

**INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE**

**CLOSED PROCEEDINGS**

Melbourne — 14 December 2015

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Deputy Commissioner Wendy Steendam, Deputy Commissioner Capability and  
Assistant Commissioner Brett Guerin, Assistant Commissioner Professional Standards, Victoria  
Police.

**The CHAIR** — Deputy Commissioner Wendy Steendam and Assistant Commissioner Brett Guerin, welcome to the public hearings of the Independent Broad-based Anti-corruption Commission Committee.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and where applicable the provisions of reciprocal legislation in other Australian states and territories. However, it is important that you note that any comments you make outside the hearing, including effective repetition of what you have said in evidence, may not be afforded such privilege. Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

**Deputy Comm. STEENDAM** — We have.

**Asst Comm. GUERIN** — Yes, I have.

**The CHAIR** — It is also important to note that any action which seeks to impede or hinder a witness or threaten a witness or the evidence they would give or have given may constitute and be punishable as contempt of Parliament.

We are recording the evidence and will provide a proof version of the Hansard transcript at the earliest possible opportunity so you can correct it as appropriate.

I would like to invite you to make a verbal submission, and we will ask questions as appropriate.

**Deputy Comm. STEENDAM** — Thank you. If it pleases the committee, I will start first and I will just do a short overview of the context in which we interact with IBAC, and then Assistant Commissioner Brett Guerin will talk more specifically around some of the queries and questions that have been asked by the committee.

Victoria Police notifies IBAC of any complaint and investigation of misconduct according to section 169(2) and (3) of the Victoria Police Act; the results or progress of any investigation of misconduct, which is in section 170(3) of the Victoria Police Act; any complaints about corruption, conduct or police personnel misconduct by a Victoria Police employee or police recruit under section 52 of the IBAC act; the results of any action taken or proposed in any investigation about corrupt conduct or police personnel misconduct or by a Victoria Police employee or police recruit under section 57(3) of the IBAC act; any complaint or misconduct that the chief commissioner considers may be a protected disclosure under section 22 of the Protected Disclosure Act; any complaints against corruption, conduct or police personnel misconduct by a Victoria Police employee or police recruit that the chief commissioner considers may be a protected disclosure complaint under section 21 of the Protected Disclosure Act; and the findings and any action taken or proposed of any protected disclosure complaint or investigation referred to it by IBAC.

IBAC may investigate any complaint made or notified to it, and that includes against any member of Victoria Police personnel; refer for investigation to an investigating body any complaint, which includes Victoria Police; or dismiss any complaint. IBAC may refer to Victoria Police for investigation a complaint about a member of Victoria Police personnel under section 73 of the IBAC act. The complaint must be conducted by Victoria Police under part 9 of the Victoria Police Act and part 10 of the Victoria Police Act if it is a protected disclosure complaint.

We have internal processes and delegations in place that provide for the specific receipt and notification processes relating to those notifications I have just talked about. There is agreement and ongoing consultation between IBAC and Victoria Police to facilitate the receipt, referral and notification processes.

In relation to Victoria Police's current experience in operating under the current misconduct and anti-corruption legislation, generally Victoria Police is satisfied with the current police misconduct and anti-corruption legislation. There is a healthy and robust relationship with IBAC, and both agencies regularly engage in productive discussions, investigations and sharing of information. This is a necessity

due to the IBAC functions of oversight of police conduct and the legislative requirements of police notification.

However, there are and have been some concerns with how the legislation is interpreted and the complexities confronted by Victoria Police as an agency that can receive complaints and investigate complaints, and having to work between three pieces of legislation — the Victoria Police Act, the IBAC act and the Protected Disclosure Act. This is also referenced in a review that was done by IBAC in the review of protected disclosure procedures in December 2014, and the issues that we raise are not dissimilar to those that are also raised by the Ombudsman of Victoria.

Victoria Police thanks the committee for the opportunity to discuss the current integrity regime and welcomes the opportunity for recommendations for improvement. Assistant Commissioner Brett Guerin will talk through some of the key questions that were asked of us by the committee.

**Asst Comm. GUERIN** — Just to reiterate what the deputy said, we are generally satisfied. On an operational level it is working very well. We do have a very good relationship with IBAC, and I do not want to overstate that because they are after all the oversight body.

**The CHAIR** — There is supposed to be a certain amount of tension

**Asst Comm. GUERIN** — Oh, no, we do not like them too much. There is a professional relationship, but you also do not need acrimony. There is no acrimony; there is a mutual professional respect, and on occasions we do augment their capacity when they exceed it in relation to operational matters. They do not have a power to arrest. They do not have the resources that we do, so we will often respond to requests to help them with operations. That works very well.

There are, however, a few areas of contested spaces. That would certainly be around the interpretation of protected disclosure. Anything that is reported to IBAC, any reported misconduct, they automatically consider as a protected disclosure. Under that of course it limits us legally as to what we can do in the short term. For example, there is an agreement we have reached with them that where a report of misconduct constitutes a criminal offence — such as, for example, a police officer is accused of raping a person — then we will immediately instigate an investigation to secure evidence, prevent the contamination of evidence, prevent the interfering with witnesses and so forth. That is really just a phone call, so it works well.

Where we run into some difficulties is where the complaint does not relate to a criminal offence but where it relates to a breach of discipline. Sometimes there it really is just conduct, not misconduct. It may involve a workplace conflict issue where someone has been directed to move desks or there is a breakdown in the relationship between a boss and a worker. That worker may make a complaint to IBAC, and under the law we cannot actually investigate that until it is referred to us from IBAC, because it is a protected disclosure.

Obviously where you have matters of workplace conflict sometimes you need to strike quickly, or not strike quickly but you need to intervene quickly. Also it is very difficult to resolve a workplace conflict issue where you cannot tell anyone much about it, including the identities, so mediation is rendered redundant. There are some issues there that cause some difficulty for us, so what we would suggest is, for example, if legislated reform were to be introduced under the Victoria Police Act, to state that for a complaint to constitute a deemed protected disclosure the information received must show or tend to show a member is engaged in misconduct. That would clarify it somewhat for us.

**Ms SYMES** — Can you repeat that?

**Asst Comm. GUERIN** — I might actually read it just from the point of clarity for the committee, given it is going into Hansard.

**The CHAIR** — Yes, sure.

**Asst Comm. GUERIN** — Victoria Police requests that the Protected Disclosure Act or the Victoria Police Act be amended to provide further clarity or to clarify the threshold that must be met before complaints made under section 167(3) will constitute protected disclosures — for example, an amendment which states that for a complaint to constitute a deemed protected disclosure the information received under section 167(3) must show or tend to show a member has engaged in misconduct. In other words, if the complaint is around a minor matter, a police officer would feel free to say, ‘This is not misconduct. It is not a protected disclosure. We can act quickly. We don’t have to wait for a referral from IBAC’. Does that make sense?

**The CHAIR** — Yes. Can we just clarify that point?

**Ms SYMES** — Is this predominantly to address the example you gave in terms of office — —

**Asst Comm. GUERIN** — Conduct as distinct from misconduct. I do not think I am telling anyone here any news, but this is a really complex area in which we operate.

**Ms SYMES** — But it would predominantly deal with workplace disputes.

**Asst Comm. GUERIN** — Correct.

**Ms SYMES** — Is that the major issue?

**Asst Comm. GUERIN** — Yes.

**Ms THOMSON** — So what would the number of these be? Can you quantify it?

**Asst Comm. GUERIN** — No, I cannot. I am sorry, I cannot. It is not something that bogs us down every day. We are not operating under some leviathan process that is really having a huge impact on us, but it does have an impact on us, and this is just an opportunity to express a view where we might make it better. IBAC takes a very —

**Ms THOMSON** — Precise.

**Asst Comm. GUERIN** — precise interpretation of it. What we might consider as conduct, they say, ‘Misconduct, protected disclosure; you’ve got to wait until we refer it to you before you can investigate’.

The other issue with that is that sometimes it can take up to two or three weeks to get a referral with these matters. Really, if you do have some issues fermenting in a workplace, a two or three-week delay can militate against a speedy resolution.

**Ms THOMSON** — Would the majority of those be referred back? Sorry, I should let this continue.

**The CHAIR** — No, I think it is important we clarify this point.

**Asst Comm. GUERIN** — Yes, the majority are referred back, because they are matters that are investigated by us and often resolved either through a discipline investigation or through our organisation.

**Ms THOMSON** — Is there any chance of getting some figures around that?

**Asst Comm. GUERIN** — Yes.

**The CHAIR** — Okay, if we could put that on notice. Is it that the threshold is too low in regard to misconduct?

**Asst Comm. GUERIN** — I think it is a definitional thing. IBAC regard any reported misconduct as a protected disclosure, whereas we do not.

**The CHAIR** — What is the view of Victoria Police, that there should be a higher threshold in regard to misconduct?

**Deputy Comm. STEENDAM** — Can I just answer that?

**Asst Comm. GUERIN** — Of course.

**Deputy Comm. STEENDAM** — I think our concern is the lack of clarity about section 167, about what type of complaint constitutes a deemed protected disclosure under section 167(3). I think the intent when the legislation was created was certainly that it is for misconduct, not for conduct matters, but under the literal interpretation that is applied all matters are deemed to be a protected disclosure, which then creates some limitations for us, until it is referred back to us, in being able to, I suppose, start an investigation and protect any evidence that we need to and some of the mechanics that we need to actually work through. Even if we had the statement of intent about what was intended by that section to give clarity, that would be helpful to us.

**Asst Comm. GUERIN** — The other piece to it is around the provision of welfare support to people who are in these workplace conflict situations, because if we cannot act quickly, that is militated against. Also they are prohibited from telling anybody if it is a protected disclosure. If it is considered a protected disclosure, they are prohibited from telling someone like a doctor or a psychologist what the circumstances are. So we would like some amendment to loosen that up to enable people to at least tell a certain class of person what the background is, because at the moment they cannot — and VEOHRC in their report make that point as well.

**Mr D. O'BRIEN** — So the issue is that the person with a complaint is really going to the wrong authority for a start, whereas they should be going to — —

**Asst Comm. GUERIN** — They do not understand it. Yes, they do not understand necessarily the implications of protected disclosure provisions, and not many people will be thinking about a legislative thesis when they go to make a complaint, including police officers.

**Mr D. O'BRIEN** — Of course not. I am not trying to blame them.

**Mr D. O'BRIEN** — Yes.

**Ms THOMSON** — Or they do!

**Mr D. O'BRIEN** — Yes; that is right.

**Asst Comm. GUERIN** — That was really the main point about that piece. In relation to the implications for Victoria Police and the interaction with IBAC in dealing with police complaints — this is in relation to the proposed change to the act — the only impact that we can see it would have on us is the reporting of improper or corrupt conduct relating to Victoria Police employees, unsworn and recruits under section 57 of the IBAC act changing from a current 'may report' to a proposed 'must report'. That will have very limited impact on us because we report them all as a matter of course to IBAC.

**The CHAIR** — Okay, so no impact.

**Asst Comm. GUERIN** — No impact. I think the deputy might want to mention a response to the last question around the single complaints portal, as proposed by the Ombudsman.

**Deputy Comm. STEENDAM** — And in the context of that, I suppose our response is a little bit contained in that it depends on what you mean by a portal. I have not seen what is referenced by that. If it is a portal for one place to actually make a report and then it is triaged, then there would need to be some technical expertise obviously that would sit within that process. We currently have a whole regime that sits within Victoria Police that takes a number of calls, classifies them and effectively triages those. Often they

are actually about service delivery issues. They are not necessarily a formal complaint, and it depends on how they are classified as to what stream they take.

From our perspective there would be a lot of complexities in relation to a portal, and I suppose the devil would be in the detail in how the mechanism of that was proposed to work before we could have a formal position on that.

In the context of a community person knowing where to go and where to make a complaint, I suppose it is actually helpful to have one pathway in from a complaints process, but again as I say, for us we deal with many complaints on a daily basis. It is done through our intake area, and equally there are a whole lot of matters that are referred through local police stations, where they are reported and either dealt with as a service delivery issue or, in fact if they are a formal complaint, then triaged into our professional standards command. Then you have obviously got what is then referred directly to IBAC or through other mechanisms. Our position, I suppose, would be it has some potential from a community perspective in terms of having a single point of entry, but we would need to see and understand the detail and how that would actually work, because, as I say, there are a lot of matters that we actually deal with that are not actually a full complaint but a service delivery issue that needs to be attended to by our organisation.

**Ms SYMES** — Just an assumption that I have: if the general public have got a complaint against a police officer's conduct or anything like that, they would be more likely to contact Victoria Police than IBAC in the first instance.

**Deputy Comm. STEENDAM** — I suppose it depends on issue and what notice they have got. We have pamphlets and information that actually talk about the pathways for reporting matters. It can be dealt with through a police station. It can be dealt with directly through a complaint to our professional standards command, which Assistant Commissioner Guerin manages, and we also provide information about the oversight body's reporting regime so that they have that option.

Often it will come down to the individual's choice about where their preference lies. They may not have trust or confidence that it will be dealt with appropriately by Victoria Police, and they prefer to have the other pathway. We get many complaints, or at least contact with us on a daily basis, and as I said, it is managed and triaged by us. Without the details of how many complaints we have had this year, there is a large percentage that come through our pathway and not through the IBAC pathway.

**Ms SYMES** — Yes, sure.

**Asst Comm. GUERIN** — They would be like customer service complaints: the police have put a breath-testing station at the same place on the highway for the last three weeks.

**Ms THOMSON** — Or I had to wait 24 hours for the police to turn up after a burglary or something like that.

**Asst Comm. GUERIN** — Yes. A bit more serious, that one.

**Ms THOMSON** — I guess the issue for us is a little bit of an understanding, because I am of the same opinion as Jaclyn that it is more likely, given the historic knowledge of the community, to go to the police complaints and follow that path before you would go to an IBAC. It would be interesting to know whether that is in fact what the data shows.

**Asst Comm. GUERIN** — Overwhelmingly.

**Deputy Comm. STEENDAM** — Overwhelmingly, we are a pathway in from our perspective, and there is only certain matters that obviously IBAC will investigate, even though, as I indicated at the beginning, all of the matters that we are notified of we refer across but most of them come back for us to undertake investigations because they sit more appropriately within our regime.

**Mr D. O'BRIEN** — We might well find though that as IBAC gets more publicity that that starts to change, particularly if there are some high-profile police cases in the future of some sort.

**The CHAIR** — Wendy, do you have any further comments?

**Deputy Comm. STEENDAM** — No, not at the moment. The only comment that I wanted to make was just the issue around the protected disclosures and some of the limitations of that. It is more from, I suppose, the wellbeing perspective. For matters that should appropriately be streamed back into and dealt with through our discipline system or where it is a conflict issue and it is on the lower end of the threshold it is very difficult to put in place the welfare and the appropriate supports when they are classified as a protected disclosure, because they cannot talk to anyone about that. We are keen, where it is possible, to remedy that particular issue.

**Asst Comm. GUERIN** — The other piece gets back to what I was saying before about having to wait for a referral from IBAC for protected disclosures. A remedy might be that the legislation is changed to make a default situation that Victoria Police can in fact commence investigations into anything criminal and discipline straightaway, but if IBAC decide to investigate the matter themselves, we will cease and assist them in any way we can.

**Ms SYMES** — One more question. You might not be able to answer it, but in terms of a workplace dispute and a police officer presumably makes a complaint themselves to IBAC, is that a cultural thing? If people know that they cannot have it resolved immediately, why do people go to IBAC as opposed to another method, or is it because they want to make it more serious? I do not know. Is it because they are police and they do not know how the system works?

**Deputy Comm. STEENDAM** — No, I think they know how the system works. All police are aware of the pathway through PSC or through our other processes to actually make complaints and have matters dealt with. It may well be that they have had a matter dealt with through that process and they are dissatisfied with the outcome of that process and they will then take that complaint through the IBAC complaint process.

As I indicated before, there are some particular protections if they are classified as a protected disclosure. It may well be that they have a preference and they have not reported it through our process and they wish to go through that as their initial entry point for a host of reasons that only the individual that makes that choice will actually be aware of. I think they are probably the two categories we have: those who are well aware and it suits their purposes to go through that other pathway, and others that perhaps do not have a lot of confidence and so will choose that as a pathway.

**Asst Comm. GUERIN** — The complexity arises when they report it to both. IBAC will receive the complaint, protected disclosure will receive the complaint and perhaps think it is conduct not misconduct and it will not be protected. So we start —

**Ms SYMES** — You could start — —

**Asst Comm. GUERIN** — by saying it is a protected disclosure. That is what I was saying in my previous comment about reform to clarify the situation.

**Ms THOMSON** — So why would they take it to both?

**Mr D. O'BRIEN** — Cover your bases.

**Asst Comm. GUERIN** — It is difficult. The deputy is right. Some people will go to the Independent Broad-based Anti-corruption Commission because they do not feel confident in reporting to us — —

**Ms THOMSON** — I understand that bit; that bit I get. But I kind of struggle with why you would go to both simultaneously and why you would not at least try either avenue as a single entry point rather than do the double whammy.

**Asst Comm. GUERIN** — It is difficult for me to give you that answer. It may well be that they want to cover all bases. I do not know.

**The CHAIR** — Any other questions?

**Mr D. O'BRIEN** — Just one, whether Victoria Police has a view at all on the lowering of the threshold.

**The CHAIR** — For IBAC investigations?

**Mr D. O'BRIEN** — Sorry, yes.

**Asst Comm. GUERIN** — Lowering the threshold to — —

**Mr D. O'BRIEN** — To suspicion of corrupt conduct from only investigating serious conduct.

**Ms THOMSON** — Yes, it is the same as — —

**Mr D. O'BRIEN** — You may not — feel free to say no.

**Ms THOMSON** — Because that is already in there for the police.

**Asst Comm. GUERIN** — As I mentioned before, we request that the Protected Disclosure Act or the Victoria Police Act be amended to provide further clarity on the threshold that must be met before complaints made under section 167 of the Victoria Police Act will constitute protected disclosures. For example, an amendment which states that for a complaint to constitute a deemed protected disclosure the information received under section 167 must show or tend to show a member has engaged in misconduct. Under 167 of the Victoria Police Act where people make a complaint, if an officer makes a complaint, it is deemed to be a protected disclosure under that section.

**Deputy Comm. STEENDAM** — Can I just seek clarity of the question you have asked? My understanding is that the question you have asked is about the threshold around investigation of police around serious misconduct and reducing that threshold. Is that the question you are asking?

**The CHAIR** — No, the issue that Danny was asking about was in regard to IBAC itself investigating and how the threshold has been lowered in the new legislation with new amendments.

**Ms THOMSON** — But that does not affect the police, does it — —

**Deputy Comm. STEENDAM** — No.

**Ms THOMSON** — because they are already on that lower threshold.

**Mr D. O'BRIEN** — Is that the case? Okay.

**Ms THOMSON** — Yes.

**The CHAIR** — Any further questions? Deputy Commissioner, Assistant Commissioner, thank you very much for your time. A copy of the Hansard transcript will be sent to you, so make changes as you see appropriate. We wish you both a merry Christmas.

**Asst Comm. GUERIN** — Thank you. The same to you.

**Deputy Comm. STEENDAM** — The same to you.

**The CHAIR** — I close the hearing.

**Committee adjourned.**