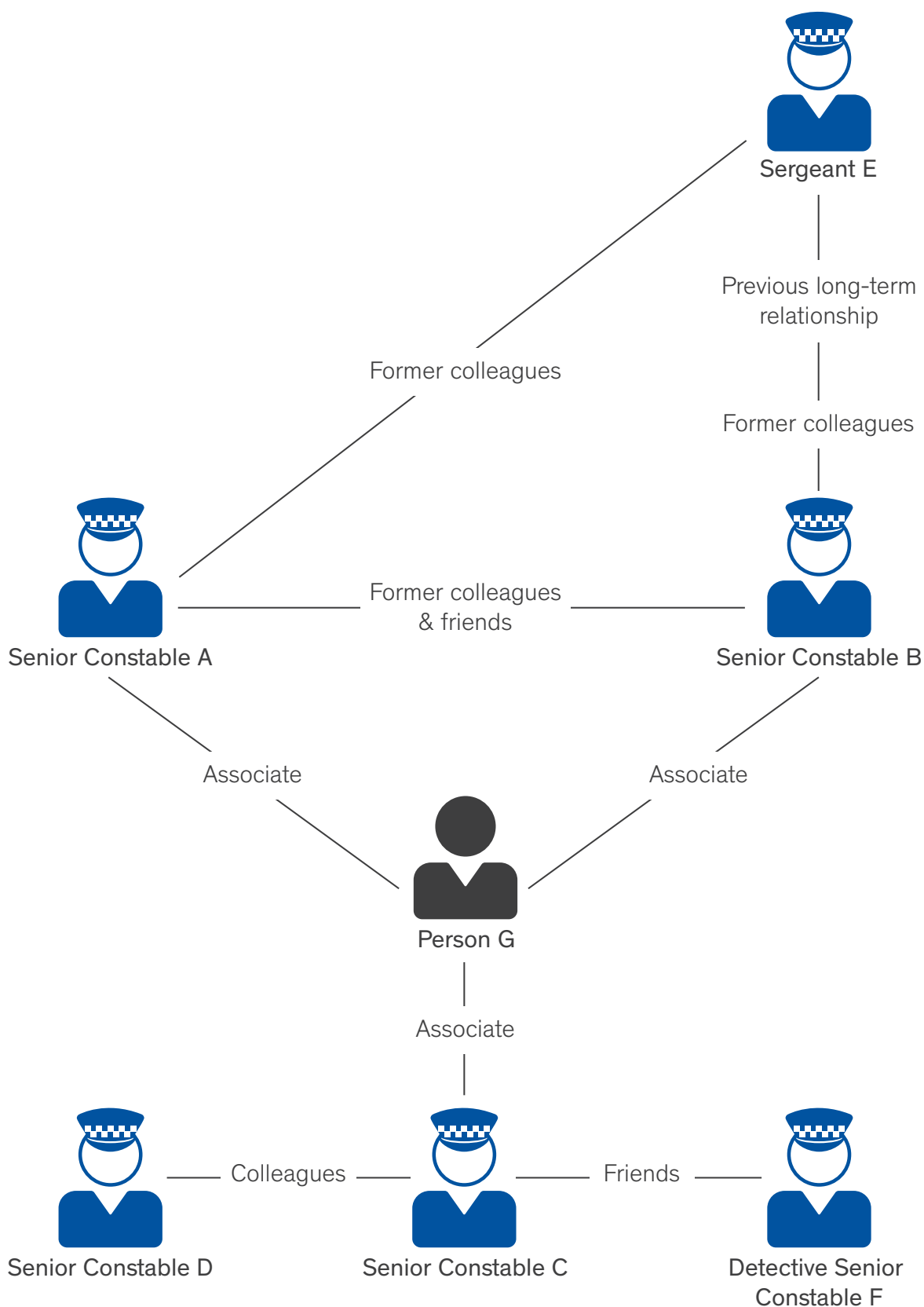
² The 2013 National Drug Strategy Household Survey found that approximately 43 per cent of Australian adults had used illicit drugs in their lifetime, see Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013 online tables – table 5.7*, 2014, (<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549638>).

³ Victoria Police, *Mental Health Review*, May 2016, p 6 and p 20.

2 Operation Apsley

2 Operation Apsley

Figure 1: Operation Apsley key persons involved



2.1 The early stages of the investigation

In June 2015, IBAC commenced an investigation (Operation Apsley) into a uniformed member of a metropolitan police station, referred to in this report as Senior Constable A. The investigation concerned allegations that Senior Constable A was trafficking and possessing drugs of dependence (cocaine) for their own personal use and to sell to other members of Victoria Police.

By September 2015, the investigation had revealed an interconnected social network of sworn police officers and civilians, each suspected of using (and in some cases trafficking) illicit drugs. Operation Apsley was subsequently expanded to examine the conduct of these police officers.

Trafficking, possessing and using a drug of dependence are all offences against the *Drugs, Poisons and Controlled Substances Act 1981*. These activities therefore fall within the definition of police personnel misconduct under section 5 of the IBAC Act.

2.2 The persons involved

Operation Apsley identified an interrelated cohort of police officers with shared common social groups, links to sporting clubs, and professional links.

IBAC initially identified 14 officers who were reasonably suspected of being involved in the use, possession and/or trafficking of illicit drugs. The investigation eventually focused on 12 of these officers from a range of inner and outer metropolitan Melbourne police stations. The officers were a mix of males and females and ranged in rank from constable to sergeant. They had between two and 16 years' experience as police officers and were aged between 24 and 40 years.

In all, 12 police officers were subject to targeted drug tests during Operation Apsley. Four returned positive results for drugs of dependence including cocaine, ecstasy and methamphetamine. A further two officers returned negative drug tests and later made admissions under oath to using illicit drugs during their police careers. These six officers are the main focus of this report.

2.2.1 Senior Constable A

Senior Constable A commenced employment with Victoria Police in 2011 as a police recruit. At the commencement of Operation Apsley, this Senior Constable was 29 years old and stationed at a south-east metropolitan police station. Senior Constable A graduated from the same recruit squad as Senior Constable B. The two officers worked at the same police station and maintained a close friendship.

In June 2016, Senior Constable A was dismissed from Victoria Police at a discipline hearing.

2 Operation Apsley

2.2.2 Senior Constable B

Senior Constable B commenced employment with Victoria Police in 2011 as a police recruit. At the commencement of Operation Apsley, this senior constable was 28 years old and stationed at a south-east metropolitan Crime Investigation Unit. Senior Constable B was a squad mate and close friend of Senior Constable A and had previously been in a long-term relationship with Sergeant E.

Senior Constable B is presently suspended awaiting discipline proceedings.

2.2.3 Senior Constable C

Senior Constable C commenced employment with Victoria Police in 2009 as a police recruit. At the commencement of Operation Apsley, Senior Constable C was 26 years old and stationed at a north-west metropolitan police station. Senior Constable C was a close friend of Detective Senior Constable F and a colleague of Senior Constable D.

In January 2016, Senior Constable C resigned from Victoria Police while under investigation.

2.2.4 Senior Constable D

Senior Constable D commenced employment with Victoria Police in 2010. At the commencement of Operation Apsley, this senior constable was 34 years old and worked at the same station as Senior Constable C.

Senior Constable D was charged by PSC with using and possessing a drug of dependence. In January 2015, Senior Constable D was suspended without pay and is awaiting court proceedings.

2.2.5 Sergeant E

Sergeant E commenced employment with Victoria Police in 2005. At the commencement of Operation Apsley in June 2015, this sergeant was 40 years old and stationed at an inner-Melbourne police station. Sergeant E was previously in a long-term relationship with Senior Constable B and prior to promotion to sergeant, had worked at the south-east metropolitan police station with both Senior Constables A and B. Sergeant E resigned from Victoria Police while under investigation in February 2016.

2.2.6 Detective Senior Constable F

Detective Senior Constable F commenced employment with Victoria Police in 2009. At the commencement of Operation Apsley, this officer was 30 years old and stationed at an outer northern metropolitan Crime Investigation Unit. Detective Senior Constable F was a close friend of Senior Constable C.

In June 2016, Detective Senior Constable F received an admonishment notice⁴ for illicit drug use from the Assistant Commissioner PSC and has since resumed normal duties.

2.2.7 Other witnesses

A further 11 people were summonsed to appear before private examinations at IBAC (six police officers and five civilians). These witnesses were each closely associated with one or more of the six police officers described above.

The evidence given by these witnesses, and evidence obtained under summons, was critical to corroborating the hypotheses of investigators. As well, the evidence provided additional intelligence on criminality and misconduct by other police officers.

⁴ Admonishment notices are a written notice and are intended to be used when there is a minor breach of discipline. They are not part of the statutory discipline regime and are designed as an alternative to the formal discipline process.

2.3 The allegations in brief

The allegations against each of the six officers subject to this report are that:

- Senior Constables A, B, C and D each engaged in police personnel misconduct through involvement in the trafficking, possession and use of drugs of dependence
- Sergeant E and Detective Senior Constable F each engaged in police personnel misconduct through involvement in the possession and use of drugs of dependence.

2.4 The conduct of the investigation

2.4.1 Information obtained

The initial phase of Operation Apsley focused on intelligence collection in relation to Senior Constable A and their associates. As a result of these intelligence gathering activities investigators identified a second police officer (Senior Constable B) and a civilian (Person G) suspected of being involved in the trafficking, possession and use of drugs of dependence.

On the strength of the gathered intelligence (corroborated by initial investigations), IBAC utilised its powers to assist in establishing the full extent of the drug activities of the Victoria Police officers and civilians involved.

In particular, Person G was identified by investigators as a key person of interest. Person G was a close associate of both Senior Constables A and B and was identified as having introduced Senior Constable A to a drug supplier.

Senior Constables A and B were both suspended from duty following the execution of search warrants, drug tests and initial examinations. IBAC investigators then conducted a review of intelligence gathered during Operation Apsley and determined there were sufficient indications that a number of other police officers may have used or were using illicit drugs. Further targeted drug tests and private examinations were conducted, resulting in another four officers admitting to illicit drug use.

2 Operation Apsley

IBAC powers of investigation

In the three investigations discussed in this report (Apsley, Hotham and Yarrowitch), investigators used a broad range of powers and capabilities including under the IBAC Act, the *Surveillance Devices Act 1999*, the *Telecommunications (Interception and Access) Act 1979* (Cwth) and the *Crimes (Controlled Operations) Act 2004*. Those powers included summonses, search warrants, telecommunications interceptions, surveillance devices, physical surveillance, controlled operations, witness interviews, financial analysis, high-tech crime analysis and private examinations. The extent to which these powers were used varied between the three investigations.

The importance of coercive examinations and their implications

IBAC's ability to conduct examinations has proved to be a highly effective tool in exposing corruption and police personnel misconduct.

The examination process, strict confidentiality requirements, and the penalties attached to giving false or misleading answers, can motivate otherwise uncooperative persons to provide evidence and information that IBAC is unable to obtain voluntarily, or through traditional investigative methods.

Admissions to criminality made by a person subject to examination cannot be used to support criminal proceedings (except in limited circumstances); however, those admissions can be used to support disciplinary action.

These protections ensure IBAC can perform its primary functions of exposing and preventing corruption and misconduct.

2.4.2 Private examinations

In all, between August 2015 and April 2016, 23 private examinations were conducted with 17 individuals, including 12 police officers and five civilians.

2.4.3 Execution of search warrants

In September 2015, search warrants were executed on the private residences of Senior Constable A and Senior Constable B. Investigators also searched the workplaces of both police officers under section 86 of the IBAC Act. Electronic devices including phones and computers were seized. Analysis of these items provided further evidence to corroborate the allegations against both officers, while also shedding light on possible drug use by other police officers.

2.4.4 Targeted drug tests

Between September and December 2015, 12 police officers were subject to targeted drug tests approved by Victoria Police based on IBAC's Operation Apsley. Hair and urine samples were analysed. Four officers returned positive tests to drugs including cocaine, ecstasy and methamphetamine.

3 Operation Apsley: Investigation into the conduct of Senior Constables A and B

3 Investigation into the conduct of Senior Constable A and Senior Constable B

3.1 The evidence against Senior Constable A

Operation Apsley clearly established that Senior Constable A had used, organised to purchase and (on some occasions) re-sold cocaine among a small group of close associates. Evidence included lawfully intercepted information, electronic evidence obtained under summons, and the corroboration of multiple witnesses who provided first-hand accounts of Senior Constable A's drug use and trafficking.

Senior Constable A was subject to two separate private examinations in 2015. In evidence, the officer admitted to:

- using cocaine most days for approximately four months in early 2015
- meeting with and purchasing cocaine from a drug dealer
- re-selling some of the cocaine purchased to friends within the officer's social group.

In September 2015, prior to the execution of search warrants on Senior Constable A's private residence and workplace, Senior Constable A was subject to a targeted drug test in which both a hair and urine sample were taken. The hair sample returned positive for cocaine.

3.1.1 Senior Constable A's history and rationalisation of illicit drug use

Senior Constable A admitted to using illicit drugs before joining Victoria Police, giving evidence that they first used drugs (namely cannabis) as a teenager. IBAC obtained Senior Constable A's Victoria Police employment application forms which did not disclose this previous use of illicit drugs.

Senior Constable A acknowledged being well aware that using drugs was illegal and incompatible with the role of a police officer. The officer stated that they used cocaine to cope with personal stresses. However, communications between Senior Constable A and Senior Constable A's close friends showed illicit drug use to be an accepted and regular part of their social lives.

The following excerpt of a lawfully intercepted conversation, shows that the use of illicit drugs was normalised to the extent that Senior Constable A was comfortable in openly discussing the transportation of illicit drugs over state borders with a friend.

Associate: *Oh, I was thinking if you could get gear for the footy trip, how are you getting it over, like, to Adelaide?*

Senior Constable A: *That's where you come in...*

Associate: *That's fine. I was just – I was wondering because I was actually going to say to you if obviously you wouldn't take it on a plane, I'm happy to put it into my car.*

Senior Constable A: *Mm.*

Associate: *If I get arrested and I end up on Border Patrol or something I'll be, like (unclear). Like, "What?" I'm, like, "Nothing."*

Senior Constable A: *Border Patrol. ... I think you'll be fine.*

This normalisation of illicit drug use within Senior Constable A's social group allowed Senior Constable A to rationalise their own personal drug use and that of Senior Constable A's close associates, as separate to the obligation to enforce and uphold the law as a police officer.

3.2 The evidence against Senior Constable B

Operation Apsley established that Senior Constable B used, possessed and trafficked illicit drugs.

Electronic evidence obtained under summons, which was corroborated by other witnesses and partial admissions from Senior Constable B, demonstrated Senior Constable B would organise to purchase and re-sell illicit drugs among a small group of close friends. During private examinations, witnesses provided first-hand accounts of Senior Constable B's drug use and trafficking.

In Senior Constable B's communications with associates, the officer made no attempts to disguise drug transactions. For example, the following is a text message exchange between Senior Constable B and a civilian associate:

Senior Constable B: ...can I come get a pile of drugs Wednesday or Thursday night

Associate: Yep

Senior Constable B: Sweet ill get some money together I have a few orders... Prob 3 bags coke and 1 bag speed

Associate: An md powder⁵ I think u should get

Senior Constable B: Aww yeah and an MD powder.!

Senior Constable B: So speed \$200 coke \$300 How much is md.? ...

Associate: 200

Senior Constable B: Ok cool..! I'll get ppl to put cash in my account tomorrow

Senior Constable B was subject to two private examinations. During the first examination the officer admitted to conduct amounting to using, possessing and trafficking a drug of dependence (cocaine) while a serving police officer. Senior Constable B admitted being an irregular user of cocaine but denied using any other illicit drugs.

IBAC has assessed Senior Constable B's evidence as self-serving and less than truthful. Evidence indicated the officer regularly used multiple types of illicit drugs throughout their police career and was something of a lynchpin for drug use, actively pressuring close friends (including police officers) to use illicit drugs in their company.

Senior Constable B was subject to a targeted drug test in which both a hair and urine sample were taken. The hair sample returned positive for cocaine. IBAC investigators then executed a search warrant at the officer's private residence and workplace.

3.2.1 Senior Constable B's history and rationalisation of illicit drug use

During a private examination, Senior Constable B admitted to using illicit drugs prior to joining Victoria Police, stating 'when I was 18 I probably used some pills'. Electronic evidence obtained under summons during Operation Apsley suggested that Senior Constable B had used illicit drugs extensively both before and after joining Victoria Police. Senior Constable B's Victoria Police employment application forms were obtained by IBAC; the previous use of illicit drugs was not disclosed at the time of application.

During examination under oath, Senior Constable B detailed using cocaine multiple times over the previous two to three years while a police officer. Senior Constable B stated their cocaine use would usually occur in social situations involving a select group of civilian friends among whom cocaine was often available. Senior Constable B stated that the only other police officer with whom they used illicit drugs was Senior Constable A. Senior Constable B also acknowledged being conscious that taking drugs was illegal and incompatible with the role and responsibilities of a police officer.

⁵ MDMA (methylenedioxyamphetamine) powder.

3 Investigation into the conduct of Senior Constable A and Senior Constable B

3.3 The risks posed by Senior Constables A and B's illicit drug use

Both Senior Constables A and B demonstrated a startling lack of insight at having compromised themselves through their drug use and direct or secondary interactions with drug dealers.

Senior Constable A gave evidence admitting the purchase of illicit drugs on multiple occasions directly from a drug dealer. In doing so, Senior Constable A's integrity was immediately compromised, as criminals were provided with leverage to use against the officer in future exchanges.

Senior Constables A and B were also cavalier about the safety risks posed by their illicit drug use.

Senior Constable A gave evidence during an examination that Senior Constable A would not go to work if feeling affected by cocaine use, leaving at least an eight-hour window between using and attending work. Similarly, Senior Constable B stated during an examination that Senior Constable B would never use drugs if working the following day. However, messages between the two officers (obtained under summons), refute these claims as demonstrated by the following exchange about a night out, where both officers had used cocaine.

Senior Constable A: *Feeling slightly average but okay. Gonna be a long shift. Rad night.*

Senior Constable B: *Kill me, I wanna lay down.*

Senior Constable A: *Crashing and burning.*

Senior Constable B: *I wanna die.*

While the question of impairment may come down to individual tolerances to different illicit drugs, the metabolites of cocaine would have remained in their bodies while they were working. In Senior Constable A's case, this would have been exacerbated by daily drug use over a period of several months. During this time Senior Constable A worked as a police officer, carrying tactical equipment⁶ and making potentially critical decisions impacting on personal safety, the safety of colleagues and members of the community.

Senior Constable B's attempts to undermine the investigation

IBAC obtained evidence Senior Constable B had become suspicious that they were under investigation around 10 September 2015. In the days following, Senior Constable B undertook a series of actions to undermine the IBAC investigation. This included making repeated contact with civilian friends who were aware of the officer's illicit drug use, in attempts to incite them to lie to IBAC if questioned. The day after Senior Constable B became fully aware they were being investigated for drug activities, Senior Constable B applied for sick leave from Victoria Police.

In light of Senior Constable B's knowledge of the investigation, active attempts to undermine it and familiarity with investigative techniques, IBAC determined there was a significant risk of compromise to the investigation. As a consequence, a decision was made to fast track certain actions (including search warrants and drug testing of Senior Constable A and Senior Constable B), to avoid the risk of further compromise.

IBAC has received further evidence that since being suspended from duty in September 2015, Senior Constable B has made a further effort to undermine the investigation by attempting to convince another Operation Apsley witness to make a false complaint against IBAC officers. As a result of Senior Constable B's attempts to undermine the investigation and IBAC, IBAC has charged the officer with inciting a witness to mislead IBAC.

⁶ Tactical equipment includes firearms, OC spray/foam, conducted energy weapons ('tasers'), batons, and handcuffs.

4 Operation Apsley: Investigation into the conduct of other officers

4 Investigation into the conduct of other officers

4.1 The evidence against Senior Constable C

Operation Apsley established Senior Constable C used, possessed and trafficked illicit drugs. The evidence collected by IBAC indicated Senior Constable C was an extensive and frequent user of illicit drugs.

Analysis of communications involving Senior Constable C and Person G (a civilian associate of Senior Constable C) revealed numerous references to using illicit drugs including cocaine, ecstasy/MDMA and amphetamine (speed). Senior Constable C was not an associate of Senior Constables A or B. Senior Constables A or B, but incidentally shared a common association with Person G.

In communications with associates, Senior Constable C made no attempts to disguise drug related discussions. For example, the following is a text message excerpt between Senior Constable C and a civilian associate discussing the transfer of MDMA powder (referred to as 'MD') into capsules for ingestion:

Senior Constable C: *I may or may not have spent 2 hours today capping md.*

Associate: *...Now that you run a sophisticated drug syndicate you will be... esstremely bizzzy*

In September 2015, Senior Constable C was subject to a targeted drug test in which hair and urine samples were taken. The hair sample returned a positive result for cocaine, methamphetamine and MDMA. The officer was subsequently suspended from duty.

After being drug tested, Senior Constable C was summonsed to a private examination where the officer made admissions to conduct amounting to drug use, possession and trafficking. Other witnesses also provided firsthand accounts of Senior Constable C's drug use, possession and trafficking.

In January 2016, Senior Constable C resigned from Victoria Police while under investigation.

4.1.1 Senior Constable C's history and rationalisation of illicit drug use

During the private examination, Senior Constable C admitted to using a variety of illicit drugs while a serving police officer including cocaine, ecstasy, cannabis and LSD. Senior Constable C stated there were no specific personal or professional issues which had contributed to the drug use.

On joining Victoria Police in 2009, Senior Constable C recounted being 'very anti-drugs' and, prior to joining, professed to having only tried cannabis once as a teenager. Owing to their extensive use of illicit drugs, Senior Constable C stated they could no longer consider themselves to be anti-drugs.

Senior Constable C further stated that when using illicit drugs they were always conscious that what they was doing was illegal and did not meet the expectations of a police officer. However, Senior Constable C was able to rationalise the conduct because 'in my mind, it's – I guess it was just having a good time with my friends'.

4.1.2 The risks posed by Senior Constable C's illicit drug use

IBAC found evidence that Senior Constable C was purchasing drugs directly from drug dealers, as well as using a civilian associate (Person G) to make purchases. As with Senior Constables A and B, Senior Constable C showed a lack of insight into the fact that the purchase of illicit drugs compromised their integrity as a police officer.

According to evidence given in an examination, Senior Constable C considered the potential personal risk, as well as the risk to colleagues and the community, of attending work while drug impaired. Senior Constable C said drug use was generally planned around the officer's work schedule to ensure several days off between using drugs and working.

4.2 The evidence against Senior Constable D

Operation Apsley established Senior Constable D used and possessed illicit drugs.

Besides being a work colleague of Senior Constable C, Senior Constable D was not directly associated with any other Operation Apsley persons of interest. However, as a result of intelligence sharing between IBAC and PSC, PSC identified Senior Constable D as a person potentially linked to Operation Apsley.

A coordinated investigation between PSC and IBAC took place under the umbrella of Operation Apsley. A search warrant was executed by PSC on the private residence of Senior Constable D; as a result of the search warrant Senior Constable D has been criminally charged with possessing and using a drug of dependence.

In late 2015, Senior Constable D was subject to a private examination at IBAC. During this examination the officer made admissions to using illicit drugs and to a criminal association with a drug dealer. Criminal charges against Senior Constable D are before the court.

4.2.1 Senior Constable D's history and rationalisation of illicit drug use

During a private examination, Senior Constable D admitted to having used cocaine once and 'ice'⁷ two to three times while a serving police officer. However, the results of Senior Constable D's drug test hair sample analysis detected high levels of methylamphetamine, suggesting more extensive drug use than admitted to IBAC, or that the officer was frequently passively exposed to drugs.

Before joining Victoria Police, Senior Constable D admitted to experimenting with drugs including cocaine and ice. During the examination Senior Constable D attributed much of the drug use since joining Victoria Police to coping with work related stresses: 'the headspace that I was in, like, just every time I did it (used drugs) I was always at a down point'.

Senior Constable D further stated they were always conscious that using drugs was illegal and incompatible with the expectations of a police officer, but that in trying to deal with workplace stress, the officer had made 'stupid decisions'.

4.2.2 The risks posed by Senior Constable D's illicit drug use

Senior Constable D gave evidence admitting to purchasing illicit drugs directly from a drug dealer and that the drugs found by PSC at the officer's private residence had been supplied by that dealer. As with the other officers investigated during Operation Apsley, by purchasing and using illicit drugs, and by associating with a person the officer knew to be a drug dealer, Senior Constable D irreparably compromised their integrity as a police officer.

According to evidence given in an examination, Senior Constable D considered the potential personal risks, as well as the risk to colleagues and the community, of attending work drug impaired. Senior Constable D said they generally allowed two to three days between using drugs and reporting to work, or would alternatively call in sick.

⁷ Crystal methamphetamine.

4 Investigation into the conduct of other officers

4.3 The evidence against Sergeant E

Operation Apsley established that Sergeant E used illicit drugs on two occasions while a police officer.

Sergeant E was identified during Operation Apsley as a close associate of Senior Constable B, having previously shared a long-term intimate relationship. Evidence provided by multiple witnesses during private examinations indicated Sergeant E had, at the very least, witnessed drug use by Senior Constable B and Senior Constable B's friends, including Senior Constable A.

In October 2015, Sergeant E was subject to a targeted drug test with hair and urine samples collected. The drug test returned a negative result.

Sergeant E was also summonsed to a private examination at IBAC. During the examination Sergeant E admitted to using illicit drugs while a police officer on two separate occasions in the company of Senior Constable B. Sergeant E also denied witnessing Senior Constable B use drugs openly – other than on the two occasions Sergeant E participated in the drug use – but that the sergeant did have an 'inkling' Senior Constable B was taking drugs when going out socially.

Investigators assessed Sergeant E's evidence as largely credible.

4.3.1 Sergeant E's history of and attitude toward illicit drug use

During a private examination, Sergeant E admitted using illicit drugs on a total of three occasions. The first time occurred prior to joining Victoria Police, while on holiday overseas. The other two occasions took place while a police officer, both times in the company of Senior Constable B.

Notwithstanding Sergeant E's own use of illicit drugs in company with Senior Constable B, the sergeant indicated generally being anti-drugs. In reference to Senior Constable B's use of illicit drugs, Sergeant E stated: 'I didn't like the fact that [Senior Constable B] did it, and – which I guess is a bit hypocritical, but I didn't like the fact that [Senior Constable B] did it and [it] doesn't sit well with me because I'm a [parent and a police officer].'

Due to the relationship with Senior Constable B, Sergeant E overlooked Senior Constable B's illicit drug use while getting involved in it personally: 'I still can't believe that just because of my association with [Senior Constable B] and – just devastated that I'm in this position really. Yeah. That's it. Because, yeah, I think I'm a pretty normal, nice person and just – yeah – definitely not a drug addict.'

During the examination, Sergeant E clearly articulated that using illicit drugs was incompatible with the role of a police officer and was a failure as an officer in a position of leadership. Sergeant E repeatedly expressed dismay at the situation and indicated it was unlikely they would return to Victoria Police.

Sergeant E subsequently resigned from Victoria Police while under investigation in February 2016.

4.3.2 The risks posed by Sergeant E's illicit drug use

Sergeant E's drug use in the company of Senior Constable B was by the sergeant's own admission incompatible with the role of a police officer. As a sergeant in a position of leadership, it is arguable the greatest risk posed by Sergeant E's drug use was a failure to role model acceptable behaviours to subordinate officers, and a failure to report the illegal conduct of Senior Constables A and B, as obligated.

Sergeant E's failure to report Senior Constables A and B not only enabled their behaviour, but also did nothing to address the integrity and safety risks their drug use posed. As a leader, Sergeant E was expected to have a greater level of insight and responsibility over issues affecting police integrity. To the officer's credit, Sergeant E demonstrated recognition of these failings in evidence to IBAC.

4.4 The evidence against Detective Senior Constable F

Operation Apsley established Detective Senior Constable F used illicit drugs on two occasions while a police officer.

Detective Senior Constable F was identified during Operation Apsley as a close associate of Senior Constable C. Intelligence gathered during the investigation gave investigators cause to reasonably suspect Detective Senior Constable F may have engaged in illicit drug use, and/or was aware of Senior Constable C's involvement with illicit drugs. IBAC provided this information to PSC for consideration of a targeted drug test of Detective Senior Constable F; however PSC did not support a targeted drug test at this time.

In late 2015, Detective Senior Constable F was summonsed to a private examination. During the examination the officer made admissions to using illicit drugs on two occasions as a serving police officer, including once while holidaying overseas and once with Senior Constable C. Detective Senior Constable F also provided evidence which corroborated the use of illicit drugs by Senior Constable C. Detective Senior Constable F admitted failing to consider the obligation to report Senior Constable C's drug use, due to their close personal relationship.

In light of the admissions made by Detective Senior Constable F during the private examination, PSC approved and conducted a targeted drug test. The test returned a negative result.

PSC prepared a disciplinary brief for Detective Senior Constable F with recommendations the officer be subject to disciplinary charges that may have seen their position as a police officer terminated. The Assistant Commissioner of PSC instead recommended Detective Senior Constable F receive an admonishment notice.

Detective Senior Constable F has since returned to work and been served with the admonishment notice as a penalty.

4 Investigation into the conduct of other officers

4.4.1 Detective Senior Constable F's history of and attitude toward illicit drug use

At the private examination, Detective Senior Constable F admitted to using illicit drugs twice while a serving police officer. The first occasion took place while holidaying overseas in company with several other Victoria Police officers including Senior Constable C. In the second instance, Detective Senior Constable F used a substance the officer believed to have been 'speed' (amphetamine) at the insistence of Senior Constable C. Detective Senior Constable F stated that before joining Victoria Police they had used illicit drugs only once, at the age of 18.

Detective Senior Constable F described themselves as being generally against drugs due to having witnessed the negative consequences of illicit drug addiction in their own family. Detective Senior Constable F stated that on the occasions where the officer had used drugs, it had been due to peer group pressure.

4.4.2 The risks posed by Detective Senior Constable F's illicit drug use

Detective Senior Constable F's decision to use illicit drugs on two occasions, in the face of peer group pressure, was incompatible with the role of a police officer. Additionally the officer's failure to report the drug use of Senior Constable C as obligated, effectively enabled Senior Constable C's behaviour and its associated integrity and safety risks.

It is arguable that another risk posed by Detective Senior Constable F's illicit drug use is the lack of disciplinary action the officer faced as a consequence. The Victoria Police Manual describes an admonishment notice as being a suitable penalty for 'minor breaches' of discipline. While Detective Senior Constable F's drug use was substantially less frequent and extensive than that of Senior Constables A, B, C and D, the officer nevertheless compromised their own integrity as a police officer by using illicit drugs and failing to report the activities of Senior Constable C as legally obliged.

It is IBAC's view that wilfully using illicit drugs cannot be considered a 'minor breach' of discipline for a police officer. By treating it as such, Victoria Police has potentially sent a mixed message to other officers who may use illicit drugs occasionally.

5 Other IBAC investigations of police involvement in illicit drug use

5 Other IBAC investigations of police involvement in illicit drug use

5.1 Operation Hotham

5.1.1 Background to the investigation

Operation Hotham was an own motion⁸ investigation conducted by IBAC pursuant to section 64(c) of the IBAC Act. The investigation commenced in October 2014 focusing on a first constable from an inner south-east metropolitan police station (referred to in this report as First Constable X). First Constable X was believed to be using and trafficking illicit drugs, as well as using their position as a police officer to protect personal associates involved in drug trafficking.

First Constable X was accepted into Victoria Police in 2011 on the third attempt at joining. First Constable X's first application in 2002 was rejected on the grounds of relative youth and lack of life experience. In 2004 First Constable X's application was rejected as the officer had incurred a speeding infringement that resulted in the loss of the officer's driver licence.

During a short police career, First Constable X demonstrated a propensity to attract complaints, and was the subject of four investigations. None of these complaints related to the behaviour investigated during Operation Hotham.

5.1.2 The evidence against First Constable X

The investigation uncovered evidence that First Constable X was a user of illicit drugs, that the officer was closely associated with persons involved in significant criminal activity, and that the officer disregarded a police officer's duties, in order to protect criminal associates.

During a private examination, First Constable X admitted to using cocaine supplied by close criminal associates. First Constable X also revealed they used cannabis and MDMA before joining Victoria Police. First Constable X's three Victoria Police employment applications were obtained and the officer's previous drug use was not disclosed at the time of any of the applications.

Other evidence gathered during the investigation demonstrated that First Constable X actively concealed information implicating one close associate in criminal activity. In effect, this protected the officer's associate from law enforcement attention.

First Constable X was directed to undergo a targeted drug test which returned positive for cocaine.

IBAC determined against pursuing criminal charges and referred the matter back to PSC to instigate disciplinary proceedings. PSC charged First Constable X with the discipline offence of improper conduct and set aside a date for a discipline hearing.

First Constable X resigned from Victoria Police the day before the discipline hearing was to take place in November 2015.

5.2 Operation Yarrowitch

5.2.1 Background to the investigation

Operation Yarrowitch was an own motion investigation conducted by IBAC pursuant to section 64(c) of the IBAC Act. The investigation commenced in January 2016 and focused on a first constable (referred to in this report as First Constable Y) as a result of intelligence gathered that indicated a thorough review of previous PSC investigations into the person was required.

5.2.2 PSC investigations into First Constable Y

First Constable Y was accepted into Victoria Police as a police recruit in 2011. At the commencement of Operation Yarrowitch, the officer was working at a Crime Investigation Unit in south-eastern Melbourne. Before Operation Yarrowitch, First Constable Y had been the subject of two previous complaints relating to alleged use of illicit drugs. PSC investigated both complaints.

⁸ An 'own motion' investigation is when the IBAC Commissioner initiates an investigation without receiving a complaint or a notification from a mandatory notifier.

Results of first PSC investigation

February 2013	PSC began an investigation after a police officer reported that First Constable Y had sent him a text message in which First Constable Y appeared to be asking him for drugs.
August 2013	PSC subjected First Constable Y to a targeted drug test. At this time, targeted drug tests were confined to urine samples, being less effective than hair samples. First Constable Y's urine sample was negative for traces of illicit drugs.
October 2013	First Constable Y advised PSC that the text message in question was sent as a practical joke by a friend and not intended for the police officer who had received it. First Constable Y denied being a user of illicit drugs.
November 2013	PSC concluded the investigation, stating they were 'unable to determine' the veracity of the allegation.

Results of second PSC investigation

October 2014	An anonymous call was made to Crime Stoppers claiming that First Constable Y was using illicit drugs.
April 2015	PSC subjected First Constable Y to another targeted drug test. By this time, Victoria Police had the capability to take hair samples for targeted tests. First Constable Y's hair sample returned a positive result for cocaine. The amount of cocaine detected in the hair sample was said to be at the lower end of the detection scale.
May 2015	When interviewed by PSC, First Constable Y proffered the explanation that a former partner may have been responsible for the anonymous complaint to Crime Stoppers and that the positive drug test may have been due to either fitness supplements the officer regularly consumed or having a drink spiked. First Constable Y again denied using illicit drugs.
July 2015	Victoria Police was unable to pursue discipline proceedings against First Constable Y as it was discovered that the April 2015 drug test had not been conducted in accordance with procedures stipulated in the Victoria Police Regulations 2014. Consequently, discipline charges did not proceed.

5 Other IBAC investigations of police involvement in illicit drug use

5.2.3 IBAC's investigation

IBAC conducted a thorough review of the two PSC investigations and identified additional lines of inquiry that could be pursued.

By exploring these avenues of inquiry, IBAC investigators established that the brother of First Constable Y – referred to here as Person Z – was involved in the use and trafficking of illicit drugs, and that First Constable Y was at the very least aware of his drug use. Person Z frequently travelled overseas and usually resided with First Constable Y when he was in Australia. Liaison with federal law enforcement agencies allowed IBAC to receive further intelligence in respect of Person Z. This assisted in furthering the investigation into First Constable Y.

In March 2016, IBAC investigators executed a search warrant on the private residence of First Constable Y. While searching the premises, quantities of white powder in labelled clear resealable bags were located. The bags had Person Z's name on the labels. First Constable Y claimed never to have seen the bags and claimed that they must have belonged to Person Z. Forensic analysis later confirmed the white powder to be quantities of cocaine and MDMA respectively. During the search electronic devices including mobile phones belonging to First Constable Y were also seized.

First Constable Y was summonsed to a private examination. At this examination, First Constable Y under oath denied the allegations made in 2013 and 2014 and denied unequivocally using drugs while a police officer. First Constable Y did, however, make admissions to extensive drug use prior to joining Victoria Police, and also to lying about this fact during the psychological screening component of police recruitment.

First Constable Y was directed to undergo a targeted drug test. The hair sample returned a positive result for the illicit drug ketamine. Analysis of electronic devices seized during the search warrant identified evidence which appeared to implicate First Constable Y in the use and trafficking of illicit drugs while a police officer. Subsequently, First Constable Y was recalled to a second private examination. During this examination First Constable Y again unequivocally denied using illicit drugs as a police officer. When confronted with the evidence obtained from the officer's electronic devices, First Constable Y confessed to lying to IBAC and PSC and admitted to using and supplying cocaine to a friend in 2012 and 2013 while a serving police officer.

First Constable Y's admitted drug use in 2013 occurred just months after the first complaint was made. First Constable Y's positive test in 2016 occurred only eight months after discipline action was not proceeded with by Victoria Police over the second PSC investigation. Despite admitting to using cocaine in 2012 and 2013, First Constable Y still denied knowing why the hair sample returned a positive detection for cocaine in April 2015 and denied any knowledge as to why they would have tested positive to ketamine in 2016. In light of the evidence against First Constable Y over the course of three investigations, IBAC investigators assessed the officer's repeated denials as disingenuous.

IBAC has charged First Constable Y with making a false or misleading statement to IBAC and four counts of perjury in relation to evidence given during the private examinations. IBAC's inquiries in respect of First Constable Y's brother, Person Z, also resulted in federal and interstate law enforcement agencies taking an interest in his activities. In April 2016 he was arrested in relation to importation and border controlled drug offences.

This case highlights a number of systemic issues that were also present in Operations Apsley and Hotham, and which are explored further in section 6 of this report. These issues include limitations with the Victoria Police's current drug testing program and the failure by officers to declare prior drug use during the application/recruitment process to join Victoria Police.

6 Systemic issues and opportunities

6 Systemic issues and opportunities

Operations Apsley, Hotham and Yarrowitch have highlighted a number of weaknesses in Victoria Police's current approach to detecting and preventing illicit drug use by its officers. These issues are discussed below. It is noted that there may be other ways in which Victoria Police can strengthen its systems and practices to better respond to and manage this risk based on contemporary best practice. These approaches should be considered by Victoria Police as part of IBAC's recommendations arising from this report.

6.1 A clear Victoria Police position on illicit drug use is needed

During private examinations for Operation Apsley it was apparent very few of the officers examined were clear on Victoria Police's position on illicit drug use.

Most were aware that a policy existed, knew non-specific details about drug testing, and acknowledged that illicit drug use is an illegal activity incompatible with their roles as police officers. However, some appeared uncertain about whether drug use was a fatal blow to their careers. For example, despite overwhelming evidence of being a chronic drug user during their police career, Senior Constable A maintained they were suited to being a police officer and indeed, had recently applied for their dismissal to be reviewed.

Victoria Police's alcohol and drugs policy states that illicit drug use is not tolerated. However, it contains an element of ambiguity around the consequences of illicit drug use: 'Employees are reminded that the use of illicit drugs is a criminal act and that Victoria Police will not tolerate this activity by its employees; where illicit drugs are detected discipline action **may** result in an employee being dismissed' [emphasis added].

In contrast, the New South Wales Police illicit drugs policy is unequivocal. The foreword to that policy reads: 'All employees of the NSW Police Force are required to comply with the policy's general principles of total abstinence from illicit drugs. The use of anabolic steroids is also prohibited ... If you take illicit drugs, if you sell illicit drugs, if you abuse prescription drugs, **there is no place for you in NSW Police**' [emphasis added].

As the Victoria Police Manual states, illicit drug use and possession is a criminal act. As upholders of the law, police officers cannot be selective with which criminal laws they choose to abide.

Victoria Police needs to review its current policy on illicit drugs, with a view to adopting an unambiguous organisational position on illicit drug use by its officers, and to clearly state the consequences associated with using and/or selling illicit drugs. This policy review should be conducted with reference to contemporary best practice across other police and law enforcement agencies.

6.2 Stronger messages around integrity risks are needed

6.2.1 Illicit drug use compromises police officers

Police officers who use, possess or traffic illicit drugs are compromising their own position, as well as that of Victoria Police.

Despite being sworn police officers, each of the officers who were subjects of IBAC's investigations failed to grasp the fact that illicit drugs are manufactured and sold by criminals. This means that criminals are only one or two degrees separated from the individuals using drugs. It is IBAC's experience that criminals who sell illicit drugs are keenly aware when a police officer is among their clientele, understanding that this knowledge could be of future benefit to them.

There have been several relatively recent examples in Victoria of police officers becoming beholden to criminals due to their illicit drug use. Once a criminal is aware a police officer uses illicit drugs, that officer becomes susceptible to blackmail, coercion or even misplaced loyalty. An intelligence report published by IBAC⁹ found that drug use among public servants was a risk taking behaviour leveraged by crime groups to compromise the integrity of individuals and gain access to sought after information, commodities or decision making processes. Any police officer who makes the decision to use illicit drugs must therefore be conscious there is a strong likelihood that criminals will not only become aware of this, but also use it as leverage to access law enforcement information and favour.

Currently, Victoria Police's illicit drug policy and other related information focuses on the safety risk to individuals if an officer's decision making was to be impaired by drug use. While this is important, the compromise to the integrity of police officers is equally vital. During their private examinations as part of Operation Apsley, the police officers appeared far more concerned with impairment and safety than they did with integrity.

As part of its policy review, Victoria Police should consider incorporating consistent messages about integrity risks (including the vulnerability to compromise) in policies, training and other information about illicit drug activity including available welfare support.

6.2.2 Off-duty conduct has on-the-job consequences

The police officers investigated by IBAC during Operations Apsley, Hotham and Yarrowitch believed their drug activities were occurring discreetly while off-duty among a close group of like-minded friends. Those officers who had used illicit drugs overseas while on holiday commonly expressed uncertainty over whether they were in breach of policy as they were not within 'jurisdiction'. Despite being police officers who would routinely arrest members of the community for drug-related offences, these officers appeared to rationalise and compartmentalise their off-duty behaviours.

During private examinations the officers were questioned as to whether drug use was compatible with their roles as police officers. Most acknowledged that drug use was not acceptable for a police officer. However, most also went on to minimise their culpability by suggesting they would never attend work if they felt drug affected, and some indicated that despite their transgressions they believed they should still keep their jobs as police officers. It is apparent that despite the existence of an illicit drug policy, most officers were not aware of its specific application.

IBAC considers Victoria Police should clearly and actively articulate to all personnel, on a regular basis, that their off-duty behaviour is not separate to their on-duty competency, and must be consistent with the organisational values, code of conduct and ethical standards expected of police.

⁹ IBAC, *Organised crime group cultivation of public sector employees*, September 2015.

6 Systemic issues and opportunities

6.3 Better recruitment processes may help identify and manage risks

Evidence gathered during Operations Apsley, Hotham and Yarrowitch indicated each of the officers implicated in using illicit drugs had also used illicit drugs before joining Victoria Police. For some of these officers, that drug use was sporadic or one-off experimentation in their youth. For others, it was regular and ongoing.

6.3.1 Applicants should be asked about illicit drug use at the earliest opportunity

The 2013 National Drug Strategy Household Survey found that approximately 43 per cent of Australian adults had used illicit drugs in their lifetime.¹⁰ It stands to reason that a significant proportion of police applicants have used illicit drugs before applying to join Victoria Police.

Victoria Police should encourage applicants to be entirely truthful by advising them that a declaration of prior drug use will not automatically preclude their application from progressing.

In the current recruitment process for sworn police positions, applicants pass through two separate online gateways without being asked specifically if they have ever used illicit drugs or whether they have ever committed a criminal offence (regardless of whether the offence came to law enforcement attention). Specific questions regarding drug use are asked at the third recruitment gateway, via a hard copy 'applicant pack'. Victoria Police has indicated to IBAC that this approach is consistent with the Australian Government Security Vetting Agency's standards for baseline vetting. Thereafter applicants are asked about illicit drug use and any other criminal activities several times during the medical and psychological screening phases.

Victoria Police should examine its recruitment processes and consider ways they can be strengthened to more effectively inform prospective applicants of the force's position on illicit drug use, and to help identify candidates who may require particular further assessment or risk management due to declared prior illicit drug use.

¹⁰ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013 online tables – table 5.7*, 2014, (<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549638>).

False representations

Evidence gathered during Operations Apsley, Hotham and Yarrowitch demonstrated that most officers had made false representations during the police recruitment process regarding their past drug use. For example, in a private examination, First Constable Y (the subject of Operation Yarrowitch), admitted to extensive drug use before joining Victoria Police. First Constable Y estimated using cocaine six to 10 times, ecstasy 10 to 15 times and speed once or twice monthly over a two-year period before joining Victoria Police. First Constable Y admitted to failing to disclose their previous history of drug use during the police recruitment process and expressly recalled lying about it during the psychological screening component.

Under section 257 of the Victoria Police Act, the offence of providing 'false representations' to gain admission to Victoria Police is a summary offence, punishable with up to six months imprisonment, but restricted by a 12 month statute of limitations.

During Operations Apsley, Hotham and Yarrowitch, IBAC encountered difficulties in enforcing the applicable penalties against officers who provided false information to gain admission to Victoria Police.

In practical terms it is highly unlikely that an offence under section 257 of the Victoria Police Act could be detected, investigated and a charge brought within 12 months of the false representation first being made.

Previously, under section 98 of the now repealed *Police Regulation Act 1958*, it was an indictable offence¹¹ for a person to obtain 'by any false representations' admission into Victoria Police. No statute of limitation applied. Consideration should be given by Parliament to amend section 257 of the Victoria Police Act, making it an indictable offence with no statute of limitations for applicants who make a false representation/s in order to gain admission to Victoria Police.

6.3.2 Stronger messaging during recruitment may deter illicit drug users

When people apply to work as a police officer, Victoria Police must set early and consistent standards regarding behaviour and conduct, including a consistent message that illicit drug use by police is unacceptable.

The New South Wales Police Integrity Commission (PIC) Operation Abelia identified the pre-recruitment phase as an opportunity to deter persons who use or may be prone to using illicit drugs from applying to join the force. Providing potential applicants with relevant information may deter some unsuitable applicants from applying to join Victoria Police in any capacity. That information would clearly set out expectations on conduct and behaviour, including specific messaging around illicit drug use and details of the organisation's drug testing program.

It is understood the Australian Federal Police (AFP) recruitment program conveys these critical messages over a final weekend, before applicants finalise their employment contracts. IBAC recognises that Victoria Police recruits a significantly larger number of sworn police than the AFP and there may be practical challenges to adopting a similar model; however the approach warrants consideration.

¹¹ As a general description an 'indictable offence' is an offence that is able to be tried in the County or Supreme Courts (although some can be tried in certain circumstances summarily in the Magistrates' Court). Indictable offences are more serious than summary offences (offences that can only be dealt with in the Magistrate's Court) and are punishable by maximum penalties of imprisonment from 5 years to life.

6 Systemic issues and opportunities

Australian Federal Police recruitment program

At the conclusion of all recruitment gateways, the AFP invites all shortlisted sworn policing applicants for individual courses to the AFP College in Canberra for a weekend during which job roles, expectations, values and behavioural and conduct standards – including specific content on illicit drug use – are reiterated.

At the conclusion of this weekend, applicants are invited to finalise their offers of employment. This weekend provides an additional opportunity for applicants to be reminded of the AFP's expectations; consequently, some applicants decide that a policing career is not for them. Further, the weekend provides a final opportunity for the AFP to assess candidates in the college environment, including their behaviour and adherence to values, prior to offers being finalised.

6.4 Drug testing programs should be reviewed

Since 1 July 2014, the Victoria Police Act has enabled Victoria Police to conduct both random drug tests and targeted drug tests in relation to investigations. The Act also allows for drug testing following a critical incident and on 'designated' workplaces.

The Victoria Police Act allows hair samples to be collected and analysed for targeted tests. Unsworn Victoria Police personnel employed under the *Public Administration Act 2004* can also be drug tested in limited circumstances.

IBAC has identified the following issues with the current approach to drug testing and suggests that these issues form part of a broader review by Victoria Police of the effectiveness of the drug testing regime.

6.4.1 Frequency of testing to act as a deterrent

Victoria Police is currently committed to randomly drug testing five per cent of officers including police recruits annually. IBAC has identified that Victoria Police recruits in training are no more likely to be drug tested than other police officers, forming part of the five per cent who are randomly tested each year.

At this rate a Victoria Police officer is likely to be randomly drug tested just once every 20 years. By comparison, New South Wales Police – the only law enforcement agency in Australia larger than Victoria Police – randomly drug tests more than 30 per cent of its sworn officers every year.¹²

During examinations for Operation Apsley, officers who were target tested as part of the investigation were asked whether they had previously been drug tested for any reason in their police careers. Only one replied 'yes'. The officers had between four and 16 years of service. Each was aware that they could be drug tested, but only one had specific knowledge about whether the tests could be conducted randomly or targeted specifically.

¹² NSW Police Force Annual Report 2014–15, p 92.

Other evidence obtained during Operation Apsley highlighted that some officers did actively discuss the possibility of being drug tested; however, it was apparent the low likelihood of actually being tested was not sufficient cause for them to curb their drug use.

For drug testing to be an effective deterrent, the chances of being randomly tested must be increased, in a similar way to random breath testing of motorists for alcohol. To prevent and deter illicit drug use, drug testing must be prominent and visible to recruits, presenting an early reminder that drug use is not accepted within Victoria Police and creating an expectation that they will face regular random tests throughout their careers.

Operation Abelia in NSW

In 2005, the New South Wales PIC released a report titled Operation Abelia. This was the culmination of extensive research and investigations into illicit drug use by New South Wales police officers. At the time New South Wales Police was randomly drug testing three to four percent of its officers, a similar proportion to Victoria Police today.

PIC identified that a key to deterring illicit drug use among police was increasing 'the perceived risk of being caught and being punished by increasing the visibility, publicity, unpredictability and inability to influence the chances of being detected through drug testing'.¹³

6.4.2 An appropriate positive threshold for hair testing is needed

In terms of detecting illicit drug use, hair sampling is substantially superior to urine testing. Due to the way illicit drugs are metabolised in the body, illicit drug residuals and metabolites remain in the hair for many months after use, while urine metabolites for most illicit drugs are excreted within three to five days after use. The Victorian Institute of Forensic Medicine (VIFM), which currently conducts hair testing analysis on behalf of Victoria Police, states that hair testing can provide evidence of both retrospective and/or long-term use of illicit drugs with a detection window of between three days and six months prior to the test being conducted.¹⁴

Since the introduction of hair testing on 1 July 2014, Victoria Police and its testing providers have used varying thresholds to determine what level of detection should constitute a positive test. This issue came to a head with recent cases, including the 2015 PSC drug test of First Constable Y. These cases have raised a pertinent question: when should the detection of an illicit drug result in a positive test result?

Victoria Police advised IBAC there are currently no Australian or New Zealand workplace standards for hair testing. Victoria Police and its drug testing analysis providers have previously established their own limits as to what cut-off levels constitute a positive test. However, recent reviews of police disciplinary cases conducted by the Police Registration and Services Board¹⁵ have resulted in officers being reinstated based on alternative interpretations of drug test results. One reinstatement was partially based on the finding that the threshold adopted by Victoria Police and its previous testing provider was flawed and did not allow sufficient consideration for external factors such as passive exposure to illicit drugs or contamination of the sample.

¹³ *Operation Abelia Summary Report*, September 2005, pp 32–33.

¹⁴ Victorian Institute of Forensic Medicine, <http://www.vifm.org/our-services/forensic-services/forensic-science-services/specialist-hair-drug-testing/>

¹⁵ Police Registration and Services Board review A140/2015 and review A122/2015.

6 Systemic issues and opportunities

In response, in January 2016, Victoria Police and its current testing provider, VIFM, adopted the European workplace hair testing guidelines. These are the only internationally recognised standards for hair testing. However, the recommended positive cut-off levels detailed in the European Guidelines for Workplace Drug and Alcohol Testing in Hair 2015 effectively allow for infrequent or occasional illicit drug use. The positive thresholds under the European guidelines are set at such a level that only frequent use or exposure¹⁶ would result in a positive test result. Low level detections which may indicate occasional or one-off drug use are likely to be reported as negative, thereby allowing officers who have used illicit drugs infrequently to evade detection.

Victoria Police's current illicit drugs policy states that the organisation will not tolerate illicit drug use and that detection of illicit drugs may result in an employee's dismissal. The adoption of the European standards for hair testing essentially makes Victoria Police's stated intolerance of illicit drug use conditional. This means that drug use which is infrequent or occasional will not result in disciplinary action as it will not result in an acknowledged detection. Victoria Police needs to review its threshold for a positive test result and ensure it is consistent with the organisation's policy on illicit drug use by its officers.

6.4.3 Hair sample analysis for drug testing should be expedited

The detection of illicit drug use via urine and hair testing is time critical. A longer period between the time of alleged illicit drug use and testing increases the probability of a lower residual level being detected. This may result in a challengeable detection or a detection below nominated cut-off levels, resulting in a negative test. This delay in testing is recognised by Her Majesty's Inspectorate of Constabulary (UK) who state that 'drugs remain detectable in the body for only a limited time, and it is therefore important to carry out tests as soon as possible after the intelligence that justifies a test has been received'.¹⁷

¹⁶ European Workplace Drug Testing Society, *European guidelines for workplace drug and alcohol testing in hair*, June 2015.

¹⁷ *Integrity matters: An inspection of arrangements to ensure integrity and to provide the capability to tackle corruption in policing*, HMCIC 2015 ISBN: 978-1-78246-697-0.

PSC currently lacks a defined referral process in relation to allegations of illicit drug use or activity.

IBAC's review of the two PSC investigations into alleged illicit drug use by First Constable Y found in both cases a five-month period between receipt of the complaint and a targeted drug test being conducted. Based on the evidence obtained during Operation Yarrowitch, IBAC assessed that had targeted drug tests been approved and conducted in a timely manner – for instance, within five days of the initial complaint – the likelihood of detection would have been significantly higher.

Victoria Police needs to consider adopting an expedited complaint referral process for allegations of illicit drug use, enabling targeted drug tests to be conducted within days of the receipt of the initial complaint. This expedited process would ensure that officers who have consumed illicit drugs do not evade detection or have their results return a lower, challengeable reading, due to a time delay. If complaints that fall into this category contain other criminal allegations, PSC should have the discretion to consider whether this process be followed, taking into account any need for covert investigation in respect of the other allegations.

The benefits of hair testing over urine testing

Drug testing was first introduced to Victoria Police in 2008. Testing was restricted to sworn police and only urine samples were to be furnished.

The introduction of hair testing for targeted drug tests resulted in a significant increase in the rate of positive detections. Drug testing data provided by Victoria Police demonstrates that in the first completed financial year of targeted drug testing using hair sample analysis (2014/15), 45 per cent of officers tested returned positive results. By comparison, between 2008/09 and 2013/14 only 13 per cent of officers who were target tested using urine samples returned positive results.

In the case of urine tests, the metabolites of most illicit drugs remain in a person's urine for a period of three to five days.

6.4.4 A monitored drug testing program should be considered

Victoria Police does not currently have a drug testing process for monitoring officers subject to allegations of illicit drug use.

First Constable Y was the subject of three investigations alleging illicit drug use. If this officer had been required to undergo a monitored program of targeted urine tests every two to three months for a defined period of time following the first and second allegations in 2013 and 2014, their drug use may have been deterred or detected.

As part of the recommended comprehensive review of its illicit drugs framework, Victoria Police should consider developing a monitored drug testing program, consistent with the provisions of sections 88 and 89 of the Victoria Police Act, for officers subject to allegations of illicit drug use and for whom an initial targeted drug test is approved.

6.4.5 Opportunities for officers to avoid drug testing should be addressed

During Operation Apsley, direct evidence was obtained of methods used by officers to avoid drug tests or to avoid testing positive. Most police officers examined during the investigation demonstrated at least a tacit understanding of the timeframes during which drug metabolites were likely to remain in their bodies if drug tested via urine sample (as they would be for a random or designated work unit/function test). Officers who made admissions to using illicit drugs stated they would avoid work in the days immediately after using drugs by either calling in sick or by only using drugs when they had multiple days off.

The analysis of hair samples for targeted drug tests has greatly increased the detection window for targeted testing and police who use illicit drugs are likely to know this (as detailed in section 6.4.3 of this report). For example, during Operation Apsley, IBAC identified a female officer had shaved off her hair to avoid the risk of a positive drug test. This officer denied wilfully using illicit drugs but stated she believed she may have inadvertently ingested an illicit substance and therefore decided to remove her hair to avoid the possibility of testing positive.

The administration of Victoria Police's drug testing regime may itself provide opportunities for avoidance of detection. Evidence obtained during Operation Apsley showed one officer, upon receiving notice their police station was to be drug tested, concocted an urgent medical appointment so as not to be present when the testing took place.

Victoria Police has advised IBAC that the officers in charge of workplaces undergoing either random or designated workplace drug testing are provided between one and seven days' advance notice. If this information is then passed on to staff, officers who have recently used illicit drugs may be able to avoid testing.

IBAC is of the view that managers of workplaces to undergo random testing or designated work unit/function testing should be provided with as little notice as practical to minimise opportunities for drug testing avoidance.

Based on the evidence obtained during Operation Apsley of officers using drugs when they had several days off work, Victoria Police could use the provisions of section 89 of the Victoria Police Act, which allows for subject officers to be recalled to duty for the purpose of being directed to undergo a targeted drug test, as part of developing a more robust drug testing regime.

7 Conclusion and recommendations

7 Conclusion and recommendations

Operations Apsley, Hotham and Yarrowitch investigated allegations of illicit drug use by Victoria Police officers. The allegations were substantiated against eight police officers. Of these officers, two have been charged with offences relating to giving false evidence, misleading or attempting to mislead IBAC, and inciting a witness to mislead IBAC. One officer has been charged with drug offences by Victoria Police. One officer has been dismissed, three have resigned, three are currently suspended and one returned to work after receiving an admonishment notice.

IBAC considers the investigations detailed in this report are likely to represent snapshots only of a more widespread and serious problem for Victoria Police. There is evidence to suggest illicit drug use is a significant concern beyond the individual officers and work groups exposed through IBAC's Operations Apsley, Hotham and Yarrowitch. This conclusion is based on the prevalence of illicit drug use across the broader community, the experience of other police and law enforcement agencies, and Victoria Police's own internal investigations.

This is a serious matter. The extent of illicit drug use raises serious integrity concerns (including exposing officers to the risk of compromise by associating with criminals), the potential to erode community confidence in the authority of Victoria Police to uphold the law, and the health and safety risks created by illicit drug use.

IBAC therefore recommends Victoria Police undertake a review of illicit drug use by its officers, with the objective of strengthening its policies and practices to detect and prevent such conduct. This review should consider the vulnerabilities identified as a result of Operations Apsley, Hotham and Yarrowitch, and examine with reference to contemporary best practice across policing and other industries how Victoria Police's response to illicit drug use by its officers can be improved.

The investigations described in this report highlighted how illicit drug use was normalised amongst some police officers. Despite their training, they chose to engage in conduct that was deeply at odds with the professional and ethical standards expected of them as police officers. It is now incumbent on Victoria Police to ensure it develops and implements a fulsome and effective response to this complex issue.

Victoria Police has welcomed this report, advising that it accepts the recommendations made by IBAC, and is committed to reviewing current policies and practices regarding drug use, recruitment and drug testing.

Finally, IBAC is concerned that similar risks associated with illicit drug use are presenting across other frontline service areas within the Victorian public sector. IBAC is conducting further work in this regard.

7.1 Recommendations

Pursuant to section 159(1) of the IBAC Act, IBAC makes the following recommendations:

Recommendation 1

The Chief Commissioner of Victoria Police to undertake a comprehensive review of the use of illicit drugs by Victoria Police officers, as well as associated policies, systems and practices to inform the development and implementation of a more robust framework to prevent and detect police illicit drug use. This review should consider, among other things:

- the development of clear policy on the use of illicit drugs and the consequences of such use by officers, with reference to contemporary best practice
- strengthening recruitment processes and policies to more effectively identify and manage risks
- the adequacy of the current drug testing regime and how it can be improved
- improving training and communication to clearly and regularly reinforce Victoria Police's position and response to illicit drug use by its officers
- appropriate welfare and support arrangements for officers who appear to be using illicit drugs, including those who voluntarily disclose their use of illicit drugs.

Recommendation 2

The Chief Commissioner of Victoria Police to provide IBAC with a progress report by 30 June 2017, and final report by 30 June 2018 on development and implementation of a more robust framework to prevent and detect police illicit drug use. These reports will be published on IBAC's website.

8 Appendices

Appendix A: Natural justice requirements and responses

To the extent that Victoria Police may be considered to be the subject of adverse or possible adverse findings, it was given a reasonable opportunity to respond to same by being shown a draft of the report. Its response was given due consideration in the final drafting of this report.

In accordance with section 162(2) of the IBAC Act, the response of Victoria Police is reproduced below.

Victoria Police response

We thank IBAC for the opportunity to comment on the draft special report concerning illicit drug use by Victoria Police officers. It is noted that the IBAC report:

- raises serious concerns about illicit drug use by sworn police personnel, and
- highlights potential systematic weaknesses in Victoria Police's approach to this issue.

Victoria Police accepts the recommendations and acknowledges that illicit drug use by Victoria Police personnel is of grave concern. This is taken very seriously by Victoria Police and wherever possible, appropriate action has and will continue to be taken. This includes criminal, discipline and management interventions.

It is also acknowledged that there are various underlying circumstances as to why a police officer may use illicit drugs, including as a coping mechanism for mental stress. Victoria Police currently has policy relating to illicit drug use that emphasises the health and safety risks, however as recommended, additional information and education will need to be considered regarding the integrity concerns raised in the special report.

Since 2014 when the legislation regarding drug testing changed, new policy and practice has needed to be developed around this issue. Some system and practice issues have been identified and there is scope for significant improvement, as highlighted in the IBAC special report. Drug testing within Victoria Police is both taken seriously and dealt with in a timely manner.

Victoria Police welcomes the IBAC special report and its recommendations and commits to reviewing current policies and practices regarding drug use, recruitment, and drug testing. This will include an examination of current education programs to ensure that welfare and support mechanisms are strengthened.

Appendix B: Previous IBAC special reports

Publication date	Report title
November 2013	Special report concerning certain operations in 2013
February 2014	Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information
April 2014	Special report following IBAC's first year of being fully operational
October 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
August 2015	Special report concerning Police Oversight
April 2016	Operation Ord: An investigation into the conduct of officers at the Department of Education and Early Childhood Development
May 2016	Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police
October 2016	Operation Exmouth: An investigation into the conduct of a former senior employee of Places Victoria, Carmine Petrone
November 2016	Operation Ross: An investigation into police conduct in the Ballarat Police Service Area

