Operation Darby

An investigation of Mr Nassir Bare's complaint against Victoria Police

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Background

In the early hours of 16 February 2009, Mr Nassir Bare and three others were stopped by Victoria Police officers and arrested in relation to the theft of the motor vehicle in which they were travelling.

During the arrest it is alleged that the arresting officer, Constable Anthony Hassett:

1. used excessive force against Mr Bare by:
    - deploying Oleoresin Capsicum (OC) spray in his face while handcuffed
    - grabbing him by the hair and hitting his head on the gutter three or four times causing him to cut his chin and chip his teeth.
2. told Mr Bare, 'Youse black people think you can come in this country and steal cars after we gave you a second chance' or words to that effect.

On 3 February 2010, Mr Bare lodged a complaint with the OPI against Victoria Police alleging excessive force and racial discrimination during his arrest. He also requested that his complaint be investigated by the OPI given the nature of the allegations and his age (17 at the time of the incident) rather than referring the matter back to Victoria Police for investigation.

On assessment, the OPI determined that it was appropriate to refer the matter to Victoria Police for investigation. In 2012 Mr Bare unsuccessfully challenged the OPI's decision in the Supreme Court on the basis that it was made in error and breached the *Charter of Human Rights and Responsibilities Act 2006*. An appeal was subsequently lodged with the Court of Appeal of the Supreme Court, which referred the matter back to IBAC in July 2015 'to make a fresh decision in relation to the correct course for dealing with [Mr Bare's] complaint, under section 58 of the *Independent Broad-based Anti-corruption Act 2011*(IBAC Act)'.

All three judges of the Court of Appeal agreed that the Charter Act did not contain an implied right to an investigation of a police complaint by a body independent of the police.

IBAC's assessment of the complaint

In assessing the correct course for dealing with Mr Bare's complaint under section 58 of the IBAC Act, IBAC undertook a thorough assessment of the available information and determined that the matter should be retained for investigation by IBAC due to the significant public interest.

IBAC's investigation

The investigation of Mr Bare's complaint was completed by IBAC in February 2016. In undertaking this investigation, IBAC:

- took a statement from Mr Bare and conducted a follow up interview
- interviewed two witnesses who were also in the vehicle on 16 February 2009 (noting that the third witness was unable to be located)
- interviewed the subject officer, Senior Constable Hassett
- obtained statements from and interviewed other attending officers
- spoke to the representative from the Youth Referral and Independent Person Program (YRIPP) who attended Williamstown Police Station as a support person for Mr Bare on 16 February 2009
- reviewed the YRIPP's records relevant to this matter
- reviewed relevant hospital, ambulance and medical records with Mr Bare's consent
- reviewed relevant Victoria Police records.

IBAC's findings

Allegation of excessive use of force

With regard to the allegation that police deployed OC spray in Mr Bare's face while handcuffed, the investigation confirmed that OC spray was used during the incident, however the evidence suggests it was deployed prior to the use of handcuffs. This specific allegation was put to Senior Constable Hassett who stated that he deployed OC spray twice during the incident (once into the vehicle and once while in pursuit of Mr Bare who had attempted to flee the scene) but denied deploying the spray in Mr Bare's face while he was handcuffed. None of the other attending officers or civilian witnesses who were also in the vehicle were able to provide further information in support of Mr Bare's complaint. Accordingly, this allegation could not be substantiated due to insufficient evidence.

With regard to the allegation that police grabbed Mr Bare by the hair and hit his head on the gutter three or four times causing him to cut his chin and chip his teeth, the investigation indicates that hospital, ambulance, medical and dental records do not correspond with the injuries described by Mr Bare. Similarly, photographs taken at the time of Mr Bare's arrest do not show injuries consistent with his head being forcibly struck. Victoria Police records indicate that Mr Bare attended Altona North Police Station five days later (on 21 February 2009) for an unrelated matter. Under the heading 'injuries', the record notes that Mr Bare 'stated he has sore ribs from a basketball game on the 15/02/2009'. No other injuries are mentioned. Accordingly, this allegation could not be substantiated due to insufficient evidence.

Allegation of racial discrimination

In relation to the allegation that Senior Constable Hassett racially vilified Mr Bare, the attending officers and third party witnesses were all interviewed, however, none were able to provide further information in support of Mr Bare's complaint. Accordingly, this allegation could not be substantiated due to insufficient evidence.

Conclusion

IBAC's investigation found that there was insufficient evidence to substantiate Mr Bare's allegations regarding excessive use of force and racial discrimination.

At a more strategic level, trends in the use of force by and against Victoria Police are being examined by IBAC pursuant to its functions under the IBAC Act to assist in preventing police misconduct and corruption. This project will establish baseline data to assist in ongoing monitoring of the use of force by Victoria Police officers, as well as help to identify any emerging issues.

IBAC also notes the work being undertaken by Victoria Police to improve the way its officers engage with diverse communities as outlined in the 'Equality is not the same' report, published in December 2013.

This work is being overseen by a Strategic Advisory Committee comprised of senior community leaders, government and peak bodies including the Victorian Equal Opportunity and Human Rights Commission. In its December 2015 progress report, Victoria Police noted that it is reforming its training and policies to reinforce human rights in its decision making processes.

In accordance with section 15(3)(b)(iii) of the IBAC Act, IBAC continues to ensure that Victoria Police officers have regard to human rights set out in the Charter Act. All complaints and notifications received by IBAC relating to Victoria Police are assessed to determine whether the matter should be investigated by IBAC or referred to Victoria Police for action, or dismissed. Part of the assessment process involves considering whether an individual's Charter rights may have been breached.

Further information on IBAC's role and key police oversight activities since becoming fully operational in early 2013 is outlined in the 'Special report concerning police oversight', available at **www.ibac.vic.gov.au**

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

To report corruption phone 1300 735 135 or visit www.ibac.vic.gov.au

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