



POLICE ASSOCIATION OF SOUTH AUSTRALIA

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Your Ref: A2014/00181
Our Ref: MC:jw:1719/14

26 March 2015

The Hon Bruce Lander QC
Independent Commissioner Against Corruption
GPO Box 11066
ADELAIDE SA 5001

Dear Commissioner

Re: Review of Legislative Schemes – Evaluation of Practices, Policies and Procedures of Police Ombudsman

INTRODUCTION

Thank you for the invitation to make submissions to you regarding the matters you raised in your February 13 correspondence to the Police Association.

In addition to this, I am quite prepared to address any public hearing you might schedule. The matters which are the subject of your intended review are critical to association members and their employment as sworn police officers.

We agree with your assertion that the current police-complaints system involves "duplication, complexity, confusion and delay". But aspects of the current system, including the Police Disciplinary Tribunal, operate successfully.

So, while we advocate certain changes, we do not encourage you to recommend alterations to that which is working successfully in the current system.

Delay is caused chiefly at the investigation stage rather than at the point when, for example, disciplinary charges are laid. Since their creation, the ICAC and OPI have themselves contributed significantly to both duplication and complexity.

To the extent that it is possible, therefore, we advocate strongly that, in "run-of-the-mill" disciplinary matters, the ICAC and OPI should play little part.

We agree with your introductory assertion that “the South Australian community is well served by a professional, ethical and high-calibre police force”.

This statement has not always applied to other states of the Commonwealth. Standing commissions against corruption or commissions to maintain police integrity have existed far longer in other jurisdictions than they have in South Australia.

Valuable lessons have been learnt by virtue of the existence of these bodies.

We contend that the good state of affairs in South Australia is evidence of the success of our existing integrity systems. This gives weight to the argument that they ought not be changed.

LESSONS FROM OTHER JURISDICTIONS

Bodies such as the ICAC and OPI have rarely, if ever, operated without questions as to their effectiveness. Examples of problems certainly exist in other jurisdictions.

Our submissions include our observations of the nature of complaints made about the operations of such bodies in other jurisdictions in the hope of avoiding similar mistakes in South Australia.

The problems which exist, or have existed, in other jurisdictions fall into one or another of two categories.

The first issue complained of, in NSW, was that too many bodies existed to cover the same or similar ground.

Former commissioner, the Hon Jerrold Cripps QC, argued passionately that an independent police integrity commission was justified in NSW, but many more have condemned the model.

In a recent select committee on the conduct and progress of the ombudsman’s Operation Prospect Inquiry, the NSW Legislative Council published the assertion below under its findings and recommendations from page 114 (*Oversight of police*).

“During the inquiry, several participants expressed concerns about the system to oversight police complaints in NSW, including the multiple number of agencies involved in the investigation and oversight of police conduct....” (paragraph 7.18).

Referring to a submission made by the Police Association of NSW, the inquiry noted that “in a system where there are multiple oversight agencies, a matter may be assessed by one or more agencies as not warranting further investigation, only for another agency to launch a full investigation. In such cases, justice is put at risk and important questions are raised about the reasons for the differing decisions and the appropriateness of the decision to investigate where more than one agency declined to do so”.

In the *Review of Oversight of Police Critical Incidents*, the NSW police commissioner said: "oversight agencies collide in a way that was not intended."

Experienced legal practitioner in the area, David Porter, who gave evidence to the inquiry, said that involvement by multiple agencies such as the Crime Commission and Police Integrity Commission showed a "predominant failure of the multiple-agency system..."

The inquiry further noted the evidence of Commissioner Andrew Scipione APM: "I think in terms of the failure here we had three agencies trying to do the work of what should have been a single agency... My view is this should have been a single agency that had carriage of the investigation... It is very difficult when you have got three agencies, with all the goodwill in the world, with one steering the bus, one using the brake, and one using the accelerator. That does not work."

The inquiry made recommendation 6: "That the NSW Government establish a single, well-resourced police oversight body that deals with complaints quickly, fairly and independently."

The second issue is the ever-present problem of who watchdogs the guardians. This was a particular concern in the operation of the Victorian Office of Police Integrity.

Clear abuses occurred in the form of unwarranted investigations into police officers and involved warrants granted without justification. This is the obvious downside to a "one-stop-shop" system.

Irrespective of the New South Wales concerns, the potential evil in concentrating all functions within the same office is the risk of abuse and "noble-cause" corruption.

In a long submission to the Integrity and Anti-Corruption System Review, the Police Association Victoria quoted former Office of Police Integrity assistant director Graham Ashton, who said: "...noble cause corruption is something we focus heavily on at the OPI because it's an often misunderstood concept. Noble cause corruption is the breeding ground from which more endemic corruption occurs and more serious corruption grows out of that. If there's an acceptance that any sort of corruption is acceptable because it has a noble end, that's where corruption gets a foothold and quite often there'll be a cultural acceptance of noble cause corruption but not of what people might regard as a more serious corruption, but there's little understanding that the more serious corruption will generally flow from an environment that's created by the noble cause corruption."

Examples of poor practices by the Victorian OPI include the unsuccessful criminal prosecution in *R v Bolton* and *R v Ashby*.

When complaints were made about the Victorian OPI, the Victorian ombudsman was tasked to investigate. However, in the following year, the Office of the Victorian Ombudsman itself came under investigation.

An inevitable question arose as to who was watchdogging the guardians. Meanwhile, police officers had been unfairly accused and their reputations damaged when, to the

observer, there seemed insufficient accountability on the part of anti-corruption agencies which had engaged in poor and illegal practices.

Similar problems currently exist in the Western Australian Crime and Corruption Commission. However, in light of the immediacy of those matters and current criminal investigations into members of the CCC, it would be improper to do any more than allude to that example.

In Queensland, the Crime and Misconduct Commission found itself investigating all manner of matters which, in any other jurisdiction, would have fallen squarely into what one might regard as the "disciplinary" domain.

Under the former Queensland government, the commission's purview was reduced to that of corruption matters only.

THE POLICE ASSOCIATION OF SOUTH AUSTRALIA POSITION

The Police Association is uncomfortable with the *Independent Commissioner Against Corruption Act* insofar as it allows for the investigation of matters related purely to misconduct, when that misconduct is neither corrupt nor tantamount to maladministration.

These matters ought to be investigated, but we consider that to be the job of the South Australia Police, insofar as investigations might pertain to police officers. We make no submission in respect of other public officers.

We were, and remain, uncomfortable with ICAC fulfilling this function. It is entirely proper for ICAC to play some oversight role but, in our proposed model, the ICAC ought not, in this area, be charged with direct responsibility.

The Police Association position on this subject is not new. Nor has it changed. We expressed similar views in our submission to the Attorney-General by letter of 18 June, 2010 (copy enclosed at Appendix A).

THE ROLE OF THE OMBUDSMAN, POLICE OMBUDSMAN AND COMMISSIONER FOR PUBLIC EMPLOYMENT

Police Association members who might be the subject of complaints do not fall within the jurisdiction of the Commissioner for Public Employment. Our interaction with the South Australian Ombudsman is minimal. We cannot usefully add to the remarks in your discussion paper regarding those offices and therefore confine our submissions to the Office of Police Ombudsman.

Our view is that the Office of Police Ombudsman is now largely pointless.

Any complaint made to the police ombudsman is investigated by police.

Furthermore, acting on a recommendation made by the police ombudsman is, and remains, a matter in the discretion of the Commissioner of Police.

With the introduction of the Office of Public Integrity, it would seem pointless to retain the Office of Police Ombudsman.

POLICE ASSOCIATION OF SOUTH AUSTRALIA PREFERRED MODEL

How then should a successful model look and what aspects of the current system should remain?

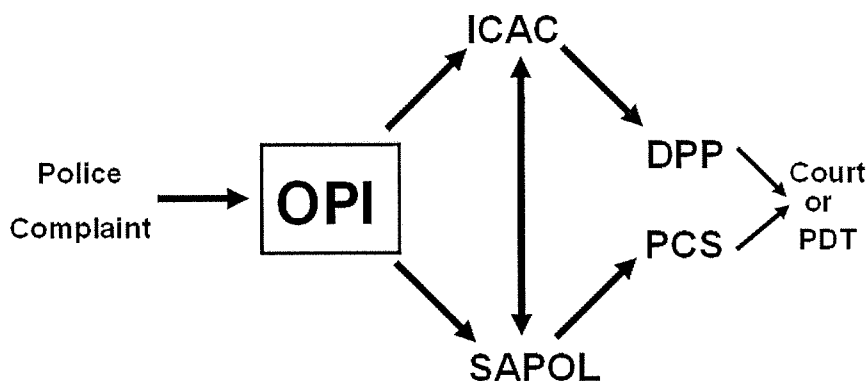
First, the existing scheme of discipline is enshrined in legislation in *The Police Act* and *Police (Complaints and Disciplinary Proceedings) Act*. It has existed in this way for many years, because both the South Australia Police and Police Association value its fairness, impartiality and success.

Unlike other jurisdictions employing an administrative approach, South Australia has avoided the common complaints of a lack of procedural fairness, transparency and a just outcome.

When a police officer faces significant penalties – including potential termination, suspension, demotion and other long-term financial penalties – the assurance of a fair evidentiary hearing before a properly specialized independent magistrate is a system which should without question remain.

The association sees nothing wrong with an evidence-based adversarial model when dealing with an accused police officer's rights and entitlements, and believes the South Australia Police shares that view. To do less is to demean the sworn office, discourage police and, long-term, erode the very high quality of candidate who is attracted to the police occupation in South Australia.

On the other hand, we do not contend that the current system of complaint might not be improved. To that end, the model that we advance is this.



Legend:

PCS – Professional Conduct Section

PDT – Police Disciplinary Tribunal

A police complaint is made to an independent Office of Public Integrity. The OPI determines whether the matter pertains to corruption or maladministration, as distinct from an ordinary matter of misconduct.

Should the matter have the characteristics of corruption or maladministration in public office, it is to be referred to the ICAC. Otherwise the matter is referred to SAPOL for investigation. At any time during an investigation, SAPOL may refer a matter to the ICAC and vice versa.

As to disciplinary/misconduct matters, the current system of prosecution and the Police Disciplinary Tribunal ought to be retained for the reasons set out above and in the written advice of Mrs Shaw QC dated 17 March, 2015 (attached at Appendix B).

FUNDING

Finally, as with other jurisdictions, immediate and serious consideration must be given to funding legal representation for police officers who are summonsed before the ICAC for examination, particularly if the matter arises out of or in the course of duty.

Clearly, the resources of the Police Association should not be eroded owing to the creation of an ICAC. Our argument to the Attorney-General regarding that point is attached at Appendix C.

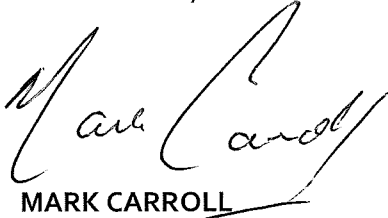
ANSWERS TO SPECIFIC QUESTIONS

In answer to the specific questions contained on page 12 of your correspondence:

1. There are too many agencies owing to the creation of the OPI and ICAC.
2. The role of each agency ought to turn on the nature of the matter complained of.
3. Yes, subject to our earlier remarks.
4. By preserving the existing disciplinary framework and limiting the role of the ICAC and OPI when a matter is one of misconduct not involving corruption or maladministration in public office. Ultimately this is a judgement of common sense.
5. There should be no role of an oversight agency in determining penalties arising from misconduct. That is squarely a matter for the Commissioner of Police. The role of the oversight agency should be restricted to a recommendation to prosecute only.
6. We refer you to our preferred model.

7. The key to reducing delay is in timely investigation and the early correct delineation of the conduct alleged.

Yours sincerely



MARK CARROLL
PRESIDENT

Enc.

Appendix A



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18 June 2010

FAXED
21.6.10

The Hon John Rau MP
Attorney-General
GPO Box 464
ADELAIDE SA 5001

Dear Attorney-General

I write in response to your letter of 12 May 2010 whereby you provide the association the opportunity to comment on existing public integrity structures in South Australia.

The association appreciates the opportunity to contribute by way of a submission and provides the following:

Context

As you are aware, police officers are highly scrutinized and regulated. Police perform a unique role in society and owing to their duties can attract many and varied complaints, many of which prove unsubstantiated. A police officer must, when lawfully directed to do so, answer questions about any subject pertaining not only to on-duty but also to off-duty conduct. This applies to no other category of employment in the wider South Australian public sector.

The conduct of police officers is governed by the *Police Act 1998* and *Police Regulations 1999*. A police officer charged with a breach of the police code of conduct may elect to have the charge heard and determined by the independent Police Disciplinary Tribunal in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

Police (Complaints and Disciplinary Proceedings) Act

The Act provides for investigation of complaints made in respect of members of the police force; constitutes the Police Disciplinary Tribunal; and provides for the appointment of a Police Complaints Authority. Section 48 of the Act provides specific secrecy provisions. Whilst the secrecy provisions are often the subject of negative media comment the association supports these provisions. The publication of details of a wholly, or partly, unsubstantiated complaint would be unfair to a police officer and to a complainant. The policy of "secrecy" under the Act is a deliberate one, sanctioned by Parliament. It provides, amongst other things, reassurance to any potential complainants that their concerns will be dealt with the utmost confidentiality, and ordinarily well away from the glare of media attention.

As it is a breach of the code of conduct for a police officer to disobey an order in failing to answer questions of a senior officer or member of the Internal Investigations Section, the association is concerned that such

involuntary statements, made under compulsion, could be subject to disclosure or publication. Legislation should continue to prevent this from occurring. To this end, the *Police (Complaints and Disciplinary Proceedings) Act* has a dual purpose in that it provides for an avenue for complaints against police to be independently considered by the Police Complaints Authority, whilst maintaining confidentiality for both police and complainants.

The *Police (Complaints and Disciplinary Proceedings) Act* was last comprehensively reviewed by former district court judge Stevens (in 1998) which resulted in amendment to the Act in accordance with the report and recommendations. The Act was fundamentally amended to reduce the burden of proof required in the Police Disciplinary Tribunal from "beyond reasonable doubt" to "on the balance of probabilities". This was a major change to the Act.

The Police Disciplinary Tribunal

Proceedings before the Police Disciplinary Tribunal are confidential.

This should always be the case. There exist strong public-interest reasons why complaints should remain confidential. The Police Disciplinary Tribunal is essentially an employment tribunal which deals independently with employer-employee discipline issues.

The operation of Section 40 of the Act pertaining to proceedings before the Police Disciplinary Tribunal has been effective and should remain.

There exists in Section 40(7) of the Act a power of the tribunal to permit the Police Complaints Authority or his or her nominees and "any other person (including members of the public) to be present at proceedings of the tribunal". It is, of course, a matter at the discretion of the tribunal. However, the association holds the view that that section is adequate, ought to remain in the Act unamended, and currently provides the tribunal with proper and appropriate powers to permit third parties to be present during the proceedings, where the tribunal, in its discretion, regards it as necessary and desirable.

Definition of Corruption

In our view the question that you have posed is central to your deliberations of whether the current public integrity structures in South Australia are sufficient or, as you have reflected in your ministerial statement on the subject of public integrity dated 6 May 2010, an Independent Commission against Corruption (ICAC) is required.

In defining corruption it is important to ensure that criminality and issues of police discipline are not linked. The concern for the Police Association of South Australia and its members is to ensure that if an ICAC is eventually established either nationally or as a state commission, then conduct by police that would ordinarily be considered to be in breach of the Code of Conduct pursuant to the *Police Act*, should only be the subject of proceedings before an ICAC if the conduct under consideration falls within a legislated definition of corruption that deals with dishonest activity arising out of public office or public service.

The SAPOL Anti-Corruption Branch (ACB) operates according to directions issued by the Minister to the Commissioner pursuant to the *Police Act 1998*. Corruption is defined in the Minister's directions. That definition appears to operate in a way that does not confuse police discipline with dishonest conduct of a corrupt kind. The current public integrity structures as applicable to police in South Australia appear adequate, and there is no evidence of endemic corruption in the South Australia Police. Thus we are concerned that matters that could properly be dealt with within the existing public integrity structures in South Australia would unnecessarily find their way before an ICAC.

Issues of practicality also need to be considered. An ICAC could not consider some 1200 complaints against police lodged per year as well as investigate corruption in all areas involving public officials.

The Appropriate Delineation of Jurisdictional Boundaries between the Individual Bodies

In the context of the Police Complaints Authority, no complaint made to the Police Complaints Authority is concluded by the Commissioner of Police without reference to the Police Complaints Authority. If a breach of the Code of Conduct pursuant to the *Police Act* is prosecuted it is done so before the independent Police Disciplinary Tribunal. If criminality is alleged it is prosecuted by the Director of Public Prosecutions and determined by the independent judiciary and criminal justice system.

Oversight of the System

In relation to police complaints there is currently, and as far as we are aware, no complaint that there is a lack of oversight of the present system. Current structures are legislatively based and require reporting procedures to parliament. Outcomes of Disciplinary Tribunal matters are reported in the *Police Gazette* on a quarterly basis in an anonymous way. Disciplinary procedures are based on a strict punitive model. A disadvantage of the present system may be that it lacks an educative function. Further, in our view, the time taken to determine whether to lay proceedings before the Police Disciplinary Tribunal takes too long and should be improved. Once a matter is before the Police Disciplinary Tribunal and the timetable is controlled by the presiding officer, a magistrate, inappropriate delay is rare.

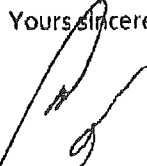
In relation to the Anti-Corruption Branch, the Commissioner is required to report every six months to the Minister on the operations of the Branch. The Branch is audited externally by a person (not being a member of South Australia Police or the public service) appointed by the Governor.

Summary

Against the background of your ministerial statement of 6 May 2010, we have interpreted your correspondence of 12 May 2010 to be an invitation to comment both in respect of the existing public integrity structures in South Australia as well as to remark upon the establishment of an ICAC.

The current system provides the necessary protections for complainants and police. Police conduct is closely scrutinised by existing legislation as well as the independent office of the Police Complaints Authority and the Police Disciplinary Tribunal. Unlike any other group in the workforce, police are compelled to answer questions to a member of the Internal Investigations Section established pursuant to the *Police (Complaints and Disciplinary Proceedings) Act*. There is no evidence that corruption of police within SAPOL is prevalent. Occasional isolated examples of dishonesty may occur, but there is no culture of corruption.

Yours sincerely



MARK CARROLL
PRESIDENT


Appendix B

MARIE SHAW QC

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17 March 2015

The Secretary
Police Association of South Australia
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Dear Sirs

I am asked to advise of the potential impact of the proposal of the State Government to incorporate the Police Disciplinary Tribunal ("PDT") into the new South Australian Civil Administrative Tribunal ("SACAT") that is proposed to absorb many current administrative bodies. For the purpose of my consideration, I have obtained information about the current operation of the PDT and I have had the opportunity to have regard to Hansard, in particular the Second Reading explanation referred to by the Honorable Minister Gail Gago on 12 September 2013 in the Legislative Council.

The explanation provides information as to the mischief or shortcomings of the current administrative landscape that the new SACAT is intended to address.

The objectives of the legislation establishing SACAT are identified as follows:

1. To be accessible to all, especially to those with special needs;
2. To ensure efficient and cost effective processes for all parties involved;
3. To act with as little formality and technicality as possible;
4. To be flexible in the way in which it conducts its business;
5. To be transparent and accountable.

The mischief the SACAT is intended to address is said to include the complication arising out of the fact that each of the existing tribunals or bodies have their own structures and processes, which results in inconsistency and unnecessary duplication. This is said to contribute to "*creating an inefficient and confusing barrier to members of the public attempting to enforce their rights*".

MARIE SHAW QC

The first point of difference between the PDT and other existing administrative bodies is that the PDT is not a body in respect of which citizens are a party or where rights of citizens are sought to be asserted. Rather, its role is to adjudicate upon complaints that come before it under the *Police (Complaints and Disciplinary Proceedings) Act 1985* ("the Act") and to determine whether a police officer has breached the Act or the *Police Act 1998*. This means that many of the concerns that are said to be the reason for the absorption of the bodies into the new SACAT do not apply to the PDT.

That is, the PDT is not a body in respect of which accessibility or special needs impacting on accessibility are relevant. In that respect, quite properly, any and every complaint against police is the subject of an investigation and may or may not result in the need for a hearing. In the same way, there is no issue about cost effectiveness or procedural complexities. Police officers are well trained in the processes and are not prejudiced in that respect. Another citizen who needs to grapple with the process does not control the case against a police officer.

Indeed, such is the importance of allegations against police in so far as the potential impact on a career is concerned, and such is the range of complaints that can be made, it must be prudent to maintain a serious approach to the conduct of the proceedings. There is no issue of a need for greater flexibility about the way the PDT conducts its business. Police officers are regarded as professional witnesses and by occupation, are required to act with due formality adhering to a hierarchal structure at all times such that a level of informality is simply not appropriate. Their role is too serious. Any allegation and its impact on their career and the standing of police must remain a matter of utmost seriousness.

In so far as the goal of the establishment of the new SACAT is to address the inconsistency of structure and process that currently exists amongst administrative bodies, this does not apply to police and the PDT. Disciplinary proceedings against police are simply not comparable to the function of any other administrative body.

Further, issues of transparency and accountability are provided for by the legislation itself.

The PDT, its investigations and hearings must always be alive to ensuring that confidentiality is the norm. That is because every investigation of police that explores their powers or their conduct is likely to include evidence or information about police practices that for very good reasons, are invariably the subject of public interest immunity claims in order to preserve their ability to police effectively. That is, it is critical that police operations and police practices remain confidential so that their efforts to gather evidence and identify alleged offenders are not thwarted by the release of such information into the public domain.

MARIE SHAW QC

Police are dealing with very sensitive matters on a daily basis, both in relation to ongoing criminal enquiries but also in relation to more serious security issues. It is in the public interest that, where required, transparency gives way to ensuring that effective police operations are not put at risk.

This need for confidentiality of police operations and procedures necessarily would result in inconsistency between the way hearings relating to allegations against serving police officers are dealt with as compared to other matters that might be the subject of the new SACAT's jurisdiction.

That is, the Act and the *Police Act 1998* specifically recognise the need for a disciplinary structure that is able to address the unique responsibilities that police have and their integral role in protecting the public both in community policing and, perhaps more importantly, investigating crime and bringing alleged offenders into the criminal justice system. Parliament has determined that these goals are fostered before the PDT, for example, by the automatic suppression of a police officer's identity in relation to proceedings under the Act.

It is important to recognise that the members represented by the Police Association of South Australia ("PASA") have confidence in the present process of dealing with disciplinary matters. In addition, I am instructed that the Commissioner of Police does not believe that the PDT should be absorbed into the SACAT.

The history of the PDT demonstrates that it has neither been unwieldy, inefficient, expensive or inconsistent in its processes and its outcomes. There is no suggestion that the present processes do not work or have failed in any respect. Since December 2011, only three matters have proceeded to trial. 34 have been withdrawn. 64 have resolved by way of guilty pleas.

It is in the public interest that serving police officers are able to carry out their onerous responsibilities with the confidence that the current system and its disciplinary body has the experience and history of giving them a fair hearing.

In conclusion: unlike other tribunals that are to be abolished or merged or their costs reduced by the new structure, the disciplinary process for police officers is not an appropriate vehicle to seek to achieve such cost savings, for the following reasons:

- a. Police officers are an essential part of the community performing the unique role of ensuring that not only the public have confidence in the police force but also that there is a perception that police will put their personal safety second to that of a member of the public if the need

MARIE SHAW QC

arose.

- b. The current PDT is the subject of careful legislation that has regard to the particular role that police have in our democracy both in addressing the most serious security risks and policing the whole range of regulatory and serious offending.
- c. The current system has been able to operate effectively in accordance with the Act under which it operates for a very long time without any suggestion that there is a need for reform. It is contrary to the public interest to abandon a system that has not been shown to be wanting, and to replace it with one in respect of which the police force would lack confidence and which is established for purposes inconsistent with the peculiar operational needs of police and the public interest.

In my opinion, there is a real risk that if the police lack confidence in their disciplinary process, it may be reflected in the performance of their duties, and therefore impact adversely on effective law enforcement and public protection. In addition, if the goal is transparency, then effective policing and public safety might well be placed at risk.

Should you require any further information please do not hesitate to contact me.

Kind regards,


Marie Shaw QC

Liability limited by a scheme approved under the professional standards legislation

Appendix C



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Ref : MC:jw:0619/13

9 October 2014

The Hon J Rau MP LLB
Attorney-General
GPO Box 464
ADELAIDE SA 5001

Dear Attorney

Re: Representation of police officers appearing at the ICAC

The office of the Independent Commissioner Against Corruption began operations a year ago. The Police Association therefore considers it timely to reflect on the impact the Commissioner's office has had on the association and its members.

Clearly, the secrecy provisions of the relevant legislation prevent us from detailing specific cases. But, this year, we have encountered a funding anomaly on which we would appreciate your intervention.

As police officers, our members constitute a class of people who might find themselves the subject of an ICAC schedule 2 examination. They could otherwise receive summonses to appear at such examination when they are not the subject officer.

The summons might or might not indicate whether the particular member is a subject officer, or the subject matter of the investigation.

A member who is not a subject officer could become a subject officer during the course of an investigation given the Commissioner's power to self-refer matters pursuant to section 23(2) of the act.

Given the seriousness of matters the commissioner is likely to investigate, and the act's secrecy provisions, the act provides that witnesses may be legally represented whether or not they are subject officers.

This approach is consistent with other similar commissions across Australia and inquisitorial judicial proceedings generally.

In other proceedings (criminal hearings, coronial inquests, and royal commissions) with which this association and your office are familiar, applications for reimbursement of the costs of legal representation have been made to you through such arrangements as Legal Bulletin 20, and *ex gratia* payments.

However, the secrecy provisions of the ICAC Act would not usually permit the making of an application to you for reimbursement of legal expenses, whether a member or this organization initially pays those expenses in line with protocols we have established in consultation with the Commissioner for the disclosure of the existence of the summons to the Police Association.

We would suggest that it is proper that our members are indemnified for legal costs incurred as a result of receiving summonses to schedule 2 examinations.

This is particularly so because the reasons they might be summonsed will relate to their employment as police officers, and they will not often know what the investigation relates to or whether they are subject officers.

A comparison of similar commissions across Australia reveals how the different jurisdictions have identified and addressed the issue.

New South Wales

The NSW government established the Legal Representation Office (LRO) to provide independent legal assistance to people in their dealings with the NSW Police Integrity Commission (PIC) and the NSW Independent Commission Against Corruption (ICAC).

The LRO provides grants of legal assistance to police officers who have received summonses to attend the commission.

Applicants can specify their choice of legal representation or are otherwise assigned representation by the LRO from a panel.

The grants are not means-tested, and it is a condition of the grant that the applicant repay the amount of the grant in the event that he or she is convicted of an indictable offence in a superior court as a result of the investigation.

Victoria

Section 151 of the *Independent Broad-based Anti-Corruption Commission (IBAC) Act* allows recipients of summonses to apply to the secretary to the Department of Justice for legal assistance funding.

The applicant nominates the legal practitioner of his or her choosing for the grant, although the IBAC may veto the funding of that legal representative in the event the appointment would prejudice an investigation.

Western Australia

Recipients of summonses from the Crime and Conduct Commission have a right to legal assistance funding from the Legal Services Commission of Western Australia.

The Legal Services Commission makes and assesses applications and disclosure of the existence of a summons is permitted to the Legal Services Commission for the purpose of making applications.

The grants of funding are not means-tested and the applicant may nominate his or her legal representative provided that that legal representative is on the panel of approved special legal aid providers maintained by the Legal Services Commission.

Proposal

We suggest that South Australia enact a scheme similar to those of comparable jurisdictions so as to allow our members who have received summonses from the ICAC to apply for legal assistance funding.

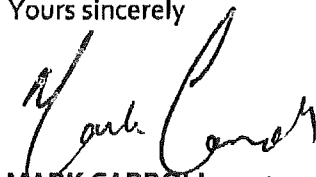
We invite discussion on the form of this scheme but suggest that it should:

- Not be means-tested.
- Be a right extended to recipients of summonses whether or not they are known subject officers.
- Be at arm's length from the ICAC.
- Allow applicants to nominate their choice of legal representation and, failing that, refer an applicant to a panel legal practitioner.

To safeguard the integrity of the scheme, we would not oppose a NSW-style approach that would permit it to recover legal expenses paid when an applicant is subsequently convicted of an indictable offence in a superior court in respect of the matter being investigated.

We propose a meeting to discuss this issue further.

Yours sincerely



MARK CARROLL
PRESIDENT

Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

THE POLICE ASSOCIATION VICTORIA SUBMISSION

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Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

1. Introduction

- 1.1 This submission is provided by the Police Association Victoria (**the Association**) on behalf of its members to assist the Public Sector Standards Commissioner in the conduct of a review into the effectiveness of Victoria's Integrity and Anti-Corruption System (**the Review**).

Police Association Victoria

- 1.2 In excess of 11,000 sworn members of the Victoria Police Force (over 98% of all police officers) are members of the Association. The Association liaises with senior management and command levels of the Victoria Police Force (**the Police Force**), including the Chief Commissioner, concerning the welfare and support of its members and the protection of their rights. Its role includes the provision of legal advice and representation to police in relation to matters arising out of their duties and responsibilities as members of the Police Force.
- 1.3 The Association is in a unique position to assist the Review. The Association has observed the operations of the Office of Police Integrity since its introduction and subsequent re-establishment under the *Police Integrity Act 2008* (**the Act**). The Association has received feedback from its members regarding the operation of the OPI and Victoria's integrity and anti-corruption system generally. The Association is also responsible for assisting its members who are the subject of investigation.

Victoria's anti-corruption arrangements

- 1.4 The Association believes that significant reforms are needed to ensure that a comprehensive, fair and accountable anti-corruption system is established in Victoria. The current arrangements are incomplete and fragmented. Anti-corruption powers at present are only exercised by the OPI against Victoria Police employees.

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- 1.5 The Association has been a strong advocate for comprehensive corruption reform. The existing measures represent a patchwork quilt of disparate bodies with varying powers and limited jurisdictions. The resulting treatment of public sector employees is selective and inconsistent.
- 1.6 At one end of the spectrum, members of Victoria Police are the subject of a dedicated corruption body with draconian powers. At the other, the majority of the public sector (including politicians and other bearers of high office) are not answerable to any dedicated watchdog at all.

The current system – a flawed model

- 1.7 The Association has specific concerns regarding the current system and its ability to adequately address corruption in Victoria. The Association believes that urgent reform is required, in particular, in relation to:-
- 1.7.1 Oversight of the OPI;
 - 1.7.2 Public examinations by the OPI;
 - 1.7.3 The excessive and unnecessary protection of OPI staff in relation to civil and criminal liability;
 - 1.7.4 The relationship between the OPI, the Victorian Ombudsman and Victoria Police and the ability of these organisations to deal independently and comprehensively with corruption in Victoria;
 - 1.7.5 The need for the establishment of a broad-based Anti-Corruption Commission capable of independently addressing all complaints of serious misconduct against public officials.

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The need for a new system

- 1.8 The Association submits that the only means of achieving an efficient and effective integrity and anti-corruption system in Victoria is to establish a broad-based Anti-Corruption Commission with the power to investigate complaints of serious misconduct and criminal offending across the entire public sector. The limited focus of the OPI makes second-class citizens of serving police officers. The OPI focuses solely on police misconduct to the detriment of exposing corruption throughout the public sector. Until such time as the current system is replaced with a dedicated and independent Anti-Corruption Commission, Victoria will continue to labour under a flawed model incapable of fully investigating serious misconduct by all public officials.

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2. Oversight by Special Investigations Monitor

Background

- 2.1 Section 114 of the Act empowers the Special Investigations Monitor (SIM) with an oversight role in relation to the OPI. The oversight powers contained in Part 5 of the Act are manifestly inadequate.

No adequate complaint process

- 2.2 The SIM may only investigate a complaint made by a person who has attended an examination before the OPI where the complaint is made within 90 days after the person was excused from attendance and the person was not afforded adequate opportunity to convey his or her appreciation of the relevant factors to the Director.¹
- 2.3 There is no provision for a complaint to be made to the SIM generally regarding the conduct of the OPI and its staff.
- 2.4 The need for an independent complaint process is best illustrated by example.

OPI v Bolton

- 2.5 The case of *OPI v Bolton*² was heard before His Honour Mr Gurvich M. between 28 April and 5 May 2008 in the Melbourne Magistrates' Court.
- 2.6 The facts in *OPI v Bolton* demonstrate the need for the SIM to be empowered to receive and investigate complaints regarding the conduct of the OPI and its staff. It is evident from the outcome in *OPI v Bolton* that the conduct of the OPI warranted investigation:-

¹ s.118, *Police Integrity Act 2008*

² See Schedule 1 – Executive Summary of proceedings in *OPI v Bolton*, Melbourne Magistrates' Court, 28 April to 5 May 2008.

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- 2.6.1 OPI staff and investigators repeatedly denied, in writing and on oath, the existence of audio recordings subpoenaed by the defence which were important to Sergeant Bolton's defence;
- 2.6.2 The Presiding Magistrate observed that if the audio recordings existed, they were relevant and should be disclosed;
- 2.6.3 An OPI Investigator gave sworn evidence at the hearing that no such audio recordings were made;
- 2.6.4 The evidence of the OPI Investigator was subsequently contradicted by the evidence of three other witnesses who all swore that their interviews with the OPI had been audio recorded. The OPI investigator was recalled and changed her earlier evidence (having heard the conflicting evidence of the other witnesses) swearing *"there's a very strong possibility that our interview was recorded..."*
- 2.6.5 The audio recordings were not produced at the hearing despite evidence of their existence. Some of these recordings are still missing and have never been accounted for.

Bolton's complaint – A history of inaction

- 2.7 The charges brought by the OPI were dismissed and costs were awarded in favour of Sergeant Bolton on 5 May 2008. On 20 June 2008, Sergeant Bolton lodged a formal complaint with the SIM.³ The history of that complaint can be summarised as follows:-

14 July 2008	The SIM wrote to Sergeant Bolton acknowledging his complaint and advising he has no power under the Act to investigate the matter. ⁴ The SIM forwarded a copy of the complaint and his reply to both Mr Michael Strong, Director, Police Integrity and Mr George Brouwer, State
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³ Schedule 2 – Letter from Mr Carl Bolton to the SIM dated 20 June 2008

⁴ Schedule 2 – Letter from the SIM to Mr Carl Bolton dated 14 July 2008

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Ombudsman, for their consideration. While noting Sergeant Bolton's concerns relating to the destruction of audio recordings, perjury, attempting to pervert the course of justice and misconduct in public office by OPI officers, the SIM confirmed that he was unable to assist due to his limited powers under the Act.

22 July 2008 The Victorian Ombudsman, George Brouwer, wrote to Sergeant Bolton acknowledging receipt of a copy of the complaint provided to him by the SIM.⁵ The Ombudsman stated that he would be making enquiries concerning the alleged conduct of the OPI officers. It should be noted that the Victorian Ombudsman, Mr Brouwer, was the former Director of Police Integrity at the OPI prior to the appointment of Mr Michael Strong and was therefore the former superior to the OPI officers now under investigation.

5 November 2008 Deputy Ombudsman John Taylor wrote to Sergeant Bolton.⁶ Mr Taylor confirmed that four digital audio recordings had now been located on the personal drive of one of the OPI officers who had since left the organisation. These recordings constituted interviews with witnesses for the prosecution in Mr Bolton's case. The discovery of these recordings was in direct conflict with the sworn evidence of the OPI investigator who had sworn during the course of the hearing that no such audio recordings were made. These recordings were not disclosed to Sergeant Bolton by the OPI despite written requests and the service of subpoenas. Mr Taylor concluded:-

"There is no evidence to suggest that any other recordings exist or have been disposed of".

⁵ Schedule 2 – Letter from Mr George Brouwer, Ombudsman to Mr Carl Bolton dated 22 July 2008

⁶ Schedule 2 – Letter from Mr John Taylor, Deputy Ombudsman, to Mr Carl Bolton dated 5 November 2008

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This finding was made notwithstanding the fact that the diary notes of the Informant referred to additional recorded interviews with two other prosecution witnesses; Hill and Orsolic. Both Hill and Orsolic gave sworn evidence that their interviews with the OPI were audio recorded. This evidence was apparently not considered by Mr Taylor in reaching his conclusions. In relation to the filing of criminal charges against the OPI officers, Mr Taylor responded, somewhat unhelpfully:-

"This office does not provide legal advice or conduct criminal proceedings and hence, you may wish to seek your own advice on this matter."

- | | |
|------------------|--|
| 24 November 2008 | As a consequence of both the SIM and the Victorian Ombudsman lacking any adequate jurisdiction, Sergeant Bolton referred his complaint to the then Chief Commissioner, Christine Nixon. ⁷ Receipt of the complaint by the Office of the Chief Commissioner was acknowledged on 27 November 2008. The matter was then referred to Assistant Commissioner ESD, Luke Cornelius, in March 2009. In May 2009, Assistant Commissioner Cornelius referred the complaint to Superintendent Lisa McMeeken. |
| 26 November 2008 | Sergeant Bolton wrote to the OPI requesting copies of the audio recordings located as a result of the Ombudsman's enquiries. ⁸ By letter dated 15 December 2008, the OPI refused to provide the recordings to Sergeant Bolton. ⁹ The OPI has never responded to Mr Bolton's substantive complaint. |
| January 2010 | Mr Bolton was advised by the Ethical Standards Department that the matter can be taken no further. Mr Bolton remains unaware whether his allegations of destruction of audio recordings, perjury, misconduct in |

⁷ Schedule 2 – Letter from Mr Carl Bolton to Chief Commissioner Nixon dated 24 November 2008

⁸ Schedule 2 – Letter from Mr Carl Bolton to OPI dated 26 November 2008

⁹ Schedule 2 – Letter from OPI to Mr Carl Bolton dated 15 December 2008

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public office and attempting to pervert the course of justice have actually been put to the OPI officers involved or if they have been the subject of any formal interview or enquiry. The missing audio recordings have never been found.

Breach of Charter rights

- 2.8 In *Atlan v United Kingdom*¹⁰, the prosecution repeatedly denied the existence of undisclosed material and failed to inform the Judge of the true position when it appeared that there had been undisclosed material directly bearing on the defence advanced at trial. This was found to constitute a violation of Article 6(1) (the right to a fair trial).¹¹
- 2.9 Notwithstanding the facts in *OPI v Bolton* give rise to concerns of serious criminal misconduct and the violation of S.24(1) of the Charter, there is presently no means by which Sergeant Bolton can pursue a formal complaint to the SIM. The Act does not permit it. To date, no adequate investigation has been conducted in relation to the serious allegations of misconduct raised by Sergeant Bolton against the OPI. The current system is simply unable to deal with the matter.

Who guards the guardians?

- 2.10 The former Assistant Director, Office of Police Integrity, Graham Ashton, was interviewed by Liz Jackson on the ABC's Four Corners program on 12 February 2007. Mr Ashton made the following important observations:-

"...noble cause corruption is something we focus heavily on at the OPI because it's an often misunderstood concept. Noble cause corruption is the breeding ground from which more endemic corruption occurs and more serious corruption grows out of that. If there's an acceptance that any sort

¹⁰ (2001) 34 EHRR 833

¹¹ See s.24(1), *Charter of Human Rights and Responsibilities Act 2006*

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*of corruption is acceptable because it has a noble end, that's where corruption gets a foothold and quite often there'll be a cultural acceptance of noble cause corruption but not of what people might regard as a more serious corruption, but there's little understanding that the more serious corruption will generally flow from an environment that's created by the noble cause corruption."*¹²

Mr Ashton went on to say with respect to the Armed Offenders Squad:-

*"So I think if you find that here you've got an elite squad that should be staffed by professionals doing a difficult job, you're entitled to expect, I think, that the highest ethical standards are conducted in that squad, because if they're investigating serious crimes the last thing the community wants is for prosecutions to be put at risk by slipshod investigations or by shoddy police work."*¹³

2.11 Mr Ashton's comments are of equal application to the operations of the OPI. The community is entitled to expect the OPI to conduct itself in a professional manner to the highest ethical standards. The concerns identified in *OPI v Bolton* relating to the collection of relevant audio recorded evidence, the apparent destruction of that evidence, the initial denial of the existence of such evidence on oath and the subsequent admission that such evidence did exist despite previous denials to the contrary, highlights the need for a fully independent body capable of oversight and review of the actions of the OPI and its staff. The SIM and the Ombudsman are not empowered to discharge this function.

2.12 The SIM must be capable of entertaining complaints relating to any aspect of the operations of the OPI and have the power to fully investigate. The coercive powers and secrecy provisions afforded to the OPI are unprecedented in Victoria. It is not in the public interest for the exercise of such powers to go unchecked without a formal

¹² "Four Corners", ABC, 12 February 2007

¹³ "Four Corners", ABC, 12 February 2007

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process for complaint, investigation and review. As much as it is important for the public to have confidence in its police force, it is just as important for the public and members of Victoria Police to have confidence in the operations of the OPI. Aggrieved parties must have the opportunity to have their complaints relating to the conduct of the OPI heard and investigated in a thorough and expeditious manner.

- 2.13 Only a few OPI prosecutions have proceeded to hearing to date. A significant proportion have failed. The fact that the problems identified in *OPI v Bolton* have arisen so early in the active life of the OPI reinforces the need for formal measures to deal with complaints against the OPI on a comprehensive basis.

Protected document provisions

- 2.14 The material non-disclosure by the OPI of evidence relevant to the defence was only exposed in *OPI v Bolton* through the use of a subpoena. The introduction of the protected document provisions contained in sections 104 to 108 of the Act subsequent to the decision in *OPI v Bolton* may prevent the future detection of relevant material not disclosed to the defence. Such non-disclosure is capable of constituting a violation of an accused person's right to a fair trial (as found in *Atlan v United Kingdom*).¹⁴

A comparison – Anti-corruption bodies Interstate and in the Commonwealth

- 2.15 A comparison with the oversight and review provisions of other bodies in Australia that enjoy similar powers is illustrative of the lack of adequate oversight of the OPI.

NSW

- 2.16 In New South Wales, Part 7 of the *Independent Commission Against Corruption Act* 1988 establishes a Parliamentary Joint Committee 'to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions' (ss 64 (1)(a)). The Joint Committee is not empowered to investigate

¹⁴ (2001) 34 EHRR 833

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particular matters (ss 64 (2)). The Inspector of the ICAC is however empowered to deal with complaints of any impropriety or misconduct on the part of the Commission or officers of the Commission (Part 5A). Similar provisions have been incorporated in the *Police Integrity Commission Act 1996* (Parts 6 and 7).

Queensland

- 2.17 In Queensland, Chapter 6 Division 1 of Part 4 of the *Crime and Misconduct Act 2001* establishes the Office of Parliamentary Commissioner. Sub-section 314 (2)(b) empowers the Commissioner to investigate complaints about the conduct or activities of the Crimes and Misconduct Commission as and when required by the Parliamentary Committee. The Parliamentary Commissioner has power to conduct a coercive hearing to obtain information when authorised by the Parliamentary Committee (s 318). The Act also provides power for the Governor in Council to appoint a Public Interest Monitor to monitor applications for the use of surveillance warrants and covert search warrants (Chapter 6, Part 5 of the Act).

Commonwealth

- 2.18 The Australian Crime Commission (ACC) is subject to the oversight of a Joint Committee of the Commonwealth Parliament that has, as one of its duties, the requirement to monitor and review the performance of the ACC regarding its functions (Part 111 of the *Australian Crimes Commission Act 2002*). The ACC is also subject to monitoring by the Inter-Government Committee. (Part II Subdivision C.) Matters arising under the *Australian Crimes Commission Act 2002* can also be the subject of proceedings pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (section 57).

Western Australia

- 2.19 In Western Australia s. 188 of the *Corruption and Crime Commission Act 2003*, establishes the office of Parliamentary Inspector. Sub-section 188(4) provides that "the

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Parliamentary Inspector is an officer of Parliament and is responsible for assisting the Standing Committee in the performance of its functions".

- 2.20 Sub-section 195(1)(b) empowers the Parliamentary Inspector "*to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector*". Powers provided to the Parliamentary Inspector include the power to:

2.20.1 do all things necessary or convenient for the performance of the Parliamentary Inspector's functions (ss 196 (2));

2.20.2 'require officers to attend before the Parliamentary Inspector to answer questions or produce documents or other things relating to the Commission's Operations or the conduct of officers' (ss 196 (3)(d)); and

2.20.3 hold an inquiry akin to that of a Royal Commission (s 197).

Conclusion

- 2.21 It can be seen from the oversight and monitoring of similar bodies in Australia that substantial safeguards have been implemented elsewhere to ensure the exercise of powers by such organisations, including issues of misconduct, are amenable to investigation and review. This is in stark contrast to the extremely limited oversight in Victoria.

- 2.22 It cannot be argued that further scrutiny of the OPI will adversely impact upon the performance of its functions if mechanisms for such scrutiny already exist under the equivalent models in other States and in the Commonwealth. This is particularly so bearing in mind that the equivalent bodies have been operating for some considerable time without any apparent detriment (longer, in fact, than the OPI). The ACC, for

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example, has often been the subject of judicial review by the Federal Court.¹⁵ No such accountability exists with the OPI. It is expressly prohibited.¹⁶

- 2.23 *OPI v Bolton* provides a compelling case for greater scrutiny of and accountability for the operations of the OPI beyond the manifestly inadequate provisions contained in Part 5 of the Act.

3. Proposed Findings

- 3.1 The Review should make the following recommendations:-

- i. the current oversight of the OPI is inadequate;
- ii. the SIM should be empowered to investigate and report on all matters of misconduct on the part of the OPI and its staff including a power to conduct coercive hearings and to require those called before the SIM to answer questions or produce documents or other things;
- iii. The role of the SIM should be expanded to enable the SIM to fully monitor and review the functions and actions of the OPI and its staff. The SIM's powers should equate to those enjoyed by equivalent interstate organisations;
- iv. The expanded powers of the SIM to receive complaints and investigate the actions of the OPI must be retrospective to enable the SIM to consider and review cases such as *OPI v Bolton*. It is in the public interest for the SIM to be empowered to fully investigate the past conduct of the OPI in order to clear the air surrounding matters which have not to date been the subject of any adequate scrutiny.
- v. The OPI should be amenable to judicial review in line with other coercive bodies such as the ACC.

¹⁵ For a recent example of a successful review of the ACC, see *OK v Australian Crime Commission* [2009] FCA 1038

¹⁶ S.109(6), *Police Integrity Act 2008*

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4. Public Examinations

Background

- 4.1 Since its inception, the OPI has conducted four public examinations under s.65 of the Act. The OPI is empowered to conduct public examinations if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, the Director considers that it is in the public interest to do so.¹⁷
- 4.2 All public examinations conducted by the OPI to date have occurred prior to the commencement of criminal proceedings and have involved witnesses who were yet to be the subject of any formal court process. The overwhelming majority of people examined have necessarily been police officers.

Interference with the administration of justice

- 4.3 It must have been clear to the OPI prior to the commencement of their public examinations whether certain persons of interest were being viewed as suspects or were likely to be subject to adverse findings and potential criminal prosecution. The effect of these examinations has been to publicly accuse individuals of corruption prior to anyone being charged, tried or convicted. This has taken place amidst a frenzy of media interest and publicity promoted, in part, by the OPI's own Communications and Media Unit.
- 4.4 The conduct of public examinations has the potential to seriously interfere with the administration of justice. The risk that individuals may be tried and convicted in the court of public opinion before they are even charged is contrary to both the presumption of innocence and the right to a fair trial (now enshrined in s.24 and 25 of the *Charter of Human Rights and Responsibilities Act 2006*). The fact that previous public

¹⁷ S.65(2), *Police Integrity Act 2008*

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examinations by the OPI have been conducted in an atmosphere of trial by ambush¹⁸ with selective evidence being adduced only heightens the unfairness of this process.

Contrasting approaches - ACC

- 4.5 It is accepted that the investigation of police corruption and serious misconduct is an essential and important function. This can, of course, be achieved through the conduct of private examinations and the subsequent prosecution of any identified offenders. It is the *"name and shame"* nature of public examinations that is most troubling. There are already examples of police officers who have been named and publicly vilified through the conduct of public examinations only to be subsequently acquitted.¹⁹ The destruction of the reputations of innocent individuals is anathema to any civilized and democratic society.
- 4.6 Other coercive bodies in Australia operate successfully without the need for public hearings. The Australian Crime Commission is a well established and successful coercive investigation body which has operated for years without the need for public examinations and media publicity of the information received in the course of its examinations. To the contrary, the ACC operates its hearing in private. In doing so, its operations do not jeopardize the fair trial of individuals who subsequently find themselves the subject of criminal charges by avoiding the public *"name and shame"* approach which has been a hallmark of the OPI.

Rushing to judgment

- 4.7 The vice in conducting public examinations into allegations of criminal offending and serious misconduct is obvious. The reports generated by the OPI following a public examination include findings of fact which, in effect, amount to a determination by the delegate that certain individuals have committed criminal offences. Recent public examinations have been conducted before a retired Federal Court judge. This gives a

¹⁸ See, for example, "Exposing corruption within senior levels of Victoria Police", November 2007

¹⁹ R v Ashby [2010] VSC 14

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judicial imprimatur to the OPI's findings.²⁰ These findings have been published by the OPI and reported upon widely in the media and on the internet. While the OPI has removed some of this material from its website due to pending court proceedings, a simple Google search will readily locate information relating to the OPI's previous public hearings and findings.

4.8 In relation to these findings, the following matters are particularly salient:-

4.8.1 The facts before the OPI in relation to its public examinations have invariably been in dispute and remained in issue in subsequent criminal proceedings;

4.8.2 In reaching its conclusions, the OPI, through its delegate, has applied a lower standard of proof than would apply to a criminal proceeding;

4.8.3 The OPI has, in part, acted on evidence in the course of public examinations which will not find its way before a jury hearing a criminal charge. This evidence may have already found its way into the media notwithstanding the fact that it may be inadmissible in a criminal court.

ASIC v HLP Financial Planning (Aus) Pty Ltd

4.9 In *Australian Securities Investment Commission v HLP Financial Planning (Aus) Pty Ltd*²¹, Finkelstein J dealt with the relationship between civil and criminal proceedings involving the same subject matter. This case involved an application by ASIC seeking declarations in relation to an unregistered management investment scheme which breached the provisions of the *Corporations Act 2001 (Cth)*. It is accepted that the functions and powers of ASIC are quite different to those of the OPI. The decision in *ASIC v HLP Financial Planning (Aus) Pty Ltd* is, however, illustrative of the problems that can be encountered when public determinations are made on facts which are to be the subject of a subsequent criminal prosecution. Finkelstein J concluded in *ASIC v HLP Financial Planning (Aus) Pty Ltd* that:-

²⁰ "Exposing corruption within senior levels of Victoria Police", November 2007

²¹ [2007] FCA 1868

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4.9.1 The court should not grant declaratory or injunctive relief where the relief amounts to a declaration that the defendant has committed a crime in circumstances where a criminal prosecution is on the cards or has not been positively ruled out and the facts are in dispute.

4.9.2 If there is potential for an adverse impact on the jury in any subsequent criminal proceedings as a consequence of a declaration or injunction being granted in a civil proceeding dealing with the same subject matter, this is a further factor in favour of the court declining to grant the relief sought in the civil proceedings.

4.10 Finkelstein J approved of the comments of Frieberg J in *ASIC v Intertax Holdings Pty Ltd*²² in which His Honour observed:-

"Where the possibility of prosecution is open, it would, in my judgment, be contrary to the ordinary practice for the authority of this Court to be given to a declaration which, in substance, amounted to a declaration that a defendant had committed a crime. One should not make a declaration which might be falsified by a subsequent acquittal in proceedings between the same parties."

4.11 Importantly, Finkelstein J observed in *ASIC v HLP Financial Planning (Aus) Pty Ltd* that:-

"Third, there is potential for an adverse impact on the jury. The civil case will be decided on evidence that, for the most part, will not be available to the prosecutor in a criminal trial. Imagine what would happen if a jury discovers that a civil court has ruled that Mr Berlowitz' conduct is illegal. The judge presiding over the criminal trial will be obliged to tell the jury to leave that out of account. It is axiomatic in our courts that jurors can be trusted to leave out of their consideration things that they are instructed to

²² [2006] QSC 276

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leave out. Yet many regard this kind of instruction as little more than wishful thinking. Perhaps the jurors will have explained to them that the judge who made the ruling acted on evidence not before the jury and that in any event a lower standard of proof was required in the civil court. Whether those instructions will result in a fair criminal trial may be strongly doubted. Last, but by no means least, is the falsification point made by Fryberg J. which, if it occurs, will bring the law into disrepute".²³

- 4.12 While the proceeding before Finkelstein J was clearly of a different character, the findings of the OPI can, for all practical purposes, constitute a very public determination of the guilt of an individual. The reporting of public examinations has been widespread and sensational. Many potential jurors may have formed a personal view on the guilt of those called before the OPI. Whether those jurors can put out of their mind the matters they have read and heard, as Finkelstein J noted, may be strongly doubted. More importantly, if, as we have seen, individuals are subsequently exonerated, this will bring about a falsification of the findings of the OPI which, as Frieberg J observed, will bring the law into disrepute.

The destruction of reputations

- 4.13 It is unacceptable for adverse public findings to be made against police officers by the OPI in relation to serious criminal offences where those members may never be charged or be charged and acquitted. To allow this practice to continue not only tarnishes the good reputations and careers of serving police members, it endangers the administration of justice itself.

²³ [2007] FCA 1868 at [59]

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The OPI's approach to its own staff

- 4.14 The OPI has been unwilling to identify its own staff when they have been suspected of committing serious offences in relation to the alleged theft of \$3,000.00.²⁴ An OPI spokesman was reported as having stated that the OPI employee was under investigation but that "... *he couldn't comment further for privacy reasons.*" It is ironic that the OPI is sensitive to the privacy of its own investigators when they are faced with allegations of criminality but unwilling to afford Victoria Police members the same courtesy and protection when their reputations are at stake.
- 4.15 The OPI officer suspected of fraud was subjected to what appears to be a disciplinary investigation rather than a criminal investigation. As identified in the relevant media reporting of this incident²⁵, this revelation only highlights the need for a broad-based Anti-Corruption Commission with powers to investigate not only police members but the entire public sector.

The OPI's approach to Victoria Police members

- 4.16 In February 2006, the OPI conducted its first public examination in the Melbourne County Court into the alleged theft of cash by a police member in Flinders, Victoria. In the course of that inquiry, the Police Association understands that OPI personnel and senior Victoria Police personnel (not attending as part of the inquiry but as observers) were provided with secure and private entry to and from the court through an underground car-park. This practice was repeated during the "*Operation Diana*" hearings conducted at the OPI offices in 2007 with senior police and OPI officials being provided with secure and private entry.
- 4.17 By contrast, all police members attending these inquiries pursuant to summons, whether as witnesses or suspects, were forced to run a media gauntlet through the public

²⁴ Schedule 2 – The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, The Herald Sun, 14 August 2009

²⁵ Schedule 2 – The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, The Herald Sun, 14 August 2009

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entrance. As a consequence, at least one serving police member (who was a witness, not a suspect) was filmed by television crews that aired footage as part of a “*corruption story*” on national television. That individual (a long-standing police member of impeccable character and service record) subsequently had to endure contact from acquaintances and other police officers, many of whom made disparaging remarks questioning his integrity.

R v Ashby

4.18 In the recent decision of the Victorian Supreme Court in *R v Ashby*²⁶, the public examinations conducted before the Director of Police Integrity’s delegate, Mr Murray Wilcox QC, were found to be unlawful as a consequence of the Director’s failure to make a valid delegation of his power to examine witnesses on oath.

4.19 The Director’s failure to comply with the requirements of the Act rendered the public hearing process invalid. It can only be described as a failure of epic proportions. Mr Ashby has been subjected to a public humiliation before an unlawfully constituted tribunal convened without proper legal authority. Mr Ashby’s recent acquittal has falsified the findings and recommendations of the OPI and severely, if not irreparably, damaged the credibility and integrity of the organisation itself.

4.20 The Director of Police Integrity has defended the conduct of public hearings on the basis that they reinforce community confidence that police corruption is being tackled. The Director has stated “*if you are given a power, you are expected to use it, in appropriate circumstances*”²⁷. With respect, if you are given a power, you are expected to use it lawfully. The fact that the public examinations conducted in November 2007 were tainted by illegality has raised significant public concern and seriously eroded public confidence in the operations of the OPI.

²⁶ *R v Ashby* [2010] VSC 14

²⁷ Mr Michael Strong, Director of Police Integrity, *The Age Newspaper*, 6 February 2010

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5. Proposed Findings

5.1 The Review should make the following recommendations:-

- i. It is not in the public interest under s.65(2) of the Act for public examinations to be conducted by the OPI where a criminal prosecution is on the cards or has not been positively ruled out and the facts are in dispute. In such cases, the Director of Police Integrity should decline to conduct public examinations pursuant to s.65 of the Act on the ground that such hearings have the potential to prejudice the fair trial of individuals who may subsequently find themselves the subject of criminal charges;
- ii. The OPI Communications and Media Unit should refrain from publicizing or encouraging the publication of material concerning investigations where a criminal prosecution is on the cards or has not been positively ruled out so as not to jeopardize the fair trial of individuals who may subsequently find themselves the subject of criminal charges;
- iii. The OPI has a statutory responsibility to report to Parliament. Division 4 of the Act deals expressly with confidentiality, reporting and disclosure and limits the extent to which information is to be made public. In view of the strict confidentiality and reporting requirements under the Act, the need for the OPI to maintain and fund its own Communications and Media Unit is a questionable use of resources. These resources would be better directed toward the organisation's core investigative functions. The self promotion of the OPI's activities via its Communications and Media Unit has potential to compromise the organisation's independence and is inconsistent with the confidentiality and secrecy of its operations.

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6. Protected Persons and Critical Incidents

- 6.1 The Act provides significant protection to persons coming within the definition of '*protected person*' as defined by the Act. In short, protected persons are the Director of the OPI or any employee or delegate of the OPI.

Section 109 – General immunity

- 6.2 Section 109 of the Act provides that a staff member of the OPI is not liable on any ground whatsoever for any civil or criminal proceedings that he or she would otherwise have been liable in respect of any act purportedly done under the Act '*unless the act was done in bad faith*'. This blanket protection does not apply to incidents coming within the definition of critical incident.
- 6.3 Section 109 makes it almost impossible for an aggrieved person to commence civil action or pursue criminal charges against a staff member of the OPI. Sub-sections (3) and (4) prohibit action being taken without the leave of the Supreme Court. This can only be granted where the Supreme Court is satisfied that there is a substantial ground for concluding that the OPI officer acted in bad faith.
- 6.4 The onus rests on a person seeking to commence civil or criminal proceedings to prove to the Supreme Court, as a pre-condition to such action, that the OPI officer has acted in bad faith. This goes well beyond protecting OPI officers who are acting in good faith. It must be established that there is a '*substantial*' basis for concluding that there has been bad faith. This is an extremely heavy burden of proof. In the case of civil actions, a prospective claimant must be able to discharge this onus without having recourse to the customary processes of discovery or interrogation that are normally available to a litigant. Depending on the cause of action, it may be impossible to demonstrate bad faith without first having access to adequate discovery of material exclusively within the possession of the OPI.

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Civil action

- 6.5 The inability of a claimant to prove bad faith on the part of an OPI officer will no doubt result in some people being left without any remedy notwithstanding the significant personal harm occasioned by the actions of an OPI officer. For example, if an OPI investigator, other than in the course of a critical incident but through his or her negligence, causes a child to be seriously injured, that child, through his or her parents, cannot commence civil proceedings without first satisfying the Supreme Court that the OPI officer was acting in bad faith at the time of the incident. This cannot be an intended consequence. It is a position which is incompatible with the common law rights of both the child and his or her family.
- 6.6 The common law presumption of statutory interpretation that, where possible, statutes should not be interpreted as abrogating common law rights is a presumption based on high authority of long standing.²⁸ Legislation can, of course, override the common law. However, for this to occur a clear intention to this effect is required on the part of the legislature. The Act as it presently stands restricts the common law right of individuals to commence action against a very narrow class of persons. No other class of individuals in this State enjoys this immunity.

Criminal action

- 6.7 In the case of criminal offences not coming within the definition of a critical incident, OPI officers can only be prosecuted if their impugned conduct was done in bad faith. The wording of this section leaves OPI officers liable to prosecution in cases where bad faith forms an element of the offence, for example, attempting to pervert the course of justice or perjury. However, in order to commence a prosecution, it may be necessary for the prosecution to effectively conduct its case before the Supreme Court in order to obtain leave to file criminal charges. The time involved and the financial cost of such action

²⁸ *Clancy v Butchers' Shop Employees Union* (1904) 1 CLR 181, 201; *Australian Tramway Employees Association v Prahran and Malvern Tramway Trust* (1913) 17 CLR 680, 687; *Re Bolton, ex parte Beane* (1987) 162 CLR 514; *Commissioner of Inland Revenue v West-Walker* [1954] NZLR 191; Pearce, DC & Geddes, *RS Statutory Interpretation in Australia*, 3rd ed. Butterworths 1988 at [5.11].

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would, of course, be significant. Why the normal procedure, where decisions of this nature are made by the Office of Public Prosecutions, cannot be followed in the case of OPI officers has not been established or justified.

- 6.8 An OPI officer is not liable for offences where negligence or even gross negligence satisfy the mental element of the offence. This is because the blanket protection requires the further element of bad faith in cases where OPI officers are concerned. The common law offence of misconduct in public office is the most obvious example of such an offence. The Court of Appeal of South Australia has explained the scope of this offence and specifically identified neglect of duty as a form of misconduct coming within the ambit of this offence.²⁹ The exemption of OPI officers from exposure to the application of negligence based offences places them above the law applicable to the remainder of the public sector.

Contrasting approaches – s.123 Police Regulation Act 1958

- 6.9 Section 109, and its effect, should be contrasted with the immunity provided to members of Victoria Police. Section 123 of the *Police Regulation Act 1958* provides that:

(1) A member of the force or a police recruit is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith in the course of his or her duty as a member of the force or police recruit.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a member of the force or police recruit, attaches instead to the State.

- 6.10 The protection from liability provided to police, unlike the OPI, makes no mention of criminal proceedings. Indeed, the Minister for Police and Emergency Services, Mr Haermeyer, during his second reading speech specifically stated that:

²⁹ Question of Law Reserved (No 2 of 1996) (1996) 67 SASR 62 at 77, 78, 85 and 87

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The bill also provides immunity to police officers from personal liability for civil action arising from any act or omission undertaken in good faith while on duty. This measure will free responsible police members from the worry of legal proceedings while performing their duties and is consistent with the protection already afforded police officers in New South Wales and South Australia.³⁰

6.11 Carabetta has noted that s 137 of the *Police Act 1892* (WA) is to the same effect.³¹ The absence of similar provisions Interstate to those enjoyed by the OPI raises the question as to why such protection is considered necessary for OPI investigators.

6.12 Section 8 of the *Charter of Human Rights and Responsibilities Act 2006* provides that:

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy his or her human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

6.13 Fleming has explained the rationale for the law of torts as follows:

"Tort liability ... exists primarily to compensate the person injured by compelling the wrongdoer to pay for the damage he has done. True, some traces of its older link with punishment and crime have survived to the present day, most prominently exemplary damages to punish and deter contumelious and outrageous wrongdoing. Yet the principal concern of the law of torts nowadays is with casualties of accidental, i.e., unintended, harm. In this wider field, the law is concerned chiefly with distributing

³⁰ Parliamentary Debates, Legislative Assembly 2 December 1999 at page 789.

³¹ Carabetta, J 'Employment Status of the Police in Australia' [2003] MULR 1 at footnote 7.

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losses which are an inevitable by-product of modern living, and, in allocating risk, makes less and less allowance to ideas of punishment, admonition, and deterrence".³²

- 6.14 The protection afforded to OPI officers effectively replaces the primary objective of the law of torts with a liability that is only enlivened when any harm by an OPI employee was occasioned in bad faith. As a result, section 109 of the Act is not in keeping with the terms or sentiment of Section 8 of the *Charter* and, in particular, with the requirement that 'every person is equal before the law and is entitled to the equal protection of the law without discrimination ...'.³³
- 6.15 The Act clearly provides OPI officers with preferential treatment well beyond that given to any other member of the community and, in particular, any fellow public servant. Any person seeking to take civil action against an OPI officer is placed at an enormous disadvantage.

Section 110 – Critical incidents

- 6.16 Section 110 of the Act provides that OPI staff members are not personally liable for anything done or omitted to be done in good faith when performing a function or exercising a power under the Act in relation to a critical incident. Critical incident is defined³⁴ as meaning an incident involving OPI personnel while on duty that resulted in the death or serious injury of a person and also involved:
- 6.16.1 the discharge of a firearm by a member; or
 - 6.16.2 the use of force by a member;
 - 6.16.3 the use of a motor car by a member; or
 - 6.16.4 occurred while the person was in the custody of a member.

³² Fleming, J.G *The Law of Torts*, 5th ed. The Law Book Co. 1977 at page 2.

³³ S.8(3), *Charter of Human Rights and Responsibilities Act 2006*

³⁴ S.30, *Police Integrity Act 2008*

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- 6.17 The scope of section 110 is excessive. It is arguable that an OPI officer is not personally liable for committing serious criminal offences as long as he or she was acting in good faith at the time of the incident. Support for this interpretation can be found in the fact that section 109 provides protection to OPI officers with respect to both civil and criminal proceedings. Sub-section 109(2), in excluding the blanket protection given to OPI officers involved in critical incidents, does not differentiate between civil and criminal proceedings. It follows that section 110 has application to both civil and criminal proceedings.
- 6.18 If this is correct section 110 appears to have the extraordinary effect of exempting all OPI officers, while on duty, from liability for any criminal offence where a person is killed or injured as long as he or she was acting in good faith at the time of the incident and the cause of death or injury falls within the definition of a critical incident. That is, the death or injury was caused by the OPI officer:
- 6.18.1 shooting a person;
 - 6.18.2 using physical violence on a person;
 - 6.18.3 driving a motor car; or
 - 6.18.4 while the person was in custody.
- 6.19 Although these are precisely the type of situations in which the public would expect any law enforcement officer to be held most accountable for his or her actions (as is the case with members of Victoria Police), the Act does not require such accountability from the OPI and its staff.

The OPI and motor vehicles

- 6.20 Section 110 clearly encompasses a situation where the personal actions of an OPI officer have turned what was not a critical incident into a critical incident. A case in point would be a person killed as the result of an OPI officer driving a motor vehicle. For some reason, not immediately apparent, even the passenger in an OPI car is protected under the Act. Leaving that aside, an OPI officer could be driving an OPI car in pursuit

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of a suspect in a manner that was negligent or perhaps even dangerous and in doing so cause the death or serious injury of another person. In reliance on the terms of subsection 110(1), the OPI officer could argue that he or she was not personally liable because he or she was acting in good faith at the time. If that view is correct, the only action that could be taken would be civil action against the State.³⁵

Contrasting Approaches – Police exemption under Road Rule 305

6.21 The protection afforded to the OPI regarding the driving of a motor car needs to be contrasted with the very limited protection provided to police driving motor cars in the course of their duties. *Road Rule 305* only exempts police from complying with the *Road Rules* when taking reasonable care and when it is reasonable in the circumstances to do so. Police officers are not protected from prosecution, even when acting in good faith, if their actions, when judged objectively, were not reasonable. Police are certainly not protected from prosecution in cases where it is alleged that serious offences against the *Road Safety Act 1986* or *Crimes Act 1958* have been committed.

The OPI and firearms

6.22 OPI officers are authorized under the Act to carry firearms. It is important to consider what would happen if an OPI investigator discharged his or her firearm and in doing so negligently killed or seriously wounded an innocent bystander. As is the case in relation to the negligent or even dangerous driving of a motor car, section 110 protects an OPI officer from personal liability for what could amount to very serious criminal misconduct.

The danger of applying an inconsistent standard to law enforcement

6.23 The extra protection afforded to OPI officers is surprising given that most OPI investigators are either former police or law enforcement officers of some description. OPI investigators are subject to the same pressures and temptations as any other law

³⁵ S.110(2) *Police Integrity Act 2008*

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enforcement officer and are just as prone to doing the wrong thing. There is no logical reason why the OPI should not be subject to the same scrutiny and the same laws that apply to other law enforcement organisations. One sure way to encourage abuse of power is to remove or obstruct the courts from passing judgment on alleged misconduct on the part of OPI officers. In the words of Lord Acton;

"Power tends to corrupt, and absolute power corrupts absolutely."

The Act in its current form could be said to so comprehensively absolve OPI employees from any responsibility for their actions as to encourage careless, reckless or even cavalier behaviour.

- 6.24 It is foreseeable that OPI investigators will have cause to investigate police in relation to their involvement in incidents of a similar nature to the matters specified in the definition of a critical incident under the Act. It would be unfair and discriminatory if a police member could be charged with criminal offences arising out of an incident if, in the same circumstances, an OPI officer would avoid prosecution for the same offence due to the application of these protective provisions. Preferential treatment of this nature would seriously diminish confidence in the criminal justice system as a whole.

No judicial review

- 6.25 Sub-section 109(6) of the Act prevents judicial review of the decisions of the Director to commence or to refuse to commence an investigation. The result is that the Director's decisions are immune from independent judicial review. Wrong or even biased decisions are not subject to independent judicial scrutiny. Other law enforcement bodies must operate within the normal judicial framework. No adequate reason has been advanced to exempt the OPI from the due processes of our courts to the extent provided under the Act.

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7. Compellability of OPI staff - Section 109A

Background

- 7.1 Section 109A(1) of the Act provides that a protected person cannot be compelled to give evidence in any legal proceeding in respect of any matter coming to his or her knowledge in the performance of functions under the Act.
- 7.2 A protected person can only be compelled to give evidence in a legal proceeding if the Director certifies in writing that the giving of evidence by the protected person is in the public interest.³⁶
- 7.3 In terms of transparency and accountability, it is of concern that the Director of Police Integrity alone has the power to determine whether or not an OPI staff member or, for that matter, the Director himself shall give evidence before a court. S.109A operates so as to render the Director and any other OPI employee immune from answering a subpoena to give evidence unless the Director certifies in writing that the giving of evidence by the OPI staff member is in the public interest.

Consequences

- 7.4 The practical consequences are significant:-
 - 7.4.1 An accused person facing criminal charges initiated by the OPI may seek to subpoena an OPI employee to adduce evidence favourable to the defence but damaging to the prosecution case. There is no obligation under s.109A for the Director to certify that the giving of this evidence by the OPI member is in the public interest. Moreover, in considering this question, the Director has a clear conflict of interest in determining whether to permit evidence to be adduced which may be damaging to a case brought by his agency. The court or judicial officer before whom the charges are being heard has no discretion or power to

³⁶ S.109A(2) *Police Integrity Act 2008*

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direct the calling of such a witness. The fact the Director alone must decide this question gives rise to at least a perception of bias.

- 7.4.2 In civil or criminal proceedings commenced against the OPI, a subpoena may be issued seeking to compel an OPI employee to give evidence. Once again, it falls to the Director to determine whether or not the witness shall be compelled to give such evidence. Yet again, there is no judicial power or discretion to require such a witness to be compelled to give evidence if the Director refuses to certify in writing that the giving of this evidence is in the public interest. In a civil or criminal proceeding where the Director may have a direct interest or involvement (or even be a party to the proceeding himself) the conflict of interest and perception of bias is manifest.

Conflict and impartiality

- 7.5 In the interests of impartiality, transparency and public confidence, any question as to whether the giving of evidence by a protected person is in the public interest ought to be determined by the judge or judicial officer presiding over the proceeding in question. The perception of conflict readily justifies the implementation of an independent process to determine the compellability of OPI witnesses to ensure confidence in the administration of justice is not eroded. Section 109A is unprecedented in this State and operates to severely undermine public confidence in the accountability of the OPI as a law enforcement agency.

8. Proposed Findings

- 8.1 The review should make the following recommendations:-
- i. The protections afforded to the OPI under sections 109, 109A and 110 are excessive and unjustified. They should be abrogated.
 - ii. OPI officers should retain protection from personal liability but only in respect of civil action arising from any act or omission undertaken in good faith while on duty.

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This can be achieved by implementing the same immunity afforded to police officers under s.123 of the *Police Regulation Act 1958*. Any greater immunity from civil or criminal action is excessive and unjustified.

- iii. No OPI officer should be immune from criminal prosecution. To absolve law enforcement officers from criminal liability is to create a breeding ground for serious misconduct and corruption. Such an approach would never be tolerated within our police force. It should not be acceptable amongst those charged with the responsibility of overseeing the ethical conduct of our police officers.
- iv. The decision whether to compel OPI staff to give evidence in a legal proceeding is a matter which, in the interests of justice, should be determined independently of the OPI. Vesting sole power to determine compellability in the Director gives rise to a conflict of interest and a perception of bias. Section 109A should be abrogated. Responsibility for determining compellability under subpoena should rest with the Court or Tribunal seized with the relevant proceeding.

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9. The Relationship between the OPI, Victorian Ombudsman and Victoria Police

The OPI and the Victorian Ombudsman

- 9.1 The principal function of the Ombudsman is to investigate administrative action of government departments or public statutory bodies.³⁷ To this extent, the Ombudsman ostensibly has some limited power to investigate complaints relating to the OPI.
- 9.2 The Ombudsman is not, however, empowered to provide comprehensive oversight of the OPI. It can be seen from *OPI v Bolton*³⁸ that the Ombudsman has no jurisdiction to investigate allegations of criminal offending or serious misconduct within the OPI. The Ombudsman has expressly disavowed such a role³⁹. No other body under the current integrity and anti-corruption arrangements in Victoria has jurisdiction to perform this function:-
- 9.2.1 The SIM has no power to entertain a complaint or undertake an investigation concerning criminal offending or serious misconduct within the OPI;⁴⁰
- 9.2.2 The OPI itself, after receiving a copy of Sergeant Bolton's complaint from the SIM, provided no substantive response to Sergeant Bolton's concerns. In any event, it would have been inappropriate for the OPI to conduct an investigation into its own conduct;
- 9.2.3 Once Sergeant Bolton's complaint was provided to the Office of the Chief Commissioner, the matter passed through various hands before ultimately finding its way to the Ethical Standards Department. After 12 months, Sergeant Bolton was advised that no further action would be taken. ESD has no formal role or jurisdiction to investigate OPI staff. To the contrary, the OPI is responsible for overseeing ESD investigations. The OPI has access to the ESD database. The OPI and ESD frequently conduct joint investigations and

³⁷ S.13(1), *Ombudsman Act 1973*

³⁸ *OPI v Bolton*

³⁹ Letter from Deputy Ombudsman, John Taylor to Sergeant Bolton, 5 November 2008

⁴⁰ S.118(2), *Police Integrity Act 2008*

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have a close working relationship. In these circumstances, it is inappropriate to require or expect ESD to investigate the conduct of the OPI when it has no clear authority to do so.

- 9.3 In conclusion, the SIM, the Ombudsman, the OPI and Victoria Police (through the Ethical Standards Department) are inadequately equipped to investigate allegations of criminal offending or serious misconduct within the OPI.

Misconduct within the OPI and the Victorian Ombudsman

- 9.4 The case of *OPI v Bolton* is not an isolated example. The media have reported on a number of incidents involving allegations of criminal and serious misconduct on the part of OPI and Victorian Ombudsman employees in recent years:-

- 9.4.1 An OPI investigator alleged he was forced to sign false statutory declarations at the OPI to cover up dubious expense claims, acts which potentially involve offences of perjury and obtaining financial advantage by deception⁴¹. These allegations were apparently the subject of an "*independent workplace investigation*" by a private consultancy firm, Julie Baker-Smith and Associates, as well as a review by the Ombudsman, Mr George Brouwer;
- 9.4.2 An OPI investigator left the agency after being accused of lying about his house being broken into in order to take a day off work⁴²;
- 9.4.3 A disagreement between OPI staff about whether the Office of Public Prosecutions should be notified that the OPI Integrity Testing Unit was under a cloud⁴³;
- 9.4.4 A disagreement between a now-sacked OPI officer and a senior OPI member about what information should be put into an affidavit that was used to obtain a

⁴¹ Schedule 3 - The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, Herald-Sun, 14 August 2009

⁴² Schedule 3 - The Age, 3 September 2008

⁴³ Schedule 3 - The Age, 3 September 2008

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search warrant. It has been reported that the sacked officer refused to sign the search warrant affidavit because he could not verify the information in it⁴⁴;

9.4.5 An investigator with the Ombudsman who has been the subject of complaints over alleged threatening behaviour towards councillors during the Ombudsman's inquiry into misconduct within the Brimbank Council⁴⁵.

9.5 The Association is aware of other complaints of misconduct involving OPI staff but due to current court proceedings it is not considered appropriate to publicly raise these matters at this stage.

No adequate oversight

9.6 It is evident from these examples that no adequate oversight exists in relation to either the OPI or the Victorian Ombudsman. In the case of the OPI officer accused of fraud⁴⁶, the OPI instructed a private investigation company to conduct what has been described as an *"independent workplace investigation"*. The outcome of that investigation remains unknown as does the outcome of the review conducted by the Victorian Ombudsman, Mr George Brouwer. The firm engaged by the OPI to conduct the investigation, Julie Baker-Smith & Associates, states on its website that its investigations *"...are concluded with a confidential report tailored to your specific requirements"*⁴⁷. The shortcomings in this approach are obvious:-

9.6.1 It is inappropriate for a private investigation company to be retained by the OPI to investigate allegations of criminal offending or serious misconduct by the OPI's own staff. Such a process lacks independence and transparency;

9.6.2 The OPI presumably provided instructions to the private investigation company as to the nature and ambit of the inquiry. To this extent, the OPI was the

⁴⁴ Schedule 3 - The Age, 3 September 2008

⁴⁵ Schedule 3 - Herald-Sun, 24 May 2009

⁴⁶ Schedule 3 - The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, Herald Sun, 14 August 2009

⁴⁷ Schedule 3 - Copy Home Page - Julie Baker-Smith & Associates

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"client" of the investigator. It is inappropriate for the body the subject of corruption allegations to determine the parameters of an investigation into its own misconduct;

- 9.6.3 The fact that a private consultancy firm was engaged to investigate what are essentially criminal allegations is not appropriate. Matters which have the potential to involve serious offences such as perjury and obtaining financial advantage by deception must be the subject of a fully independent criminal investigation. Potential corruption within the OPI cannot be addressed through a confidential commercial arrangement between the OPI and a private consultancy;
- 9.6.4 The investigator's report has not been made public. It appears to be the subject of a claim for legal professional privilege.⁴⁸ Potential therefore exists for the OPI to withhold findings adverse to its staff and operations. There is a clear public interest in disclosure of serious misconduct and criminal offending within the OPI. This cannot be achieved under the current system;
- 9.6.5 The fact that this investigation has been the subject of a review by the Ombudsman, Mr Brouwer, does not constitute adequate independent oversight. A review cannot remedy an inadequate or flawed investigation. The Ombudsman has a limited jurisdiction confined to administrative action and is not equipped to investigate criminal or serious misconduct⁴⁹. Independent oversight should be undertaken by a body capable of investigating (rather than reviewing) complaints and, if necessary, conducting coercive hearings and requiring individuals to answer questions or produce documents or things;
- 9.6.6 Mr Brouwer's involvement is attended by a perception of bias. Mr Brouwer was the Director of Police Integrity at the time of the events under investigation. The

⁴⁸ Schedule 3 – Herald Sun, 14 August 2009

⁴⁹ Schedule 3 – Letter from Mr John Taylor, Deputy Ombudsman, to Mr Carl Bolton dated 5 November 2008

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OPI has itself recognised the importance of avoiding any perception of bias in the selection of a reviewer.⁵⁰

Victoria Police and the OPI

- 9.7 The OPI has a statutory function to provide information and advice to, and consult with, Victoria Police to increase the capacity of Victoria Police to prevent police corruption and serious misconduct.⁵¹
- 9.8 The OPI has established a close working relationship with both the Chief Commissioner and ESD. The reason appears to be twofold. Firstly, the OPI has a consultative function. Secondly, the OPI's resources are such that it has been reliant upon ESD to conduct joint investigations utilizing the resources available to ESD to facilitate its objectives.
- 9.9 This consultative function combined with the OPI's reliance upon joint operations with ESD seriously compromises the independence and efficiency of the OPI to properly investigate serious misconduct and corruption. The independence of the OPI is compromised by a perception that it is too close to the Office of the Chief Commissioner and ESD to enjoy the confidence of both police members and the public. This perception is reinforced through the following arrangements between the OPI, the Chief Commissioner and ESD:-
- 9.9.1 As mentioned earlier, the OPI and ESD are in the practice of conducting joint investigations in which information is shared and resources pooled. The need for the OPI to rely upon ESD in such joint inquiries appears to be the product of a lack of resources, expertise and the personnel necessary for the OPI to undertake such matters in its own right.

⁵⁰ Report on the 'Kit Walker' Investigations – OPI, December 2007, p. 21 and 22

⁵¹ S.6(2)(c), Police Integrity Act 2008

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- 9.9.2 Joint operations between the OPI and ESD result in OPI investigators having to work with Victoria Police members in the course of investigating other Victoria Police members. This seemingly defeats the purpose of establishing an independent police corruption body in the first place.
- 9.9.3 If the OPI must call upon the services and resources of Victoria Police to investigate allegations of corruption and serious misconduct within Victoria Police, this can only compromise the independence and integrity of the process.
- 9.9.4 The inclusion of Victoria Police members in joint operations with the OPI increases the risk of an investigation being compromised. ESD is not immune from allegations of criminal and disciplinary misconduct.⁵² A finding has previously been made that ESD detectives *"had sanitized their evidence"* in the conduct of an ESD investigation.⁵³
- 9.9.5 Misconduct is not confined to specific departments within Victoria Police or the public sector. It is a product of human frailty. It is naïve to presume that the factors which motivate misconduct cannot operate upon individuals within anti-corruption agencies. If the OPI is to be held to its promise of detecting and preventing serious misconduct and corruption in Victoria Police independently of Victoria Police, it should no more conduct joint investigations and share resources with ESD than it would with any other department within Victoria Police. How does the OPI deal with a complaint against ESD if it has forged close working relationships with members who may be the subject of allegations themselves?
- 9.9.6 The OPI has been permitted to appoint former Victoria Police members as investigators (in contrast with the NSW Police Integrity Commission which is not

⁵² Victorian Ombudsman's Investigation into Complaints about the treatment of Senior Constable Robert John Gray and Senior Constable David Schaefer by the Ethical Standards Department (Victoria Police) dated 31 March 2003

⁵³ Victorian Police v Robert John Gray, Melbourne Magistrates' Court, 8 August 2001 per Mr Noel B Purcell, Magistrate

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permitted to employ NSW police on staff). The involvement of ex-Victorian police at the OPI has potential to expose investigations to the influence of past associations or grievances between members who may have served together.⁵⁴

- 9.9.7 If the OPI lacks sufficient funding, resources or personnel to fulfill its functions independently, this only highlights the need for a well resourced and independent Anti-Corruption Commission capable of operating in its own right.

Consultation between the OPI and the Chief Commissioner

- 9.10 Both the OPI and the Victorian Ombudsman engage in oral and written communications with the Chief Commissioner concerning their investigations. The full extent and nature of these communications are not matters of public record.
- 9.11 The communications between the Chief Commissioner, the OPI and the Ombudsman extend to the formulation and finalisation of investigative reports. The fact that the OPI seeks the input of the Chief Commissioner in relation to the preparation of its reports is a matter of public record.⁵⁵
- 9.12 The practice of providing draft OPI and Ombudsman reports to the Chief Commissioner for comment enables the Chief Commissioner to influence the outcome of these investigations. In some instances, it may be appropriate to seek a response from the Chief Commissioner with respect to specific issues as a matter of natural justice and procedural fairness. It should not, however, be necessary for the Chief Commissioner to be provided with a draft copy of an entire report for comment and input. Such an approach has the potential to undermine public confidence in the independence of the OPI and the Ombudsman and their ability to report without fear or favour.

⁵⁴ Schedule 3 – The Age, 3 September 2008

⁵⁵ See the Report on Investigation into Operation Clarendon, OPI, June 2008 at p.16, footnote 4 to the Report. The Association understands this approach has also been adopted in relation to investigations conducted by the Victorian Ombudsman, Mr Brouwer.

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- 9.13 The need for both the OPI and the Ombudsman to operate at arms length from the Chief Commissioner is highlighted by two OPI investigations which have involved scrutiny of the Chief Commissioner's own conduct:-

Operation Clarendon

9.13.1 The report on Investigation into Operation Clarendon⁵⁶ concerned the investigation of unlawful activities between members of Victoria Police and a Mr Kerry Milte who had been linked in media reports to the then Chief Commissioner, Ms Christine Nixon.⁵⁷ Ms Nixon was responsible for establishing Operation Clarendon, with the assistance of Mr Milte, to investigate organised crime activity in Victoria. Operation Clarendon was subsequently shutdown after inappropriate relationships between Mr Milte and members of Victoria Police and the Australian Federal Police were revealed. Mr Milte was subsequently convicted of aiding, abetting, counselling and procuring disclosure of information from the Victoria Police Law Enforcement Assistance Program database.⁵⁸

9.13.2 Ms Nixon was a central witness in the OPI investigation into Operation Clarendon. Ms Nixon was, however, treated differently to other witnesses. Most notably, Ms Nixon was provided with a draft of the OPI report and invited to respond. Ms Nixon appears to have provided significant input in response to the draft report.⁵⁹

The Qantas Gratuity

9.13.3 Ms Nixon was the subject of a second OPI investigation, which reported to Parliament in June, 2009. This investigation, entitled "*Offers of Gifts and Benefits to Victoria Police Employees*", examined the propriety of the Chief

⁵⁶ OPI Report, June 2008

⁵⁷ Report on Investigation into Operation Clarendon, OPI Report, June 2008 at 10

⁵⁸ Report on Investigation into Operation Clarendon, OPI Report, June 2008 at 19-20

⁵⁹ Report on Investigation into Operation Clarendon, OPI Report, June 2008, footnote 3, p.14, footnote 4, p.16

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Commissioner accepting a free return trip to the United States for herself and her husband valued in excess of \$40,000.00.⁶⁰ Evidence before the OPI established that Qantas received a benefit in relation to the arrangement in terms of publicity and Ms Nixon's reported endorsement that *"the plane was just magnificent"*⁶¹

9.13.4 Ms Nixon was summonsed to give evidence at a private examination before the OPI on 13 November 2008. Notwithstanding the enormous media and public interest, it was decided not to conduct a public examination. While some evidence was taken⁶², the evidence given on that occasion by Ms Nixon has never been made public. Instead, the examination was suspended and a meeting was arranged the next day between Ms Nixon and the Director, Police Integrity at which a public statement was settled and released. Ms Nixon ultimately admitted that her position as Chief Commissioner had influenced Qantas' decision to offer the gift of free travel and her acceptance constituted a breach of the Victoria Police Code of Conduct. These were matters previously denied by Ms Nixon when the issue was first raised in the media.⁶³

9.13.5 Prior to publication of the OPI's report, further communications took place between the OPI, Ms Nixon and her successor, Chief Commissioner Overland, concerning police policy in the area of gifts and benefits.⁶⁴ This is notwithstanding the fact that Ms Nixon was the focus of allegations of misconduct by her. It is unclear whether the former or current Chief Commissioners were given the opportunity to review a draft of the final report delivered in June 2009.

9.14 The manner in which these two OPI investigations were conducted and the treatment of Ms Nixon compared to that of other witnesses suggests that the relationship between

⁶⁰ Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p. 10

⁶¹ Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p.10

⁶² Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p.10

⁶³ Schedule 4 - Herald Sun, 23, 24 and 25 October 2008, Neil Mitchell Program, 3AW, 17 November 2008

⁶⁴ Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p.12

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the OPI and police command has remained consultative regardless of the fact that Ms Nixon was a central witness in inquiries into allegations of misconduct. While the OPI is vested with an advisory and consultative function under the Act,⁶⁵ this must not be confused with the need for the rigorous and independent investigation of complaints and allegations of misconduct made against or involving senior command within Victoria Police, including the Chief Commissioner.

- 9.15 The complaint against Ms Nixon involving the Qantas gratuity was resolved in unprecedented fashion. The Association is unaware of any previous or subsequent occasion where a private coercive examination has been terminated and a complaint resolved by the release of an agreed public statement (notwithstanding an admitted breach of the Victoria Police Code of Conduct). It is difficult to conceive of a complaint against an ordinary serving police member being resolved in such a manner. There is now a perception that one rule applies to the Chief Commissioner and another for the rank and file.
- 9.16 The consultative and advisory function of the OPI under the Act has blurred the line of separation required when dealing with complaints involving senior command within Victoria Police. If this function is permitted to continue, the ability of the OPI to vigorously and independently investigate complaints or allegations involving senior command, including the Chief Commissioner, may be lost. The close working relationship that must exist between the OPI and the Chief Commissioner if both organisations are permitted to collaborate in relation to the formulation of policy makes it impossible for the OPI to maintain the independence necessary to investigate allegations of misconduct against the Chief Commissioner or her staff.
- 9.17 The consultative and collaborative nature of the relationship between command and the OPI demonstrates the need for an independent broad-based Anti-Corruption Commission capable of entertaining allegations or complaints against not only ordinary serving police members but individuals holding high office (such as the Chief Commissioner). It is impossible for allegations of improper conduct and corruption to be

⁶⁵ S.6(2)(c), *Police Integrity Act 2008*

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investigated without a perception of bias if the investigating agency works closely with the subject of an investigation. Only the establishment of an independent broad-based Anti-Corruption Commission can ensure that such allegations are examined free of any prior relationship or association.

9.18 There are other examples of relationship which add to a perception that there is a lack of independence within the current integrity and anti-corruption system in Victoria:-

9.18.1 The current Victorian Ombudsman, Mr George Brouwer, is the former Director of Police Integrity. Mr Brouwer has been placed in the compromising position of being responsible for reviewing complaints against the OPI during the period in which he himself held the position of Director, Police Integrity. Mr Brouwer may have been the immediate boss of individuals he must now scrutinize.⁶⁶

9.18.2 The former Deputy Director, Police Integrity, Mr Graham Ashton, recently resigned and was immediately appointed by the current Chief Commissioner, Simon Overland, to a newly created senior executive position within Victoria Police. Mr Ashton has been privy to a wealth of highly confidential information while employed at the OPI. Mr Ashton cannot divulge or make use of this information in the course of his new position with Victoria Police yet it may be extremely difficult for him to avoid drawing upon this knowledge in the discharge of his new duties. This knowledge has potential to compromise both Mr Ashton, his old employer, the OPI and his new employer, Victoria Police.

9.18.3 Mr Ashton (a former Australian Federal Police Assistant Commissioner), Chief Commissioner Overland and Assistant Commissioner (ESD) Luke Cornelius were all colleagues when they worked together with the Australian Federal Police prior to their recent appointments.

9.18.4 Mr Ashton's replacement as Deputy Director, Police Integrity is Mr Paul Jevtovic. Mr Jevtovic is also a former Australian Federal Police Assistant

⁶⁶ Schedule 3 - The Age, 3 September 2008, *OPI v Bolton* (see above)

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Commissioner and a colleague and acquaintance of Chief Commissioner Overland.

10. Proposed Findings

10.1 The Review should make the following recommendations:-

- i. The OPI's consultative and advisory function in dealing with the Chief Commissioner's Office is inconsistent with its primary function of investigating police corruption and serious misconduct.
- ii. The involvement of Victoria Police members in OPI investigations (whether via ESD or through the employment of former Victoria Police members) has potential to seriously compromise the OPI's objectives.
- iii. The direct involvement of the Chief Commissioner in the formulation of reports prepared by the OPI or the Ombudsman seriously undermines the ability of either organisation to effectively and independently investigate allegations of serious misconduct against senior command within Victoria Police.
- iv. There is a need to ensure the independence and public accountability of the OPI, the Victorian Ombudsman and Victoria Police in their respective dealings with each other. All communications and correspondence between the OPI, the Victorian Ombudsman and the Office of the Chief Commissioner should be provided to the Special Investigations Monitor for oversight and review.
- v. Informal communications on matters of substance between the OPI, the Victorian Ombudsman and Victoria Police should not be permitted. In the interests of maintaining public confidence and transparency, all communications should be in writing and subject to independent oversight and review.
- vi. The transfer of personnel between agencies has the potential to undermine public confidence in the independence of the OPI, the Victorian Ombudsman and Victoria

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Police. Appointments to senior positions within each organisation should be the subject of approval by Parliamentary Committee.

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11. Conclusion

11.1 The principle of open justice is well established. Lord Hewart expressed it in terms of

*“... it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done”.*⁶⁷

11.2 The relationship between the OPI, Victorian Ombudsman, Victoria Police and its personnel has been the subject of comment and criticism.⁶⁸ These criticisms highlight the need for new measures to ensure independence and accountability within the integrity and anti-corruption system in Victoria. A strong and viable integrity and anti-corruption system must be beyond reproach. Regrettably, the current arrangements were never intended to provide a comprehensive anti-corruption system. It is a system attended by conflicts and perceptions of bias.⁶⁹

11.3 Reform is required to resolve systemic problems which are, in large part, the product of an arrangement which has been cobbled together by amendments to the *Police Regulation Act 1958*, the re-establishment of the OPI through the *Police Integrity Act 2008* and an attempt to expand the role of the existing Ombudsman to cover a jurisdiction not originally intended for a body charged with reviewing administrative action. This band-aid approach to corruption in Victoria has resulted in the creation of a flawed model with limited application and inconsistent approaches to different areas of the public sector.

11.4 The anti-corruption measures in Victoria have been drawn from a combination of incomplete powers spread across separate organisations, some of which are ill-equipped to perform corruption investigation functions in a contemporary sense. The Victorian system does not compare favorably to the anti-corruption measures

⁶⁷ R v Sussex Justices; Ex Parte McCarthy [1924] 1 KB 256 at 259

⁶⁸ Schedule 3 - The Age, 3 September 2008

⁶⁹ Interview with Mr David Jones, ABC, Stateline, Friday, 12 February 2010

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established interstate and in the Commonwealth in terms of the reach of powers, accountability and independence.

Independent Anti-Corruption Commission

- 11.5 It is time for Victoria to adopt a fully independent and broad-based Anti-Corruption Commission capable of investigating serious misconduct and criminal offending across the entire public sector including all politicians at State level. With appropriate oversight, such a system will ensure that the failings present in the current model are rectified and the Victorian public can enjoy confidence in those charged with the responsibility of serving them.
- 11.6 The failure of the OPI to conduct itself according to law in *R v Ashby* must never be repeated. It is symptomatic of an organisation that is struggling to fulfill its responsibilities. The ill-fated prosecutions of Noel Ashby and Paul Mullett serve as a sobering example of the damage that can be occasioned to the reputation and privacy of individuals when a body such as the OPI misconducts itself in the exercise of such significant powers.
- 11.7 The fact that the Director of Police Integrity, Mr Michael Strong, still seeks to portray the Ashby hearings as a success⁷⁰ is reflective of an organisation in denial, dismissive of the right of Mr Ashby to enjoy not only a presumption of innocence but the fruits of his acquittal. It is a pronouncement by the OPI that the end justifies the means.
- 11.8 The OPI's delegate, Mr Wilcox QC, has gone further by publicly questioning the correctness of the Supreme Court's decision in *R v Ashby*⁷¹ (notwithstanding the fact that no appeal has been lodged to challenge the ruling of Justice Osborn). Such hubris highlights the OPI's reluctance to accept judicial scrutiny of its actions and an unwillingness to acknowledge and learn from its mistakes.

⁷⁰ Neil Mitchell, 3AW, Interview with Mr Michael Strong, 10 February 2010, Jon Faine, ABC, Interview with Michael Strong, 10 February 2010

⁷¹ Interview with Mr Murray Wilcox QC, ABC 7:00pm News, Melbourne, 10 February 2010

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11.9 The call for the establishment of an independent broad-based Anti-Corruption Commission has, in the wake of R v Ashby, become loud and clear.⁷² The recent criticism of the OPI in the media has been scathing.⁷³ Perhaps most telling are the measured observations of the SIM, Mr David Jones, who has recognised the inability of the Victorian Ombudsman and the OPI to deal with official corruption and the need for a body capable of investigating all forms of corruption, whether by police or public officials.⁷⁴

11.10 In his introductory comments to his Report on Gifts and Benefits to Victoria Police Employees,⁷⁵ the Director of Police Integrity, Mr Michael Strong, correctly observed:-

"We expect police, like all public sector employees, always to put their public duty above their private interests."[Emphasis added]

This expectation, of all public sector employees, cannot be advanced by the OPI. At present, Victoria Police are the only public sector employees who are subject to a coercive body with powers to investigate criminal offending and serious misconduct. It is time for anti-corruption measures to be applied equally and effectively across the entire public sector. The only way to achieve this is to replace the OPI with a dedicated and independent Anti-Corruption Commission.

12. Proposed Findings

12.1 The Review should make the following recommendations:-

- i. The current arrangements in Victoria for the investigation of criminal offending and serious misconduct within the public sector are incomplete and inadequate. There

⁷² The Age, 6 February 2010, Herald Sun, 9 February 2010, The Age, 10 February 2010

⁷³ Jon Faine, ABC, 9 and 10 February 2010, Neil Mitchell, 3AW, 10 February 2010

⁷⁴ Interview with Mr David Jones, ABC, Stateline, Friday, 12 February 2010

⁷⁵ *Offers of Gifts and Benefits to Victoria Police Employees*, OPI Report, June 2009, p. 5

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is no body in Victoria capable of comprehensively investigating allegations of criminal offending and serious misconduct across the entire public sector. The OPI has no such jurisdiction. The Victorian Ombudsman's powers are limited to reviewing administrative action.

- ii. The present Victorian anti-corruption system focuses unduly on police officers to the detriment of exposing misconduct by other public officials.
- iii. The ability of the OPI to investigate allegations against members of ESD and senior command within Victoria Police is compromised by virtue of the nature of the relationship between the OPI and those it may be called upon to investigate.
- iv. The OPI has failed to perform to the standard expected of it and, as a consequence, it has now lost the confidence of the Victorian public following the decision in *R v Ashby*.
- v. In order to equip Victoria with measures equivalent to those established Interstate and in the Commonwealth, the Victorian Government should abolish the OPI and establish a broad-based Anti-Corruption Commission able to investigate allegations of criminal offending and serious misconduct across the entire public sector. Such a body should have power to investigate not only police but politicians, councillors and all other public officials. It should have the powers of a standing Royal Commission with full and independent oversight of its operations.
- vi. In the event the Victorian Government replaces the OPI with a broad-based Anti-Corruption Commission, the new body must remedy the deficiencies identified at paragraphs 3.1, 5.1, 8.1 and 10.1 of this Submission. In particular, the new body must be subject to full and independent oversight with a mechanism for the investigation of complaints of misconduct not only against the new body itself but also relating to previous investigations conducted by the OPI which, to date, has been immune from proper scrutiny. Such measures are necessary to clear the air and restore public confidence in the anti-corruption system in Victoria.

The Police Association Victoria

19 February, 2010

Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

SCHEDULE 1

**Executive Summary of Buckle (OPI) v Bolton heard at Melbourne
Magistrates' Court before His Honour Mr Gurch M on 28, 29, 30**

April, 1 and 5 May 2008

SCHEDULE 1

Executive Summary of Buckle (OPI) v Bolton heard at Melbourne

Magistrates' Court before His Honour Mr Gurvich M on 28, 29, 30 April,

1 and 5 May 2008

19 August 2006	Sergeant Carl Bolton arrested Mr Malcolm Carson for being drunk. Sgt Bolton's partner at the time was S/C Sally Slingsby.
19 August 2006	Upon return to the Colac police station Mr Carson refused to be searched and physically hindered Sgt Bolton in his attempts to search him.
19 August 2006	During the course of the search Sgt Bolton believed that Mr Carson was about to spit on him or S/C Slingsby and as a result he slapped Mr Carson once to his face. Sgt Bolton then completed his search of Mr Carson and lodged him in the cells. The incident was captured on CCTV.
	Mr Carson made a complaint to the OPI in relation to his treatment by Sgt Bolton.
30 August 2006	S/C Slingsby signed a statement that she had prepared earlier in relation to the incident involving Mr Carson.
20 September 2006	S/C Slingsby had an affidavit taken by Senior Investigation Officer Michael Davson from the Office of Police Integrity.
	Comments included in this affidavit detrimental to Sgt Bolton had not been included in Senior Constable Slingsby's earlier statement.
6 August 2007	Sgt Bolton charged with assaulting Mr Carson (nearly 12 months after the arrest of Mr Carson).
8 February 2008	Witness summons for production of documents or things was issued and served on the Director OPI.
	The subpoena required production of any audio or video recordings with respect to the interviews conducted by OPI investigators with witnesses in the matter.

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19 March 2008 In response to the subpoena, the Managing Lawyer for the OPI, Ms Vanessa Twigg, by way of letter stated that:

I have made inquiries of the informant as to whether there are any tape recordings of interviews conducted by OPI investigators in this matter. To date, no recordings have been located. Should tape recordings of interviews conducted by OPI investigators with witnesses in this matter be identified, copies of such material will be produced to the Court.

20 March 2008 Ms Twigg forwarded another letter advising that:

... I have made further inquiries with the OPI investigators who interviewed and took affidavits from witnesses in this matter. They have confirmed that they did not make tape recordings of those interviews and no such recordings have been located in a search of OPI holdings in this matter.

25 March 2008 Sgt Bolton's solicitors received material from the OPI pursuant to the witness subpoena issued to the Director.

The diary notes of the informant were provided as part of this documentation. In her diary, the informant specifically noted in relation to the interview of the witness S/C Hill on 20/9/06 that 'conversation tape recorded'. In relation to the interview of the witness S/C Orsolic on 21/9/06 she had noted 'conversation recorded'.

11 April 2008 Letter written by the solicitors for Sgt Bolton to the Office of Public Prosecutions that stated, in part:

We have cause to believe that the conversations OPI officers had with witnesses were "recorded" and request copies of such recordings and any transcript that may have been made of those recordings.

23 April 2008 The OPP by way of letter advised that:

OPI instructs that there are no recordings and refer you to Ms Vanessa Twigg's letter dated 20 March 2008.

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28 April 2008

Prosecution against Sgt Bolton commenced at the Melbourne Magistrates' Court.

Counsel for Mr Bolton stated that the defence had been denied access to the audio recordings of interviews with witnesses referred to in the notes of the informant.

In response the informant, OPI investigator Buckle, advised the prosecutor:

that's an error and that there are no tape recordings in existence.'

His Honour then asked:

are you saying that the informant will give evidence that that is confined to writing?

To which the prosecutor replied:

Yes, your Honour they are my instructions'.

Defence counsel immediately called for those notes. (Transcript pages 5-6.)

The informant subsequently gave sworn evidence, contrary to what was recorded in her notes taken at the time, that no tape recordings had been made. She also stated that no other notes had been made and the only record of what had happened was the affidavit itself. (Transcript page 11 and following.)

The informant also gave evidence that although she would normally tape record the interviews of witnesses she had not done so on this occasion because she was specifically directed by the principal investigator Mr Davson not to do so. (Page 24 transcript.)

29 April 2008

OPI officer Davson stated that he believes he would have recorded the initial interview with the complainant Mr Carson. (Transcript page 146 lines 6-7.)

Mr Davson also stated that while he did not believe there was any need to tape record the interviews with witnesses he did not recall giving a specific direction not to record interviews with witnesses. (Transcript pages 147-148.)

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30 April 2008 S/C Hill gave sworn evidence that her interview with the OPI, at which Ms Buckle was present, was tape-recorded. She indicated, however, that it was not Ms Buckle who asked if she minded whether the interview was recorded but the person who took her affidavit, "Karen" (That is, Kerry Reynolds.) She went on to say that:

I remember it because it was a very small device and I'm actually not very technically minded and it was a small device, maybe even a pen size or smaller and it was placed down there and I know that it was tape-recorded.' (Transcript page 198.)

30 April 2008 S/C Orsolic gave sworn evidence that his interview with the OPI investigators had been tape-recorded by a small tape-recording device. (Transcript page 206.) This affidavit was taken by OPI officer Kerry Reynolds.

30 April 2008 S/C Zavaglia gave sworn evidence. He also stated that his interview with OPI investigators had been tape-recorded by a little hand held tape recorder. (Transcript page 210.) S/C Zavaglia stated that the person who took the affidavit from him had also asked him whether it was okay to tape the interview. The person who took S/C Zavaglia's statement was Senior Investigation officer Davson.

30 April 2008 OPI officer Kerry Reynolds gave sworn evidence. Ms Reynolds initially denied that the interview with S/C Hill was tape recorded but when pressed stated she was not sure. (Transcript at pages 213-14 and 221-227.)

Ms Reynolds had not been present in court when Ms Buckle or the police witnesses had given evidence.

30 April 2008 OPI officer Buckle was recalled to give evidence. (Ms Buckle, as the informant, had been present in court and heard the evidence given by all witnesses.)

During her evidence Ms Buckle stated that:

Based on my diary and Senior Constable Hill's evidence I would say there's a very strong possibility that our interview was recorded....'

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Ms Buckle also acknowledged that the same could have been the case with Senior Constable Orsolic and Leading S/C Woodcroft. (Transcript pages 232-233.)

Although Woodcroft did not give evidence due to illness, he was spoken to by Mr Bolton's solicitors on the last day of the hearing and confirmed that his interview had also been tape-recorded.

OPI officer Buckle took S/C Woodcroft's affidavit.

During cross-examination Ms Buckle acknowledged that it is very easy to delete material from the portable recording devices they are provided with and that if a recording is not downloaded onto the OPI's main system prior to deletion there would not be any record that an interview had ever been recorded. (Transcript at page 234.)

When cross-examined further, Ms Buckle accepted that the evidence of the police witnesses was such that they must be telling the truth about the interviews being recorded. (Transcript page 238.)

During the course of the day, His Honour Mr Gurvich M stated that:

The defence in this case, and I understood from the prosecutor right at the outset, if the stuff was there you should have it.'

His Honour went on to say:

And I think that's axiomatic isn't it? (Transcript at page 215.)

1 May 2008

OPI officer Buckle was recalled to give evidence. During cross-examination she accepted that if recordings of interviews were made they could not have been placed onto the OPI main system by whoever was responsible for making those recordings. (Transcript at pages 247-48.)

During cross-examination OPI officer Buckle could not explain why it was that she had failed to properly check her diary to determine whether she had any record of the interviews of witnesses being recorded. (Transcript pages 248-249.)

On the basis of the sworn evidence of three police officers and the statement of a fourth officer, it is clear that the OPI

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interviews with each of those witnesses were tape-recorded. The notes taken at the time by Ms Buckle corroborate that the interviews with S/C Hill and S/C Orsolic were recorded.

5 May 2008

His Honour Mr Gurvich dismisses the current charge against Mr Bolton and awards costs against the Director OPI.

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SCHEDULE 2

Correspondence relating to the complaint of Sergeant Bolton

20 June 2008

35 Bull Hill Road
KAWARREN VIC 3249

Special Investigations Monitor
PO Box 617 Collins Street West
MELBOURNE VIC 8007

Dear Mr Jones

Re: Complaint of serious misconduct/criminal offending by members of the Office of Police Integrity during the investigation and prosecution of an assault allegedly committed by me on 19 August 2006

I am a Sergeant of Police presently stationed at the Colac Police Station. On 19 August 2006 I arrested Mr Malcolm Carson for being drunk. My partner at the time was Senior Constable Sally Slingsby. Upon return to the Colac police station Mr Carson refused to be searched and physically hindered me in my attempts to search him.

During the course of the search I believed that Mr Carson was about to spit on S/C Slingsby or myself and as a result I slapped Mr Carson once to his face. I then completed my search of Mr Carson and lodged him in the cells. The incident was captured on CCTV and I was aware at the time of the incident that it was being recorded.

Mr Carson made a complaint to the OPI in relation to my treatment of him and on 6 August 2007, nearly 12 months after I arrested Mr Carson, I was charged with assaulting Mr Carson.

After I was charged I was provided with a copy of the brief of evidence that had been compiled against me. At that time I ascertained that on 30 August 2006 S/C Slingsby signed a statement that she had prepared earlier in relation to the incident involving Mr Carson.

On 20 September 2006 S/C Slingsby had an affidavit taken by Senior Investigation Officer Michael Davson from the Office of Police Integrity. Comments in this affidavit that could be regarded as being detrimental to me had not been included in Senior Constable Slingsby's earlier statement.

On 8 February 2008 my solicitors issued a witness summons for production of documents or things and served it on the Director OPI. The summons required production of any audio or video recordings relating to interviews conducted by OPI investigators with witnesses in the matter.

In response to the subpoena, the Managing Lawyer for the OPI, Ms Vanessa Twigg, by way of letter dated 19 March 2008 wrote to my solicitors and stated:

I have made inquiries of the informant as to whether there are any tape recordings of interviews conducted by OPI investigators in this matter. To date, no recordings have been located. Should tape recordings of interviews conducted by OPI investigators with witnesses in this matter be identified, copies of such material will be produced to the Court. (Copy enclosed.)

On 20 March 2008 Ms Twigg forwarded another letter to my solicitors advising that:

... I have made further inquiries with the OPI investigators who interviewed and took affidavits from witnesses in this matter. They have confirmed that they did not make tape recordings of those interviews and no such recordings have been located in a search of OPI holdings in this matter. (Copy enclosed.)

On 25 March 2008 my solicitors received material from the OPI pursuant to the witness subpoena issued to the Director. The diary notes of the informant were provided as part of this documentation. **(Copy of relevant page enclosed.)** In her diary, the informant specifically noted in relation to the interview of the witness S/C Hill on 20/9/06 that 'conversation tape recorded'. In relation to the interview of the witness S/C Orsolic on 21/9/06 she had noted 'conversation recorded'.

On 11 April 2008 my solicitors forwarded a letter to the Office of Public Prosecutions on my behalf that stated, in part:

We have cause to believe that the conversations OPI officers had with witnesses were "recorded" and request copies of such recordings and any transcript that may have been made of those recordings. (Copy enclosed.)

By way of a letter dated 23 April 2008 the OPP advised my solicitors that:

OPI instructs that there are no recordings and refer you to Ms Vanessa Twigg's letter dated 20 March 2008. (Copy enclosed.)

On 28 April 2008 the prosecution against me commenced at the Melbourne Magistrates' Court. **(A full copy of the transcript of the proceedings is enclosed.)**

Upon commencement of the proceedings, my counsel, Mr Ramon Lopez, advised the court that the defence had been denied access to audio recordings of interviews with witnesses referred to in the notes of the informant. In response the informant, OPI investigator Buckle, advised the prosecutor:

That's an error and that there are no tape recordings in existence.'

His Honour then asked:

Are you saying that the informant will give evidence that that is confined to writing?

The prosecutor replied by saying:

Yes, your Honour they are my instructions'.

My counsel immediately called for those notes. (Transcript pages 5-6.)

The informant subsequently gave sworn evidence, contrary to what was recorded in her notes taken at the time, that no tape recordings had been made. She also stated that no other notes had been made and the only record of what had happened was the affidavit itself. (Transcript page 11 and following.)

The informant also gave evidence that although she would normally tape record the interviews of witnesses she had not done so on this occasion because she was specifically directed by the principal investigator Mr Davson not to do so. (Page 24 transcript.)

On 29 April 2008 OPI officer Davson gave evidence on oath and stated that he believed he would have recorded the initial interview with the complainant Mr Carson. (Transcript page 146 lines 6-7.) If this is correct it raises the question as to what happened to that tape recording. It would, of course, have been quite improper for Mr Davson or any other person to have destroyed the recording of an interview with the complainant and the main witness against me. This is because Mr Carson may well have made inconsistent statements during this interview that would have cast doubt on his credibility and thus assisted me in conducting my defence. The inability of the OPI to locate this recording leads to the inescapable conclusion that it was destroyed by OPI officer Davson. The destruction of this recording was obviously to my detriment and should not have occurred.

Mr Davson also stated that while he did not believe there was any need to tape record the interviews with witnesses he did not recall giving a specific direction not to record such interviews. (Transcript pages 147-148.) This sworn evidence was contrary to the sworn evidence previously given by OPI officer Buckle.

On 30 April 2008 S/C Hill gave sworn evidence that her interview with the OPI, at which Ms Buckle was present, was tape-recorded. She indicated, however, that it was not Ms Buckle who asked if she minded whether the interview was recorded but the person who took her affidavit, "Karen" (*That is, Kerry Reynolds.*) She went on to say that:

I remember it because it was a very small device and I'm actually not very technically minded and it was a small device, maybe even a pen size or smaller and it was placed down there and I know that it was tape-recorded.' (Transcript page 198.)

On 30 April 2008 S/C Orsolic gave sworn evidence that his interview with the OPI investigators had been tape-recorded by a small tape-recording device. (Transcript page 206.) This affidavit was taken by OPI officer Kerry Reynolds.

On 30 April 2008 S/C Zavaglia gave sworn evidence. He also stated that his interview with OPI investigators had been tape-recorded by a little hand held tape recorder. (Transcript page 210.) S/C Zavaglia stated that the person who took the affidavit from him had also asked him whether it was okay to tape the interview. The person who took S/C Zavaglia's statement was Senior Investigation officer Davson.

On 30 April 2008 OPI officer Kerry Reynolds gave sworn evidence. Ms Reynolds initially denied that the interview with S/C Hill was tape recorded but when pressed stated she was not sure. (Transcript at pages 213-14 and 221-227.) Ms Reynolds had not been present in court when Ms Buckle or the police witnesses had given evidence.

On 30 April 2008 OPI officer Buckle was recalled to give evidence. (Ms Buckle, as the informant, had been present in court and heard the evidence given by all witnesses.) During her evidence Ms Buckle stated, amongst other things, that:

Based on my diary and Senior Constable Hill's evidence I would say there's a very strong possibility that our interview was recorded....'

Ms Buckle also acknowledged that the same could have been the case with Senior Constable Orsolic and Leading S/C Woodcroft. (Transcript pages 232-233.) Although S/C Woodcroft did not give evidence during the hearing due to illness, he was spoken to by my solicitors on the last day of the hearing and confirmed that his interview had also been tape-recorded. OPI officer Buckle took S/C Woodcroft's affidavit.

During cross-examination Ms Buckle acknowledged that it is very easy to delete material from the portable recording devices they are provided with and that if a recording is not downloaded onto the OPI's main system prior to deletion there would not be any record that an interview had ever been recorded. (Transcript at page 234.)

When cross-examined further, Ms Buckle accepted that the evidence of the police witnesses was such that they must be telling the truth about the interviews being recorded. (Transcript page 238.)

During the course of the day, His Honour Mr Gurvich M stated that:

The defence in this case, and I understood from the prosecutor right at the outset, if the stuff was there you should have it.'

His Honour went on to say:

And I think that's axiomatic isn't it? (Transcript at page 215.)

The recordings could not be produced if they had been deliberately destroyed prior to the court hearing. It appears this is exactly what has happened in my case and that those involved have committed serious criminal offences in doing so.

On 1 May 2008 OPI officer Buckle was again recalled to give evidence. During cross-examination she accepted that if recordings of interviews were made they could not

have been placed onto the OPI main system by whoever was responsible for making those recordings. (Transcript at pages 247-48.)

During cross-examination OPI officer Buckle could not explain why it was that she had failed to properly check her diary to determine whether she had any record of the interviews of witnesses being recorded. (Transcript pages 248-249.)

On the basis of the sworn evidence of three police officers and the statement of a fourth officer, it is clear that the OPI interviews with each of those witnesses were tape-recorded. The notes taken at the time by Ms Buckle corroborate that the interviews with S/C Hill and S/C Orsolic were recorded. It is also probable, although this was not explored at the court hearing, that the interview with S/C Slingsby was also recorded by a digital recorder. I ask that as part of your investigation you make appropriate inquiries in this regard.

On 5 May 2008 His Honour Mr Gurvich dismissed the charge of assault against me and awarded costs against the Director OPI.

As a result of what transpired in my case there is strong evidence that the informant, Ms Holly Buckle, committed perjury when first giving evidence in my matter. There is also strong evidence that Mr Davson and Ms Reynolds were both involved in the recording of interviews with witnesses. The failure of OPI staff to locate the recordings made by OPI officers Buckle, Davson and Reynolds, even after very comprehensive investigations, suggests that these recordings must have been deleted and not placed on the OPI's main recording system as required.

The interviews with the various witnesses during the investigation into my alleged misconduct took place at locations away from the OPI's main office. As a result, the recordings can only have been made by the OPI officers using portable recording devices. It follows that the only persons who could have deleted these recordings are those same OPI investigators. Moreover, these deletions could not have been inadvertent because the evidence is that at least three separate devices were used to record the interviews with the respective witnesses. The fact that recordings were deleted from all three recording devices leads to the inescapable conclusion that the investigators involved reached an agreement between themselves to delete whatever recordings they had made. That is, they conspired with one another to destroy critical evidence of high relevance to my defence of the charges. In any event, the deliberate destruction of these recordings must amount to an attempt to pervert the course of justice and/or constitute misconduct in public office.

I believe that as a result of the destruction of the audio recordings made by the OPI with the various witnesses in my matter that I was seriously prejudiced in conducting my defence. As previously mentioned, if the initial interview with the complainant, Mr Carson, was recorded and then destroyed I was denied the opportunity of examining any inconsistencies in his account that may have adversely impacted on his credibility. The same complaint can be made regarding the destruction of the recordings made by OPI officers with the other witnesses. Even more importantly, any evidence of pressure being applied to any of these witnesses to make affidavits along the lines required by the OPI officers was lost. It is certainly my concern that

inappropriate pressure was placed on police witnesses in an attempt to obtain statements detrimental to myself.

I am submitting my complaint to you because there is no independent body set up to investigate allegations of criminal misconduct on the part of officers of the OPI. The Ombudsman is restricted to investigating complaints regarding administrative matters and there is obviously a conflict in Victoria Police personnel investigating members of the body set up to monitor their activities. I therefore request that you take whatever action is necessary to have my complaints properly investigated.

I ask that the following matters be investigated:

- (1) Whether the interview with the complainant, Mr Carson, was taped recorded;
- (2) If the interview with Mr Carson was tape recorded, who recorded it and what happened to that recording;
- (3) If the recording was destroyed, why was it destroyed and who was involved in the destruction of that recording.
- (4) I ask that similar inquiries be made in relation to the interviews with Senior Constable Slingsby, Senior Constable Hill, Senior Constable Orsolic, Senior Constable Zavaglia and Leading Senior Constable Woodcraft. On the basis of the evidence presented at court, the evidence is overwhelming that the interviews with Senior Constable Hill, Senior Constable Orsolic and Senior Constable Zavaglia were recorded. That being so, I ask that inquiries be undertaken to ascertain who was involved in destroying these recordings;
- (5) Upon confirmation being made that audio recordings have been destroyed, I ask that consideration be given as to whether criminal charges should be filed against those involved including consideration of the following offences:-
 - a. Perjury;
 - b. Attempting to pervert the course of justice;
 - c. Misconduct in public office.
- (6) I also ask that inquiries be undertaken to determine what procedures were in place at the OPI to prevent the destruction of evidence as occurred in my case, and whether the destruction of these recordings contravenes the *Public Records Act 1973* (Vic);
- (7) I also ask that inquiries be undertaken to determine why the managing lawyer for the OPI, Ms Vanessa Twigg, provided two letters stating that no recordings had been made and apparently provided verbal advice to the OPP to the same affect when the notes of OPI officer Buckle clearly showed that at least two of the interviews had been recorded.

I believe that if a serving police officer had conducted himself or herself in the manner demonstrated by the OPI officers in this case, a thorough and exhaustive ESD investigation would certainly follow and result in charges of perjury, attempting to pervert the course of justice, misconduct in public office and contraventions of the *Public Records Act 1973* (Vic). The misconduct demonstrated by officers of the OPI in this matter is precisely the kind of behaviour targeted by the OPI itself in scrutinising the actions of Victoria Police. It would be a gross injustice if OPI officers are permitted to engage in misconduct with immunity. The OPI has been granted extraordinary powers by the parliament and has been entrusted by the community to exercise those powers with the utmost integrity. Any breach of that trust is a most serious matter that must be addressed comprehensively if the public are to maintain confidence in the OPI.

I await your response and thank you for your consideration of this matter.

Yours truly,

C.A. Bolton



Office of the Special Investigations Monitor

PO Box 617 Collins Street West Melbourne Victoria 8007 DX 210172 Melbourne
Telephone 03 8614 3222 Facsimile 03 8614 3200 Email osim@justice.vic.gov.au

14 July 2008

Mr. C.A Bolton
35 Bull Hill Road
KAWARREN VIC. 3249

Dear Mr. Bolton

Complaint to Special Investigations Monitor

Further to your letter of 20 June 2008 and my response of 23 June 2008 the documents attached to your letter have been reviewed and considered.

I note that your complaint in essence relates to alleged conduct of officers/investigators of the Office of Police Integrity (OPI) in relation to an investigation into and subsequent prosecution of an assault allegedly committed by you on an arrested person in custody on 19 August 2006. The alleged conduct is that OPI officers/investigators destroyed audio recordings of interviews with the complainant and other witnesses which were conducted during the course of the investigation and that such recordings were therefore not produced to the defence in accordance with the summons served on the Director, Police Integrity. As a consequence these recordings were not tendered to the court hearing the prosecution against you and you were thereby prejudiced in the conduct of your defence. I also note that the result of the prosecution was that the Magistrate dismissed the assault charge against you and ordered costs against the Director, Police Integrity.

Further, I note the evidence given during the course of the prosecution by the OPI informant and other OPI officers/investigators in relation to whether the interviews were recorded and to the points you make in relation to this matter. However, I am unable to undertake investigations to determine whether interviews with the complainant and relevant witnesses were in fact tape recorded by the relevant OPI officers/investigators and whether any such tape recordings were destroyed by those officers/investigators.

My complaints jurisdiction as the Special Investigations Monitor (SIM) under the *Police Regulation Act 1958* (PR Act) relates to the OPI and in particular to how the Director of that office exercises his powers under that Act. However, it is not a general complaints jurisdiction being limited to:

- monitoring compliance with the PR Act by the Director and staff of the OPI; and
- assessing complaints made by persons who have attended before the Director, OPI in the course of coercive examinations conducted for the

purposes of providing information, producing a document or thing or giving evidence. Complaints are limited to those cases where persons called to coercive examinations are not afforded adequate opportunity to convey their appreciation of the relevant facts, it being one of the roles of the SIM to assess the relevance and appropriateness of questions or documents/things requested having regard to the purpose of the particular investigation in question.

It is clear that your complaint does not fall within the latter category referred to above as you have not been the subject of a coercive examination by the OPI.

In respect of the former, my role in monitoring compliance with the PR Act by the Director and staff of the OPI extends to the exercise of coercive powers under the PR Act. It does not extend to how the OPI conducts an investigation or to consider issues that arise in the conduct of that investigation and subsequent prosecution. The PR Act does not give me the function of supervising OPI officers/investigators in the conduct of an investigation.

I understand that you are concerned that if there was in fact a deliberate destruction of audio recordings by the OPI officers/investigators in the circumstances of your case consideration should be given to whether criminal charges are to be filed against those involved for offences including perjury, attempting to pervert the course of justice and misconduct in public office. However, it is not my function under the PR Act to investigate such allegations of criminal misconduct on the part of officers of the OPI.

To sum up the position, it is not my function under the PR Act to investigate the issues you have raised. I can only act in accordance with the function given to me by the legislation. However, the Ombudsman does have an important role with respect to the oversight of the OPI. I am therefore forwarding your complain to him for his consideration. I am also forwarding a copy of your letter and my reply to Mr. Michael Strong, Director Police Integrity for his consideration as he may wish to respond to you.

Otherwise, I regret for the reasons I have stated that I am unable to assist you further..

Yours sincerely,



David Jones
Special Investigations Monitor

CC to:

Mr. Michael Strong, Director, Police Integrity; and
Mr. George Brouwer, State Ombudsman



Office of the *Special Investigations Monitor*

PO Box 617 Collins Street West Melbourne Victoria 8007 DX 210172 Melbourne
Telephone 03 8614 3222 Facsimile 03 8614 3200 Email osim@justice.vic.gov.au

23 June 2008

Mr C A Bolton
35 Bull Hill Road
KAWARREN VIC 3249

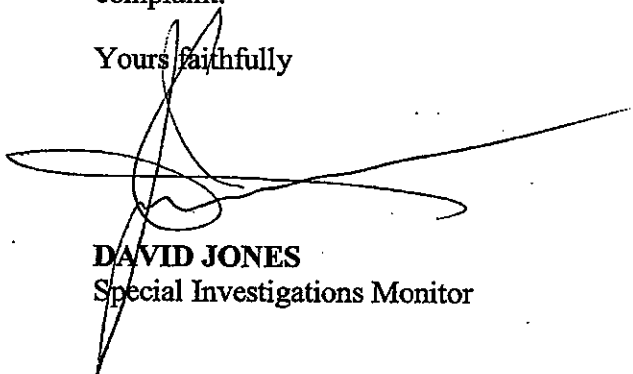
Mr Bolton

Your correspondence re complaint of serious misconduct/criminal offending by members of the Office of Police Integrity during the investigation and prosecutions of an assault allegedly committed on 19 August 2006
Our Ref: 0608

I have received your letter of 20 June complaining about various matters relating to an Office of Police Integrity investigation and prosecution of an alleged assault committed by you.

After I have had a chance to carefully consider the matters that you have raised and the material that you have provided I will be in touch with you again concerning your complaint.

Yours faithfully



DAVID JONES
Special Investigations Monitor

22 July 2008

File No: C/08/9709-02

Sergeant C. A. Bolton
35 Bull Hill Road
KAWARREN Vic 3249

Dear Sergeant Bolton

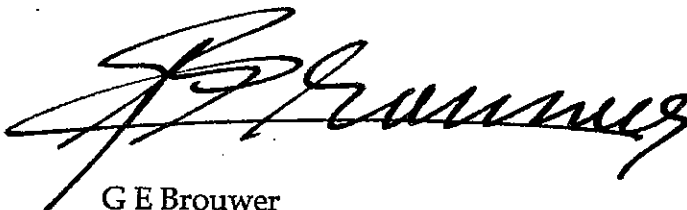
I am writing to acknowledge receipt of your letter dated 20 June 2008 which has been forwarded to me by the Special Investigations Monitor.

I will be making enquiries about the matters raised by you concerning the alleged conduct of officers of the Office of Police Integrity.

I will contact you again if I require any further information.

If you have any queries about this matter you may contact the Deputy Ombudsman Mr John Taylor on 9613 6208.

Yours sincerely



G E Brouwer
OMBUDSMAN

5 November 2008

File No: C/08/9709

Sergeant C A Bolton
35 Bull Hill Road
KAWARREN VIC 3249

Dear Sergeant Bolton

I refer to the Ombudsman's letter to you of 22 July 2008 acknowledging receipt of your letter dated 20 June 2008 forwarded to him by the Special Investigations Monitor, and our telephone conversation on 17 October 2008.

In his letter, the Ombudsman advised that he would be making enquiries concerning the alleged conduct of officers of the Office of Police Integrity (OPI).

We have concluded those enquiries and I can now advise you of the outcome.

In your letter of 20 June 2008, you raise a number of allegations. In summary, these allegations relate to the inability of OPI to locate certain tape recordings of interviews and hence on what basis were they destroyed, and the actions of OPI officers in relation to this.

Our enquiries have now revealed the existence of four digital recordings, previously stored on the personal drive of one of the OPI officers who has since left OPI. Two of these recordings relate to the interview of Mr Malcolm Carson; one to the interview of Mrs Mary Carson; and one to the interview of Constable Lynton Zavaglia. No other recordings have been discovered. If you require access to these digital recordings, you should contact OPI directly. I am satisfied that OPI has now exhausted all avenues of inquiry in relation to locating interview recordings.

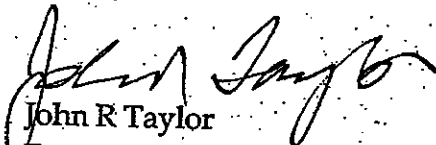
I have also examined OPI's processes and policies relating to the recording of interviews that existed at the time to assess whether those policies had been breached. I have also considered whether there is any evidence to suggest that any other recordings may have existed and been destroyed. While I consider

that OPI's procedures at the time were inadequate, I am also of the view that OPI officers acted reasonably and did nothing contrary to the policies in place at that time. As a result of our enquiries, OPI has acknowledged that improvements could be made to their record keeping methodology, and has subsequently revised its processes and procedures to overcome these deficiencies. There is no evidence to suggest that any other recordings exist or have been disposed of.

You asked that consideration be given to whether criminal charges should be filed against OPI officers. This office does not provide legal advice or conduct criminal proceedings and hence, you may wish to seek your own advice on this matter.

Given the above, I do not consider that this office can be of further assistance to you at this time.

Yours sincerely


John R Taylor
Deputy Ombudsman

Carl Bolton
35 Bull Hill Road
KAWARREN VIC 3249

24 November 2008

Chief Commissioner of Police
Victoria Police
Victoria Police Centre
637 Flinders Street
Melbourne, VIC, 3005

Dear Madam,

Re: Complaint of serious criminal misconduct by members of the Office of Police Integrity during the investigation and prosecution of an assault allegedly committed by me on 19 August 2006

I am a Sergeant of Police presently stationed at the Colac Police Station.

I enclose:-

1. My letter to Mr David Jones, Special Investigations Monitor (SIM), dated 20 June 2008 together with enclosures;
2. Copy letter from the SIM, dated 14 July 2008;
3. Copy letter from Mr George Brouwer, Ombudsman dated 22 July 2008;
4. Copy letter from Mr John Taylor, Deputy Ombudsman, dated 5 November 2008.

I forwarded a formal complaint to the SIM in June of this year requesting that he investigate whether officers of the Office of Police Integrity (OPI) have committed serious criminal offences involving perjury, attempting to pervert the course of justice and misconduct in public office arising out of their involvement in my case. The evidence relating to the unlawful conduct of members of the OPI is set out in

detail in my letter to the SIM dated 20 June 2008 (copy enclosed). This letter is to be read in conjunction with my letter to the SIM dated 20 June 2008.

On 14 July 2008, I received a response from the SIM informing me that he has no jurisdiction to investigate these matters notwithstanding the fact they involve serious allegations of criminal misconduct. Mr Jones did, however, refer my complaint to the Ombudsman and to Mr Michael Strong, Director of Police Integrity for their consideration.

I have received no response from the Director of Police Integrity notwithstanding the referral of the matter to him by the SIM.

In relation to the reply now received from the Ombudsman, my concerns have not been addressed in any substantive sense.

The Ombudsman has declined to investigate the allegations of misconduct. This is notwithstanding the fact that the Ombudsman's enquiries have resulted in four digital recordings made by the OPI being located. The OPI previously denied that these recordings existed and officers of the OPI have given sworn evidence to this effect.

The discovery of recordings of interviews by the Ombudsman confirms that OPI Officer Buckle gave false evidence on 28 April 2008 in the Melbourne Magistrates' Court when she provided the following sworn answer in response to the Prosecutor (transcript page 12) -

Prosecutor - *"Were there any tape recordings, to the best of your knowledge?"*

OPI Officer Buckle - *"No, and I searched for them and there's none."*

The Ombudsman has concluded in his reply -

"There is no evidence to suggest that any other recordings exist or have been disposed of."

There is clear and cogent evidence in the supporting materials accompanying my complaint to the SIM that other recordings do exist. The evidence relating to the existence of other recordings includes:-

- (a) S/C Hill gave sworn evidence on 30 April 2008 that the interview with the OPI, at which OPI officer Buckle was present, was tape-recorded (transcript page 198).

The OPI frequently works in conjunction with the Ethical Standards Department (ESD) and oversees the conduct of ESD investigations on a regular basis. I submit that it is inappropriate for this matter to be referred to the ESD for this reason. I request that you appoint a suitably senior and independent investigator to conduct the investigation.

I look forward to receipt of your response at your earliest convenience. I am conscious of the fact that it is now five months since I first raised my complaint with the SIM. I am keen to ensure that this matter is investigated promptly to avoid the risk of the investigation being compromised by any further delay.

Yours faithfully,

Carl Bolton

26/11/08

The Director
Office of Police Integrity

Dear Sir,

Re OPI prosecution against me in relation to an incident at the Colac Police Station on 19th August 2006.

I am a Sergeant of Police stationed at the Colac Police Station. On 19th August 2006, I arrested Mr Malcolm CARSON for being drunk. Whilst he was being lodged an incident occurred. As a result of this incident I was subsequently charged with an assault on him. The informant in the matter was Ms Holly BUCKLE. The matter was heard before the Magistrates Court and the charge dismissed.

On 8th February 2008, whilst preparing my defence of this matter solicitors acting on my behalf issued a witness summons for production of documents or things, specifically tape recordings of interviews conducted by OPI staff with witnesses in the matter.

On the 19th March we were advised by Ms Vanessa TWIGG that no recordings could be located.

On 20th March we again wrote to your office requesting that further checks be made to locate and provide any audio recordings, and Ms TWIGG advised that OPI investigators had confirmed that no recordings were made and her search could not locate any.

On the 11th April we contacted the Office of Public Prosecutions, making similar requests in relation to the production of audio recordings. On 23rd April the OPP replied relying on the advice provided by Ms TWIGG that no recordings existed.

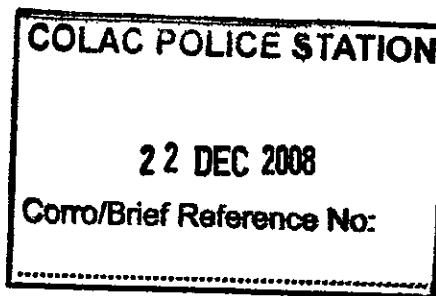
I have had reason to lodge a complaint in relation to this and other matters with the SIM who in turn forward my complaint to you and the Ombudsman.

On 5th November 2008 I received a reply from Mr John TAYLOR Deputy Ombudsman (Copy enclosed) whose enquiries revealed the existence of four digital recordings, two relate to the interview of Malcolm Carson one relates to the interview of his mother and the other to the interview of Senior Constable Lynton ZAVAGLIA. Mr TAYLOR advised that should I require access to these digital recordings that I contact the OPI directly.

Therefore I am writing to request that you forward a copy of these recordings to me at your earliest convenience.

C.A. BOLTON
Sergeant 23120
Colac Police

15 December 2008



Sergeant C A Bolton
Colac Police Station
Cnr Dennis & Queen Streets
COLAC VIC 3250

Dear Sergeant Bolton

Request for provision of information from OPI

I refer to your letter of 26 November 2008 in which you requested copies of four digital recordings made by OPI officers during the investigation into a complaint against you. The existence of these recordings was identified during an investigation by the Ombudsman of a complaint made by you against OPI.

The proceedings under which your solicitors issued a subpoena requiring production of such material concluded with your acquittal, and OPI is therefore no longer subject to the requirements of the subpoena. The Ombudsman's investigation into the conduct of OPI with respect to your prosecution has been completed and OPI has complied with all lawful requirements of the Ombudsman with respect to his investigation.

Under the provisions of section 22 of the *Police Integrity Act 2008* (Vic), OPI is prohibited from disclosing information obtained or received in the course of, or as a result of the functions of the performance of the functions of the Director, except in the limited circumstances set out in subsections 22(1)(a) to (e). Your request does not fall within any of the limited exceptions and OPI is therefore prohibited from providing the digital recordings to you. OPI will, of course, produce the material if called upon to do so in accordance with law.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Strong".

Michael Strong
DIRECTOR, POLICE INTEGRITY

Office of Police Integrity

Level 3 South Tower 459 Collins Street PO Box 4676 Melbourne VIC 3001 DX 210004

Telephone: 03 8635 6188 Toll free: 1800 818 387 Facsimile: 03 8635 6185 Email: opi@opi.vic.gov.au Website: www.opi.vic.gov.au

Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

SCHEDULE 3

**Media reports relating to misconduct within the OPI and Victorian
Ombudsman**



Herald Sun
27/08/2008
Page: 7
General News
Region: Melbourne
Circulation: 535000
Type: Capital City Daily
Size: 89.71 sq.cms
MTWTFS-

Officer suspect for fraud at OPI

Carly Crawford

A POLICE corruption investigator is facing the sack over allegations he skimmed up to \$3000 from Victoria's anti-corruption watchdog.

The Office of Police Integrity last night confirmed it had suspended a staff member for a disciplinary breach.

The *Herald Sun* believes a senior investigator is alleged to have fiddled accounts in the OPI's business unit, escaping detection for a considerable time.

The case is said to involve inadequate supervision of administration expenses.

The staff member was not involved in front-line investigations, and while suspended remains on full pay.

Embarrassed OPI officials launched an immediate inquiry after a routine internal audit in June.

"The OPI is having an independent workplace disciplinary investigation," a spokesman said. "The Ombudsman will review the findings."

The spokesman said he couldn't comment further for privacy reasons.

The revelation is likely to reignite calls for Victoria to set up a wide-ranging anti-crime commission with powers to investigate not only police but the entire public service.

The State Opposition and the Police Association have been vocal in their demands for an anti-corruption body with broader powers.

Premier John Brumby has resisted it as a waste of taxpayers' money, insisting the Auditor-General, OPI and Ombudsman were sufficient.

Former County Court Judge Michael Strong took the reins as OPI director in March, replacing George Brouwer.

Mr Brouwer had been both Ombudsman and OPI director until the offices were separated last year; he remains the Ombudsman.

The taxpayer-funded OPI has a \$16 million budget and a staff of about 100.

Matters of integrity

- Nick McKenzie
- September 3, 2008

The police watchdog has been winded by misconduct allegations.

BULKY and broad shouldered, Denis Grimes is an unashamedly old-school country copper. The Shepparton senior sergeant believes the force he has served for 36 years has gone soft.

"I don't care if you are black, white or brindle. I just like catching crooks and keeping the streets safe," he says.

His outspoken nature has long grated with his superiors. According to some police, so too has his handling of lost property. When lost property is handed into the police and not claimed for three months, it has to be destroyed or donated to charity.

But about 18 months ago, the state's police watchdog got a tip-off that Grimes had been bending the rules. A system check showed that Grimes, an avid hoarder and handyman, had been previously investigated for his mishandling of lost property but nothing had ever stuck. So the Office of Police Integrity decided to set a trap.

Armed with a false identification, an officer from the OPI's secretive integrity testing unit approached Grimes claiming to have found some property at a truck stop, including a knife, a fishing reel and a gun-cleaning kit. Grimes took the items back to the police station, where they were duly recorded. Three and a half months later, when no one had arrived to claim them, they were earmarked for destruction.

It was then that Grimes took the bait. Six months later in December last year, OPI officers, with a search warrant, raided Grimes' home. Among the items found were a fishing reel, knife and gun-cleaning kit.

Without doubt, Grimes' decision to take the goods was open to serious question. But did taking property due to be destroyed amount to a clear case of criminal activity?

Grimes certainly didn't think so. "I don't care if they go after the crooked coppers. And if I had taken the property straight home, it might be different. But I waited until it was to be destroyed," he says.

Grimes is suspicious about whether the OPI had a strong enough case to justify the granting of a search warrant. "To take out a search warrant, the goods have to be stolen. And that is where I have got them (the OPI). They had to tell lies (in an affidavit) to get the search warrant. Any copper worth their salt would know that," Grimes says.

That an old-school copper accused of wrong doing is pointing a finger back at his accusers is hardly revelatory. But Grimes is not alone in holding concerns about the OPI's handling of the matter.

Not only has the Office of Public Prosecutions deemed the case too weak to warrant criminal charges but *The Age* reveals today that the Grimes matter is one of several cases - including an inquiry into two OPI investigators - that have sparked disquiet among some within the OPI. This disquiet ultimately goes to the question of the accountability and oversight of one of the nation's most powerful anti-corruption agencies. Who is watching the watchdog?

It is a question that comes at a politically sensitive time for the agency set up four years ago by the State Government. That the OPI has had an impact on corruption and driven a raft of policing reforms is unquestionable. But the Police Association, State Opposition and scores of lawyers are watching the agency's every move - and the Government has not improved oversight of the OPI, leaving the agency vulnerable to criticism.

WELL-PLACED sources have told *The Age* that the integrity testing unit investigator who handed Grimes the "lost" items had later resisted signing the search warrant affidavit because he claimed it contained information he could not verify. After he refused a request from a

senior officer to alter his original affidavit, he was allegedly sworn at. Another investigator signed the final affidavit and the warrant was granted.

According to sources, there was also a disagreement between two OPI officers about whether the Office of Public Prosecutions should be informed of an unexpected twist in the case: that the OPI officer who carried out the integrity test in Shepparton, as well as the investigator's boss in the integrity testing unit, had themselves fallen under a cloud. (The OPP was ultimately notified of the allegations.)

But the problems within the unit go beyond office place clashes and debate. In March*, the investigator who performed the Grimes integrity test was sacked by the OPI for abandoning his workplace. Before he was fired, the investigator conceded he had acted improperly in respect of the OPI's expense account, but said that he had only done so under pressure from his integrity testing unit boss, who has been suspended. *The Age* understands the investigator made the allegations in an OPI interview and to the private Melbourne investigation consultancy hired to look into the claims, Julie Baker-Smith and Associates.

The investigator alleged his boss had spent about \$3000 of OPI expenses on pokies, meals, wine, entertaining guests at a unit forum and tinting his work car windows. It is unclear which expenses adhered to public sector policy, but some of the spending appeared questionable.

In order to account for the expenses, the investigator admitted to signing false statutory declarations. In some cases, the investigator conceded exaggerating the amount of work he had done on an OPI operation codenamed Uranium. He said his boss knew the declarations were false.

It is understood the investigator's allegations were outlined in a statement prepared in March, but he refused to sign it after advice from his union. Shortly afterwards, he moved overseas.

Some of his claims fall into a grey area; an undercover officer must sometimes build up a false identity by hanging around pubs and gambling venues. But the integrity testing unit boss is a well known former Victorian police officer and, therefore, an unlikely candidate for undercover work.

The Age has no evidence to corroborate the allegations and it is understood they have been fiercely contested by the unit boss. But sources aware of them say they must be thoroughly examined because they involve potentially criminal conduct. The manner in which this should be done goes to the heart of the issue of how the OPI is held accountable.

Two agencies have oversight of the OPI - the state's Special Investigations Monitor, David Jones, and the Victorian Ombudsman, George Brouwer, who is the former head of the OPI.

The Police Association, State Opposition, lawyers and academics have argued that under this model the OPI lacks accountability because Brouwer is left overseeing an agency he used to run, and the powers of the Special Investigations Monitor are limited.

The OPI director, former county court judge Michael Strong, disagrees.

"It amazes me when I hear that said (that the OPI is unaccountable). Practically every day I sign reports to the Special Investigations Monitor," he told *The Age* recently.

But among the proponents for greater oversight is the Special Investigation Monitor and former county court judge David Jones. A report Jones tabled in November stated that his ability to investigate complaints was "much narrower" than those who have oversight of the NSW Police Integrity Commission and Queensland's Crime and Misconduct Commission. In contrast to the OPI, a parliamentary committee and a dedicated inspector have oversight of the interstate agencies.

Jones' investigation jurisdiction is limited to the OPI's use of phone taps, listening devices and coercive questioning powers. Misconduct or abuse-of-power complaints that don't involve these areas go instead to George Brouwer. Jones has said that given Brouwer's former job as OPI director, it may lead to the perception of a conflict of interest.

So is it appropriate for a private consultancy with no police powers or accountability to inquire into the integrity testing unit or for Brouwer to review its investigation?

The unit's troubles also raise questions about OPI recruitment. For instance, how closely screened were the two officers before their appointment?

The OPI's hurried creation by a government under fierce pressure over corruption issues left the unenviable task of building an agency in a policing environment in which good officers were in high demand. Several OPI staff, including OPI chief Michael Strong and assistant director and former senior federal policeman Graham Ashton, are highly respected in policing and legal circles. Among anti-corruption investigators, OPI legal director Greg Carroll and senior investigator Mick Sherry are also respected.

But some ill-suited staff have parachuted into sensitive roles. As *The Age* reveals today, a very small number of OPI officers have had their integrity questioned while a senior investigator recently quit the agency and voiced his concerns to senior management about staff and case mismanagement.

Another OPI staffing issue is the fact that it is allowed to appoint former Victoria Police officers as investigators (in contrast with the NSW Police Integrity Commission, which is barred from hiring NSW police). While ex-Victorian detectives bring with them local law enforcement expertise, they are also potentially left directing investigations against former colleagues. Well placed sources have told *The Age* that some within the OPI have questioned whether old grievances have partly driven some investigations.

In the Grimes case, a senior OPI officer told another investigator that he knew that the Shepparton senior sergeant was a justifiable target because he had worked with him more than a decade ago.

Strong recently told *The Age* that any public sector agency would occasionally confront integrity issues.

"If, and to the extent, they have arisen they have been appropriately dealt with," Strong said.

The OPI has had some important successes; its high-profile work has cemented its place in the Victorian policing landscape and provided impetus for force command to tackle the darker side of police culture. In 2006, a secret OPI camera recorded the ugly assault of a police suspect that led to the scrapping of the controversial armed offenders squad. Several problematic stations have been reformed after OPI inquiries. The OPI has recently advanced its case against former assistant commissioner Noel Ashby. Other major OPI operations are gathering pace.

But its clumsy handling of relatively minor matters, including the Grimes case and one involving Colac Sergeant Carl Bolton, has led to the perception among its critics that it is overzealous or engaged in cheap run scoring.

Bolton was accused in August 2006 of assaulting a man he had arrested for public drunkenness. Video footage showed Bolton slapping the man inside the police station. Bolton maintained he had done so in self-defence after the unco-operative drunk prepared to spit at him or his colleagues.

The Age has been told that a year after the alleged assault, Bolton was charged in the face of at least one internal warning from an OPI investigator that the case would not succeed.

During Bolton's court hearing, an OPI officer who worked on the investigation came under repeated fire from Bolton's lawyer for telling the court she did not tape record any witness interviews. She revised this position after the court heard that a notation in the investigator's diary and the recollection of three witnesses suggested otherwise.

One source aware of the Bolton inquiry says: "The case let the OPI down and let Bolton down and even let the alleged victim down. You could deal with it sensibly down the disciplinary route. Or you could go him in court and he will beat it and walk out with his head held high. That is what happened."

Magistrate Maurice Gurchick dismissed the assault charge against Bolton in April and ordered the OPI to pay his defence costs.

Suspended Senior Sergeant Denis Grimes was visited by his boss last week and told he would not face criminal charges as a result of the OPI investigation. In what is likely to be an inglorious end to 36 years of policing, Grimes will now face a disciplinary hearing. He says one of his last acts as a policeman, albeit suspended, will be to complain about the OPI's handling of his case. Like Bolton, who has also lodged a complaint about the police watchdog, Grimes' complaint will be sent to the very man who headed the OPI when he and Bolton

became targets, Ombudsman George Brouwer.

Also soon to be in the Ombudsman's OPI file will be the private consultancy's report on the problems within the integrity testing unit, which also occurred during Brouwer's stint as OPI boss.

Welcome to the Victorian way.

Internal sacking, suspension stir police force watchdog

- Nick McKenzie
- September 3, 2008

VICTORIA'S powerful police corruption watchdog is facing its own integrity problems, with one officer sacked and another suspended after alleged misconduct.

An Office of Police Integrity investigator recently sacked for abandoning his workplace has alleged he was forced to sign false statutory declarations at the OPI to cover up dubious expense claims — acts which potentially involve offences of perjury and obtaining financial advantage by deception.

The sacking and suspension come after concerns were raised internally at the OPI by a small number of staff about the handling of some cases and the oversight and management of staff.

The sacked OPI investigator told a private company hired by the OPI to investigate the allegations, Julie Baker-Smith and Associates, that he signed false statutory declarations to account for OPI expenses spent on meals and entertainment. He has alleged he did so after pressure from his boss at the OPI's integrity testing unit, who spent some of the money.

The investigator has also alleged that he was directed to falsely declare hundreds of dollars spent by his boss on poker machines as expenses for an OPI operation, code-named Uranium. His boss is suspended on pay and is understood to have rejected the claims.

In a statement, the OPI said the allegations were part of an "independent workplace investigation" that would be reviewed by State Ombudsman George Brouwer. Mr Brouwer is the former head of the OPI, and the alleged misconduct occurred during his time there.

The revelations are likely to spark debate about whether the oversight of the OPI is appropriate. The OPI said it had reviewed policies and procedures and stressed that internal auditing had identified the alleged misuse of expenses, which is believed to involve a few thousand dollars.

The OPI's director, Michael Strong, said he had confidence in the integrity of his staff and that every workplace occasionally confronted "workplace issues".

"When those issues involve any allegations of misconduct, it is important those allegations are independently investigated and the investigation is oversighted," Mr Strong said.

The Age can also reveal that an OPI officer quit in June and told Mr Strong last month of his concerns about the management of staff and some cases.

A small number of other staff have left the agency, and it is understood some hold concerns about its running. More than 18 months ago, an OPI investigator left the agency after being accused of lying about their house being broken into and attending a funeral in order to take a day off work. Several well-placed sources critical of the OPI conceded that its assistant director, Graham Ashton, and other senior staff were experienced and respected and had delivered some strong results. But they said some poor recruiting and oversight had caused problems.

One of the OPI cases that has caused concern involved long-serving Shepparton officer Denis Grimes. Senior Sergeant Grimes was the subject of an OPI integrity test in mid-2007 that involved the now-sacked OPI officer handing him lost property items. After several months had passed and the property was due to be destroyed, Senior Sergeant Grimes took it home.

Concerns about the case within the OPI have included:

- A disagreement between OPI staff about whether the Office of Public Prosecutions should be notified that the integrity testing unit was under a cloud.

■A disagreement between the now-sacked officer and a senior OPI member about what information should be put into an affidavit that was used to get a search warrant. A well-placed source said the since sacked officer refused to sign the search warrant affidavit because he could not verify information in it.

The OPP recently advised that Senior Sergeant Grimes, who has been suspended, should not face criminal charges. He will instead face a disciplinary hearing.

Senior Sergeant Grimes told *The Age* his case had been poorly handled and questioned the validity of the search warrant. "They had to tell lies to get the search warrant. Any copper worth his salt would know that."

Sources say a senior OPI investigator also warned against prosecuting another police officer, Colac sergeant Carl Bolton, for allegedly assaulting a drunk man in a police station. The case against Sergeant Bolton was dismissed by magistrate Maurice Gurvich in May. The Police Association singled out the Bolton case before a state parliamentary committee in June because of discrepancies with the evidence of an OPI officer.

Got a tip? Email investigations@theage.com.au

NEWS

IN BRIEF

ACCIDENT

Fruit-picker struck

A HONG Kong woman was in intensive care at the Royal Melbourne Hospital last night after she and five other backpackers were hit by a car as they walked to a fruit-picking job near Shepparton.

The woman was flown from the collision after receiving severe head injuries just before 8am yesterday. The driver of the car, Nino Atzori, from nearby Durrigle, was the group owner of the hostel where the group was staying.

Paramedics put the critically injured woman into an induced coma at the scene.

The five others were taken to Goulburn Valley Health hospital. One had a broken leg while the others had minor injuries. Police said last night that no charges had been laid.

THE AGE

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CORRECTION POLICY

It is the policy of The Age to correct all significant errors as soon as possible. The Age is committed to presenting information fairly and accurately.

LOTTERIES

Super 7s 02 Lotto (draw 785)
dividends: Division 1, \$2 million;
division 2, \$63,393.40; division 3,
\$2837.30; division 4, \$271.75;
division 5, \$34.60; division 6,
\$18.30; division 7, \$11.85.
Wednesday Lotto (draw 2805): 20-
39, 1, 4, 10, 16. Supplementaries:
31 and 14.

READERSHIP

Monday-Friday: 765,000
Saturday: 957,000
Sunday: 735,000

LAW LIST

View the law list at
theage.com.au/lawlist

HERE COMES WINTER: Ready or not, the Melbourne Fashion Festival (March 15-22) is coming to a catwalk, gallery and shopping mall near you.
JANICE BREEN BURNS METRO PAGE 18

MELBOURNE TAXIS

1998 New licence ownership opened to all owners.
1993 November: Then Premier Jeff Kennett suggests Melbourne's taxis should be painted a uniform colour, perhaps a periodic green and gold or even a bright pink.
1994 Reforms introduced by Kennett government:
■ Uniforms
■ Improved training and testing
■ Single colour front cabs - yellow
■ Air-conditioned cabs mandatory
■ Establishment of Victorian Taxi Directorate
■ Three-tier tariff replaced by single 24-hour rate.

1996 Forty-hour RAC course introduced that includes knowledge of Melbourne, basic English and small talk.
October 1 \$200 fine introduced for drivers eating or drinking in cabs. Fine for smoking jumps from \$50 to \$200.
2001 One 19 Passengers to pay \$1 extra on fares from Melbourne as "drip fee".
2002 Green-top cabs introduced for peak periods and nights only. Twenty per cent night tariff to operate between 1am and 5am and replace the \$1.10 flagfall after midnight. It is to be progressively introduced as taxis are reprogrammed.

2008 October 1 Late-night prepaid taxi fares come into force in Victoria, making it compulsory for passengers to pay for fares up front between 11pm and 5am.
December Transport Minister Lynne Kosky pledges driver safety seats to all cabs. Owners and operators of non-standard cabs face penalties.

Taxi! Bid to ban the hail beyond the pale

By KATE LAHEY
and JASON DOWLING

The Victorian Taxi Association said while more ranks — and safer ranks — were needed, preventing the hailing of taxis would require a huge cultural shift for drivers and passengers. "We support (G.D.) Doyle's intention and respect that it's really just one part of a wider needs to be a much larger strategy," spokesman David Samuel said.

Neeraj Soni, 27, who has been driving taxis in Melbourne for six months, said the vast majority of his fares at night were hailed off the street.

Mr Soni said the ban should not be introduced because he doubted it would be better for passengers. "The things on late nights or early mornings, when people are so tired, or when they are drunk, they cannot walk even from one street to another, and to go to the taxi ranks would not be easy for them," he said.

"It's good for us, but not for the people."

There are 3600 taxis operating in greater Melbourne and three safe ranks in the city, at Flinders Street Station, 55 King Street and 50 Bourke Street.

theage.com.au
Should the hailing of taxis in the city be banned? Vote online

and benefit patrons who just want to walk out of a venue and go home rather than get caught up in a queuing situation," he said. "Imagine if Robert Doyle's in the city and he has to walk to one of four taxi ranks and wait to catch a taxi home. It's just undignified."

But Mr Chalker said increasing the number of safe ranks would be a good idea.

When people are so tired, or when they are drunk, they cannot walk (to taxi steps). J NEERAJ SONI, driver

"Frankly, if there were 25 super stops around the city, maybe that would help."

While Cr Doyle does not have the power to introduce the ban, he is expected to meet with Transport Minister Lynne Kosky and the Victorian Taxi Director.

Mr Doyle said he was not making any proposals, but he was open to suggestions.

"I have been keen to look at safe city taxi ranks in conjunction with council for a long time," she said.

Officer accused of misconduct

By NICK MCKENZIE
AGE INVESTIGATIVE UNIT

A SENIOR investigator from Victoria's powerful police corruption watchdog has been sacked, a year after he was accused of serious misconduct.

His dismissal comes 12 months after another officer from the Office of Police Integrity — who was fired last year —

mounted a legal challenge against his sacking last month. It is also believed a private consultant hired by the OPI to probe the allegations, which amounted to potentially criminal conduct, found they did not warrant a criminal investigation.

An OPI spokesman said the agency would not comment on the matter for legal reasons.

The OPI officer had alleged that the senior investigator pressured him into signing false statutory declarations to cover up dubious expense claims.

The senior investigator, a former Victoria Police detective who was in charge of the OPI's integrity testing unit when the alleged misconduct occurred, was suspended in August.

It is believed he has denied any wrongdoing and had account for OPI expenses spent

on meals and entertainment. He also alleged he was directed to falsely declare hundreds of dollars spent by the senior investigator on poker machines as expenses for an OPI operation codenamed Uranium. The OPI officer who made the claims against the senior investigator was sacked last year for abandoning his workplace.

When the allegations were first reported in September, the OPI said they were part of an independent workplace investigation that would be reviewed there.

KEY POINTS

■ Investigator alleged to have pressured officer to sign false statutory declarations.
■ Wrongdoing denied.
■ Consultants found claims did not warrant criminal probe.

By Ombudsman George Browner, Mr Browner is the former head of the OPI, and the alleged misconduct was said to have happened in his time there.

The senior investigator's sacking is likely to spark debate about whether the oversight of the OPI is appropriate and whether police should have been called in to investigate the misconduct claims.

It also raises questions about the level of screening used when hiring OPI staff after the agency was hurriedly created in 2004 by the State Government.

When the allegations about impropriety in the integrity testing unit were revealed by The Age last year, the OPI said it had



Police watchdog sacks own investigator

reviewed relevant policies. It said its own internal auditing had identified the alleged misuse of expenses, which involved a few thousand dollars.

The police union and the Opposition have labelled the OPI unaccountable and called for the establishment of a broad-based anti-corruption commission, similar to that in NSW or Queensland.

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March 05, 2009 01:47pm AEDT

Police corruption watchdog under fire

September 03, 2008

Article from: [Australian Associated Press](#)

THE Victorian police watchdog came under fire today over the behaviour of its employees amid calls for an independent corruption body.

The Office of Police Integrity (OPI) confirmed in a statement that one officer had been suspended for falsely declaring and misusing money but did not confirm or deny reports another had been sacked.

The OPI said the matter was being independently investigated and reviewed by Victorian ombudsman George Brouwer.

The Police Association criticised the process as a conflict of interest with the ombudsman having been the OPI's director at the time of the alleged offences.

"That's the ludicrous situation we're now confronted with," association legal manager Greg Davies told ABC Radio.

"These allegations are said to have occurred while Mr Brouwer was director of the OPI.

"The Government took him away from the director's role because of a perceived conflict of interest and now he is oversighting an inquiry into matters that happened on his watch.

"That's why we've been calling for years for proper oversight of the OPI.

"The police have extraordinary powers and the OPI have powers far in excess of those held by police."

Senior Sergeant Davies said corruption was not restricted to a police force and an independent commission against corruption similar to what existed in other states was needed.

The allegations involve a sacked OPI investigator claiming he was forced by his boss to sign false statutory declarations at the OPI to cover up dubious expense claims on meals and entertainment.

His boss is suspended on pay.

The OPI said it was conducting a "thorough review of relevant policies and procedures".

OPI director Michael Strong said in a statement he had full confidence in all his staff.

"Like all workplaces, we will from time to time have workplace issues," he said.

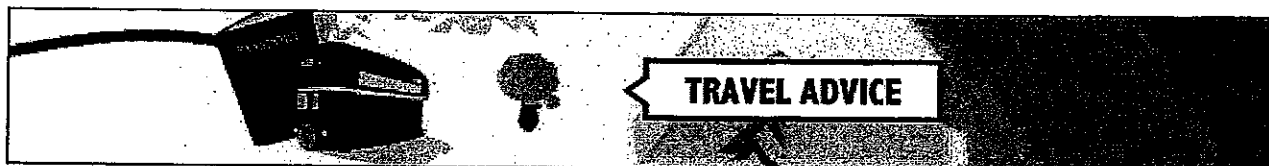
"When those issues involve any allegations of misconduct it is important those allegations are independently investigated and the investigation oversighted."

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Probe on officer 'threats'

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Article from: Sunday Herald Sun

James Campbell
May 24, 2009 12:00am

VICTORIA'S integrity watchdog is facing an investigation by State Parliament into allegations of misconduct.

President of the Legislative Council Bob Smith has revealed he has been made aware of serious allegations about the conduct of an investigator working for Victorian Ombudsman George Brouwer.

The allegations relate to an Ombudsman inquiry into misconduct at Brimbank Council, which was released earlier this month.

Former detective Lachlan McCulloch, who works as an investigator for the Ombudsman, has been the subject of complaints over alleged threatening behaviour towards councillors during the investigation.

It was revealed last week that Mr McCulloch had also been accused of revealing the identity of a supergrass in a book he wrote about his time working undercover investigating the notorious Pettingill crime family.

Mr Smith said he was concerned by the allegations relating to the way the Ombudsman office's wide-reaching Brimbank Council investigation was carried out.

"These are serious allegations," Mr Smith said.

"Allegations have been made and I am prepared to investigate any formal complaint made to me about an officer of the parliament."

Ombudsman George Brouwer is an officer of the Victorian Parliament.

Mr Smith has also flagged concerns that the current laws that govern the Ombudsman may not be adequate for dealing with allegations of misconduct against his office.

"I am also concerned there may not be a formal process to address complaints made about the Ombudsman and

that is a matter I am investigating."

Two people interviewed by Mr McCulloch during the investigation have claimed the investigator told them they could not discuss their interview with a lawyer.

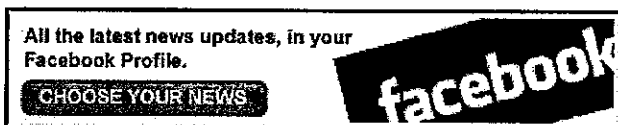
One said they had since tried to obtain a copy of the tape of their interview, but the request was refused.

"The tape will show how I was treated," the subject said.

The Ombudsman Victoria office declined to comment and asked the Sunday Herald Sun not to seek to contact Mr McCulloch.

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Herald Sun

Victoria Police have hired private investigators to check on police watchdog

- Padraic Murphy
- From: Herald Sun
- August 14, 2009 12:00AM
- 2 comments

VICTORIA'S highly secretive police watchdog has hired private investigators to dig into the affairs of its own employees.

The Office of Police Integrity engaged the firm Julie Baker-Smith and Associates to investigate John Kapetanovski, a highly respected former Victoria Police detective.

The OPI sacked Mr Kapetanovski last year and he has been fighting his dismissal in the Australian Industrial Relations Commission, now Fair Work Australia.

It's believed Mr Kapetanovski worked in the OPI's integrity testing area.

The OPI told the commission it had hired the Julie Baker-Smith firm for an "investigation report concerning Mr Kapetanovski".

The firm is run by lawyer Julie Baker-Smith and qualified teacher Katherine Clarkson. Its website claims it's the "pre-eminent investigators of sensitive and complex issues".

Start of sidebar. [Skip to end of sidebar.](#)

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- [No Tasers for cops - watchdog Herald Sun, 12 Jul 2009](#)
- [A fish who got away Herald Sun, 25 Jun 2009](#)

End of sidebar. [Return to start of sidebar.](#)

It specialises in investigating government employees with clients including the Department of Justice and the Australian Taxation Office.

Mr Kapetanovski's lawyers have been seeking the legal advice given to the OPI after they heard about criticism of the JBSA report.

The OPI successfully argued in May the independent legal advice was privileged, and denied Mr Kapetanovski legal team's attempt to be granted access to it.

Mr Kapetanovski had a long and successful career with Victoria Police before joining the OPI.

He rose to the rank of detective inspector and worked on some of the state's most high-profile crimes, including the 1996 murder of a Bendigo mother, the 1998 car bombing murder of mechanic John Furlan and the extradition from Darwin of Brendan Luke Berichon, the apprentice of the so-called postcard bandit Brendan James Abbott.

A spokesman for the OPI declined to comment.

"We can't make any comment because the matter is still before Fair Work Australia," said spokesman Paul Conroy.

Mr Kapetanovski's lawyer, Daniel Proietto, did not return calls yesterday.

[2 comments on this story](#)

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**Submission of the Police Association Victoria to the Integrity and Anti-
Corruption System Review**

SCHEDULE 4

**Media reports relating to the receipt of a gratuity by former Chief
Commissioner, Christine Nixon**



Herald Sun
23/10/2008
Page: 1
General News
Region: Melbourne
Circulation: 530000
Type: Capital City Daily
Size: 119.52 sq.cms
MTWTFS-

Police chief Nixon defends free luxury trip

BEVERLY HILLS

Cap

Peta Hellard

Los Angeles

POLICE chief Christine Nixon has defended taking a free luxury trip to Los Angeles worth tens of thousands of dollars.

The Chief Commissioner and her husband, Mr John Becquet, a former Qantas executive, flew from Melbourne on Monday as VIP guests of the airline on the inaugural flight of its A380 airbus to Los Angeles.

The trip would normally cost a couple more than \$30,000 in airfares alone, but Ms Nixon said she did not feel it was inappropriate for her to accept the all-expenses paid junket.

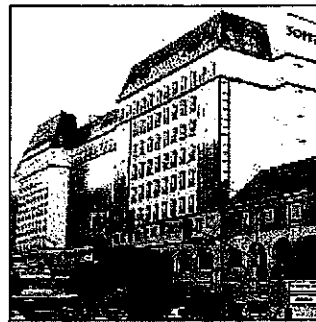
"I thought about what people might think but I have to say I don't think in any way I've been compromised," she said.

"I am on holidays for just three days ... I haven't had a holiday for maybe 12 months.

"We've been asked to be part of an amazing event — the plane was just magnificent."

Ms Nixon and her husband have enjoyed star treatment since arriving on Tuesday.

They were greeted by stars John Travolta and Olivia Newton-John and have enjoyed free accommodation at the Sofitel in Beverly Hills, cocktail parties and private tours of galleries and museums.



VIP: the Sofitel hotel

Qantas business class airfares run to more than \$16,000 a person, while first class costs more than \$20,000. Standard luxury rooms at the Sofitel — described as Los Angeles city's hottest new destination — start above \$500 a night.

Police Minister Bob Cameron last night declined to comment on whether he supported Ms Nixon taking the free trip.

He said through a spokeswoman: "The Chief Commissioner advised the minister that she was taking personal leave to accompany her husband on a trip to the US."

But Mr Becquet, who was in charge of Qantas crew operations and was involved in the 747 launch in Australia in the '70s, said his wife deserved time off.

"At the end of the day, we are entitled to a life," he said.

Continued Page 2



Herald Sun
23/10/2008
Page: 1
General News
Region: Melbourne
Circulation: 530000
Type: Capital City Daily
Size: 119.52 sq.cms
MTWTFSS-

Page 2 of 2



Relaxed: Christine Nixon and John Becquet in LA

Nixon's free trip

From Page 1

"I find it kind of bizarre that this question gets asked and she's had a three-day holiday."

Mr Becquet said the couple, who celebrate their 18th anniversary tomorrow, were invited to LA after a chance meeting with a Qantas executive. "I am normally her handbag but on this she's my handbag," he said.

Ms Nixon, whose contract as police chief expires in April, would not say whether she wanted to stay in the job.

"I've had some discussions so far but it's really not been finalised," she said.

While in LA the couple attended an exclusive cocktail party at a multi-million-dollar private home in Los Angeles and visited the Getty Centre.

Voteline: Page 25

Neil Mitchell: Page 26



Herald Sun
24/10/2008
Page: 26
Editorials
Region: Melbourne
Circulation: 530000
Type: Capital City Daily
Size: 166.96 sq.cms
MTWTFSS-

Herald Sun

A fair cop, Ms Nixon

A THREE-DAY luxury trip to Los Angeles to celebrate an inaugural flight of the new Qantas A380 is turning into a major embarrassment for Victoria Police Chief Commissioner Christine Nixon.

Ms Nixon accompanied her husband, a former long-serving Qantas executive, on the all-expenses-paid junket that would have normally cost tens of thousands of dollars.

Now she is to be asked to explain details of the trip to Office of Police Integrity director and former County Court judge Michael Strong.

The Chief Commissioner will also be asked about her own guidelines on police officers accepting gifts, as well as possible conflicts of interest.

Ms Nixon returned yesterday, telling waiting media she did not feel she acted inappropriately. Besides, she had not had a holiday for 12 months.

No one begrudges the Chief Commissioner a vacation, but that does not mean flying off on a freebie.

As to not believing she has been compromised by accepting the airline's largesse, that is perhaps for others to judge. At the very least her attitude is naive.

Former chief commissioner Kel Glare bought into the row yesterday, suggesting

Ms Nixon made an error of judgment.

His view is particularly relevant given he investigated the so-called Continental Airlines affair in the 1980s when free air tickets were handed out to business people and police.

Ultimately, it ended the career of then Victorian governor Sir Brian Murray, who took a free inaugural flight to Europe, as well as the police who accepted discounted tickets on the same airline.

John Cain was the premier who accepted Sir Brian's resignation and yesterday he too expressed concern at Ms Nixon's acceptance of free travel. Public office holders shouldn't do it, he said, and he has a point.

No one is suggesting the Chief Commissioner should lose her job over the trip.

But, coming so close to her involvement in Collingwood's decision not to draft troubled AFL star Ben Cousins, it raises questions about her judgment of late.

Whether this relates to the impending expiry of her contract is unclear. The Chief Commissioner is not saying whether she will seek an extension.

Ms Nixon is a hard-working and honourable police chief who has served the state well. On balance, she would have been better to forgo the trip.



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MTWTFS-

Junkets take their toll

THERE are disturbing aspects to Chief Commissioner Nixon accepting a free luxury Qantas VIP junket to Los Angeles.

If accepting a free air trip for himself and his wife was sufficient to justify Sir Brian Murray being forced to resign as Victorian governor by the Cain government, then Christine Nixon should be required to reimburse the full cost of this junket.

If Victorian police are forbidden to accept free hamburgers and drinks from merchants while on street patrol, then Christine Nixon should abide by the same rules and reject free luxury VIP junkets.

It appears highly unlikely this luxury junket would have been offered to a long-retired executive if he had not been married to a chief commissioner.

James Bowen, Glen Waverley



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OPI to question police chief

THE Office of Police Integrity will ask Chief Commissioner Christine Nixon to spell out the circumstances of her controversial free luxury trip to Los Angeles.

The OPI is expected to examine whether Ms Nixon breached her own guidelines in relation to accepting gifts.

OPI director Michael Strong intends

raising the VIP Qantas trip directly with Ms Nixon. "I will be seeking further information about the circumstances of the flight by the chief commissioner to Los Angeles," Mr Strong said yesterday.

"I will be doing that as soon as I am able to arrange to speak to Ms Nixon."

Report, Page 5



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 MTWTFSS-

Top cop's shocked by furore

Keith Moor, John Ferguson, Holly Ife and Ian Royall

CHRISTINE Nixon is unrepentant about her luxury junket to Los Angeles on Qantas's new A380 super jumbo.

As the Premier and the Police Minister yesterday strongly backed her, the Chief Commissioner declared "I believe what I've done is reasonable and fair."

"I don't owe Qantas anything," she said.

"I understand it's been said it's a very expensive holiday."

"Qantas owns the plane, and Qantas obviously owns part of the hotel as well, so I don't think it was very expensive in that way."

She had been surprised by the reaction to her trip.

The Office of Police Integrity will speak to Ms Nixon, seeking more information about the trip, as soon as it can be arranged.

The police manual warns of the dangers of accepting free gifts and directs police not to endorse or recommend services or products.

Ms Nixon praised the Qantas jet after joining its inaugural flight.

"We've been asked to be

part of an amazing event — the plane was just magnificent," Ms Nixon said.

She and her husband John Becquet, a former Qantas executive, flew as guests of the airline.

They returned to Melbourne yesterday.

They had free accommodation at the Sofitel in Beverly Hills and had private tours of galleries and museums during the all-expenses paid trip.

Ms Nixon told Police Minister Bob Cameron before she left that she was taking leave to accompany her husband.

The minister said yesterday: "She's doing a great job and has the full support of the Government."

A spokeswoman for Premier John Brumby said Ms Nixon was entitled to take leave, and her leave arrangements were a matter for her.

While Ms Nixon retains the backing of the Government, Labor sources told the *Herald Sun* some people expected her to stand down before her second four-year contract expired next April.

Government sources said if she wanted to stay she would be given a new contract.

Ms Nixon said yesterday she would be happy to discuss the trip with the OPI.

A spokeswoman said: "The

Chief Commissioner has been very transparent about this issue, particularly as a number of journalists were also on the flight and she was aware of this prior to taking part."

As she touched down in Melbourne yesterday morning, Ms Nixon said: "I was very aware of what I was doing."

"I had thought about whether or not I should accept this trip, and I understand that some people think it's inappropriate."

"I think it is reasonable that I accompanied my husband, went there for about 20 hours, and have come back on Thursday morning."

"I understand people's concerns but I believe what I've done is reasonable and fair. I don't think I've compromised Victoria Police at all."

Ms Nixon said she had wanted to take the trip because it was a significant occasion for her husband.

Opposition Leader Ted Baillieu said yesterday he would not have taken the trip. "I understand she sought approval from the minister... so to that extent you can't argue she's done something wrong."

"But it's not something I would have done," he said.

Former premier John Cain said Ms Nixon should not

have taken the trip.

"I've always had a strict view on this, and that view hasn't changed," he said.

"I don't think public office holders should put themselves in a position where they can be compromised. Public office holders are different."

Governor Sir Brian Murray was forced from office during Mr Cain's term in office after accepting free overseas travel from Continental Airlines.

At the time, senior and junior police were taking trips in a fares racket organised by the airline's Melbourne manager.

Editorial, Page 26



Yesterday's Herald Sun



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 General News
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Police chief will pay discount fare for Beverly Hills break

Free trip backflip

Keith Moor

CHIEF Commissioner Christine Nixon yesterday agreed to reimburse Qantas for the cost of her controversial free trip to Los Angeles.

Ms Nixon said she would do so to limit damage to Victoria Police's reputation.

She has come under pressure since joining her husband, John Becquet, on the inaugural Qantas A380 super jumbo flight to LA on Monday.

Her husband is a former Qantas executive, and Ms Nixon said it was in that capacity he was invited. She travelled as his partner.

But as the wife of a retired Qantas executive, Ms Nixon qualifies for cheap spousal fares of about 10 to 20 per cent of the scheduled fare.

Since the normal Qantas return business-class fare to Los Angeles is \$15,000, it will cost Ms Nixon less than \$3000

to reimburse Qantas.

She took annual leave for the three-day trip and informed Police Minister Bob Cameron she was going.

But the Chief Commissioner was criticised for possibly breaching her own guidelines in relation to conflict of interest, accepting gifts and endorsing businesses.

Office of Police Integrity director Michael Strong has written to Ms Nixon asking for more information about the circumstances of her flight.

Ms Nixon said yesterday she flew as a private citizen.

"After discussions with a range of people over the past 24 hours, I have arranged today to reimburse Qantas," she said yesterday.

"Whilst I was taking the flight on leave and as a result of an invitation received by my husband, a former Qantas executive, I understand that some people are concerned about the perception issue.

"At no stage was this travel

undertaken by me as part of my role as Chief Commissioner ...

"However, I do not want to damage the reputation of Victoria Police or the Victorian Government any further, and as a result my husband has today arranged to pay the funds to Qantas.

"The payment is in line with the fares normally paid as part of my husband's retirement benefits package.

"As his spouse I am entitled to access these fares. (They) are only used by my husband and I for private travel."

She said accommodation was included in the invitation and staying with her husband did not add to the cost.

Premier John Brumby and Mr Cameron have both offered Ms Nixon full support. But Opposition Leader Ted Baillieu, former premier John Cain and former chief commissioner Kel Glare, have criticised her.

The Victoria Police Manual warns of the dangers of accept-

ing free gifts and directs police not to endorse or recommend services or products.

Ms Nixon praised the Qantas jet after arriving in LA.

The OPI is expected to compare her explanation with the guidelines in the manual to see if she committed any breaches.

Editorial, Page 98
Readers react at
heraldsun.com.au



Christine Nixon

APPENDIX A

24/10 2008 07:35 FAX 61298914348

QANTAS AIRWAYS

Executive General Manager
Qantas Airways
John Borghetti



12 September 2008

Ms Christine Nixon
Chief Commissioner
Victoria Police
Level 10, Building C
Victoria Police Centre
637 Flinders Street
MELBOURNE VIC 3000

Dear Chief Commissioner,

On behalf of our Chief Executive Officer, Geoff Dixon, it is my pleasure to formally invite you and John to join Geoff and Dawn, and other invited guests, on the inaugural commercial flight of Qantas' Airbus A380. Operating as QF93, the flight will depart Melbourne for Los Angeles on 20 October 2008 at 11.15am.

Accommodation has been booked at the Sofitel Los Angeles from Sunday 19 October (to enable guests to go direct to their room on arrival) to Wednesday 22 October. An inaugural dinner will be held on the evening of arrival with the remainder of the time free.

It is anticipated that the majority of the group will depart Los Angeles on the evening of 22 October. However, we would be pleased to book a later return flight for you should you wish to extend your stay.

I realise that your schedule is extremely busy but do hope that you and John may be able to join Geoff and Dawn on this very significant occasion.

Yours sincerely,

John Borghetti
EXECUTIVE GENERAL MANAGER

Qantas Airways Limited
ABN 16 009 661 901
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APPENDIX B



VICTORIA POLICE

14 November 2008

Chief Commissioner's LA travel

On 24 October, I was asked by OPI to respond to concerns related to my recent travel with my husband to Los Angeles. I understand that later a formal complaint was received by OPI. I have cooperated with OPI in the subsequent investigation.

Pursuant to a conciliated resolution, I now release the following statement.

On 18 March 2008 my husband and I received an oral invitation to join the inaugural flight of the Qantas A380. My belief then was that the offer was made because of my husband's past connection with the airline and his interest in the A380. The oral offer was formally confirmed in a letter on 17 September 2008 addressed to me as Chief Commissioner. My husband was very enthusiastic about the prospect of joining the inaugural flight. He has been very supportive, and patient, during my term as Chief Commissioner. I was in need of a break, so we decided to accept the offer and take the trip.

I now accept that my position as Chief Commissioner influenced Qantas' decision to make the offer, and also influenced aspects of the flight arrangements made thereafter. I have come to understand that Qantas regarded me as a guest in my own right, and not merely as the partner of my husband. I should have given the offer more careful consideration. I probably should have sought independent advice.

At the time, I did not believe that my conduct contravened the Victoria Police Code of Conduct. As I now appreciate, my acceptance of the free travel was inadvisable. I accept that the free travel involved a gift of more than token value within the meaning of the Code of Conduct.

I accept that my conduct has not provided a good example for Victoria Police members to whom gifts and gratuities may be offered. I very much regret that this

has occurred. I accept that there is an urgent need for Victoria Police policy in this area to be clarified and, if necessary, strengthened. Victoria Police will work with the OPI and the State Services Authority to achieve this objective.

Because my husband is entitled to discounted travel from Qantas, for himself and for me, it is difficult to determine the true value of the benefit I received. On 30 October 2008, my husband and I have made a payment to Qantas representing the value of my travel under the Qantas staff travel scheme. In the circumstances, I have decided to pay an appropriate additional amount, to be advised by Qantas, to better reflect the value of the benefits I received. Qantas has indicated this amount will be given to charity.

Christine Nixon

Chief Commissioner

APPENDIX C

MEDIA ALERT

Friday, 14 November 2008



STATEMENT BY DIRECTOR, POLICE INTEGRITY

A complaint received by OPI in relation to Chief Commissioner Nixon's air travel to Los Angeles has been resolved by conciliation pursuant to section 86N(6) of the *Police Regulation Act 1958*.

The Chief Commissioner has publicly acknowledged that her acceptance of the free travel involved a gift 'of more than token value' within the meaning of the Victoria Police Code of Conduct and therefore contravened the Code. She has acknowledged a lack of judgment, for which she has given reasons. She has acknowledged that there is a need to clarify and, if necessary, strengthen policy in relation to gifts and gratuities offered to police members. OPI will work with Victoria Police to ensure that this occurs.

I am satisfied that resolution, in this way, of the complaint made against the Chief Commissioner is consonant with my statutory objects and functions, and is in the public interest.

I will further elaborate upon my reasons in a report to Parliament. The policy review will commence immediately.

MEDIA ENQUIRIES:
Paul Conroy
Manager, Communications
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