

# **VICTORIAN** **ombudsman**

**Investigation into allegations of  
improper conduct involving Victoria Police**

**October 2012**

**Whistleblowers Protection  
Act 2001**

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## Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to section 103 of the *Whistleblowers Protection Act 2001*, I present to Parliament my report of an investigation into allegations of improper conduct involving Victoria Police.

A handwritten signature in black ink, appearing to read 'John R Taylor', written in a cursive style.

John R Taylor  
Acting Ombudsman

22 October 2012

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## Section 22A statement

1. This report is made pursuant to section 103 of the *Whistleblowers Protection Act 2001* (the WPA) and the name of a person against whom protected disclosures were made has been included.
2. Section 22A of the WPA provides that I may disclose, in a report referred to in section 103 of the WPA, particulars likely to lead to the identification of a person against whom a protected disclosure has been made if I determine it is in the public interest to do so and if I set out in the report the reasons why I have reached that determination.
3. Having considered the four matters referred to in section 22A(2), I have determined that it is in the public interest to identify a person against whom a protected disclosure has been made by disclosing the following particulars: the name, personal details and former occupation of the subject. I have made this determination for a number of reasons.
4. I consider that it is in the public interest for the subject of a protected disclosure to be identified in a report to Parliament when the disclosure concerns significant and serious allegations of improper conduct by a person holding a public office of certain significance, such as the office of Chief Commissioner of Police; as well as significant allegations of misconduct and improper conduct within a public authority which are alleged to have arisen from management failings of that official.
5. This public interest is derived from the nature of the public office held. In this instance, the public interest arises from the importance of the role, duties and responsibilities of the office holder to the people of Victoria, which includes the management and control of a public authority in an effective and ethical manner.
6. I do not consider that the public interest identified above can be satisfied by any means other than by identifying the subject of the disclosure; confidentiality or de-identification being not appropriate as those courses are, in the instances in this report, inconsistent with the identified public interest.

## Executive summary

7. In July 2011, I received a disclosure from a whistleblower alleging that Mr Simon Overland, in exercising his powers of superintendence and control of Victoria Police during his time as Chief Commissioner, did so in a manner that fell within one or more of the categories of ‘corrupt conduct’ in section 3 of the *Whistleblowers Protection Act 2001* (the WPA). The disclosure included:

- Mr Overland, by:
  - accepting a temporary membership from the Melbourne Cricket Club (MCC);
  - accepting other offers of corporate hospitality; and
  - allowing and accepting behaviour of Victoria Police employees regarding the acceptance of gifts and benefits;

adversely affected the honest performance of functions of Victoria Police employees regarding the acceptance of gifts and benefits.

- Mr Overland (and others within Victoria Police) performed and allowed the performance of certain employment functions with inappropriate partiality including:
  - the reappointment of a superintendent;
  - an unnecessary and unethical termination payment to a senior executive; and
  - preferential treatment of two superintendents under investigation.

8. The WPA is designed to encourage disclosures of improper conduct about public officers and bodies and to provide protections for persons who make those disclosures. The Ombudsman’s role under the WPA includes determining, subject to specific provisions of the WPA, whether a matter requires investigation, and conducting or overseeing investigations.

9. Under the WPA, I may only investigate a disclosure if I determine that the matter is a public interest disclosure. To be a public interest disclosure, I must be satisfied that a person:

- believes on reasonable grounds; and
- the disclosure shows or tends to show

that a public officer or body has, is, or proposes to engage in improper conduct in their capacity as a public officer or public body.

10. Improper conduct in the WPA is defined as:

- corrupt conduct;
- a substantial mismanagement of public resources;
- or a substantial risk to public health and safety or the environment.

This conduct must also, if proven, constitute a criminal offence or reasonable grounds for dismissal.

11. I considered that the conduct of Mr Overland, if proven, would have been reasonable grounds for the termination of his appointment as Chief Commissioner when he occupied this position. I therefore considered that this disclosure was a public interest disclosure.
12. This report details the results of my investigation into the public interest disclosure. Other allegations were also included in the disclosure although I have not considered it appropriate or in the public interest to report those allegations to the Parliament. I have, however, included the results of my investigation in relation to those matters in my separate report to the Chief Commissioner of Victoria Police made pursuant to section 63A of the WPA.

## Summary of conclusions

13. I have reached the following conclusions:
  - a. a senior executive was provided with an unnecessary termination payment
  - b. a superintendent was reappointed without an open and competitive recruitment process
  - c. a superintendent under investigation retired after being alerted about a Victoria Police investigation into the inappropriate use of email
  - d. Victoria Police employees, including senior officers, continue to misuse email
  - e. Victoria Police employees, including senior officers, have accepted gifts and benefits, in breach of the Victoria Police gifts and benefits policy
  - f. Victoria Police's approach to dealing with gifts and benefits is inadequate and a number of Victoria Police employees, including senior staff, have a poor understanding of the gifts and benefits policy.
14. I did not conclude that Mr Overland or other Victoria Police employees engaged in 'improper conduct' as defined by the WPA.

## Recommendations

15. As a result of my investigation I made 14 recommendations to Victoria Police, including that it:
  - review its human resources practices to ensure that employees do not receive unnecessary payments upon resignation or termination of their employment contracts
  - review its policy regarding the retention of accoutrements<sup>1</sup> by police members upon their resignation or retirement
  - conduct a yearly audit of email use by Victoria Police employees

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<sup>1</sup> Accoutrements include a Victoria Police cap or hat badge, identification certificate, and identification wallet and badge.

- review its approach to dealing with gifts and benefits, including its policies and procedures
- develop and implement a comprehensive communication and education plan to raise awareness and understanding of the gifts and benefits policy for all employees.

## Response from Victoria Police

16. In response to my draft report, the current Chief Commissioner, Mr Ken Lay, said:

Your preliminary conclusions and draft recommendations, are helpful in the development of process improvements and better practices within Victoria Police.

...

I have responded to each recommendation in one of two ways, either I support the recommendation or I support the recommendation in principle, I believe further work needs to be done or the recommendation requires an investment decision to be considered.

## 1. The investigation

17. On 15 August 2011, I informed Mr Peter Ryan MLA, the Minister for Police and Emergency Services, in writing of my investigation.
18. When conducting an investigation pursuant to Part 5 of the WPA, I have the power to summons witnesses, require the production of documents and interview witnesses under oath or affirmation. This includes the power to interview and obtain information from any person I believe may be able to assist with my investigation, including public officers and private individuals.
19. My investigation involved:
  - interviewing 32 witnesses
  - examining extensive documentation and computer records obtained from Victoria Police and some private entities
  - reviewing relevant legislation and policy documents.
20. All witnesses were interviewed on oath or affirmation. All interviews from my investigation were audio recorded and quotations used in this report were transcribed from these audio recordings.
21. It was necessary to issue two summonses for witnesses to attend for interview. The majority of witnesses requested legal representation at interview, which I agreed to.

### The Ombudsman's jurisdiction

22. In response to a draft of my report, Mr Overland raised concerns about the scope of my jurisdiction under the WPA. Mr Overland contended that my jurisdiction is limited to supporting or refuting allegations of improper conduct that are assessed as public interest disclosures. Mr Overland stated that the Ombudsman does not have a 'general supervisory role over the Chief Commissioner' and that conclusions in my report which are made in addition to those that specifically address my findings on public interest disclosures are 'irrelevant'.
23. I do not agree with Mr Overland's interpretation of the WPA. In order for me to form a view as to whether the allegations were substantiated or not, it was necessary for me to consider related matters identified during the investigation in addition to those specifically raised by the whistleblower. To do otherwise would leave such matters unchallenged, particularly where they involved on the face of it, improper conduct.

24. Furthermore, the WPA does not require my investigations to be confined by any predetermined terms of reference. Section 103 of the WPA enables me to report to Parliament 'on any matter arising in relation to a disclosed matter'. This provision allows me to report to Parliament on any issue that arises during the course of an investigation into a disclosed matter that I consider may be in the public interest. It would not be possible for me to exercise that function properly if the scope of my investigations were constrained by any predetermined terms of reference.

## 2. Employment practices

25. The disclosure to my office included the allegation that in exercising his powers of superintendence and control of Victoria Police during his time as Chief Commissioner, Mr Overland promoted inappropriate partiality in certain employment decisions. In particular, it was alleged that:
- a senior executive was given an unnecessary and unethical termination payment to encourage the executive not to speak out about Victoria Police matters; and
  - a retired superintendent was reappointed to Victoria Police without the position being advertised and open to other applicants to apply.

### Termination payments to a senior executive

26. The whistleblower alleged that although an executive employee, Ms Nicole McKechnie had resigned from Victoria Police, she received a payment for the termination of her contract. It was further alleged that this payment was made to Ms McKechnie to encourage her not to speak out about Victoria Police matters.
27. Ms McKechnie was employed as the Director, Media and Corporate Communications at Victoria Police under an executive contract, which was due to expire on 15 June 2011. Under the terms of the contract, at least six months prior to the expiry of the contract, Ms McKechnie and her supervisor Mr Overland were required to confer regarding whether she would be re-employed. Each party was to advise the other no later than four months prior to the end of the contract of their decision regarding re-employment. As a result, Ms McKechnie and Victoria Police were required to reach a decision by 15 February 2011 as to whether a new contract would be entered into.
28. My investigation did not identify any evidence that contract discussions were held with Ms McKechnie six months prior to the expiry of her contract.
29. On or around 1 April 2011, discussions were held between Ms McKechnie and Mr Overland and it was mutually agreed that she would leave Victoria Police and that Mr Overland would terminate her contract. On 6 April 2011, Ms McKechnie publicly announced that she was leaving Victoria Police. However, at interview Ms McKechnie and Mr Overland provided differing accounts about who initiated the discussions and what Ms McKechnie's intentions were.
30. This distinction is important as, if Ms McKechnie's contract was terminated by Victoria Police, under the terms of the contract she was entitled to receive four months notice, or payment in lieu of that notice, as well as a payment for outplacement services. If however, she resigned, or the contract expired, Ms McKechnie was not entitled to those payments. If Ms McKechnie's intention was to resign or to serve out the remaining terms of her contract and then leave, the question arises as to why Mr Overland chose to terminate her employment, particularly so late in the contractual period.

31. Ms McKechnie's last day of employment with Victoria Police was 27 May 2011, eight weeks after her discussion with Mr Overland and less than three weeks before her contract of employment was due to expire. On 27 May 2011, Ms McKechnie received payments indicating that her employment had been terminated by Victoria Police. That is, she received \$62,449.60, for four months pay in lieu of notice (even though her contract had less than three weeks to run) as well as \$10,000 for an 'Outplacement Payment'. In addition, Victoria Police agreed to pay for the remainder of Ms McKechnie's Masters Degree studies.
32. At interview, Ms McKechnie said that she understood it was not commonplace for people to receive payouts such as the one she received when leaving Victoria Police, but she believed it was an acceptable practice and was reasonable. Ms McKechnie also said the payment was not provided to prevent her from speaking with others about any matter involving Victoria Police.
33. Ms McKechnie also said that she initiated the discussions with Mr Overland regarding her departure and that:

... it was very much my decision. But ... he [Mr Overland] offered that - the [termination payment] as a way of ... me leaving the organisation in a way that is helpful to me.
34. In response to my draft report, Ms McKechnie said:

... it was not my intention to leave without having found a role outside the organisation. Around April I sought a meeting with the Chief Commissioner as it was becoming clear that Mr Overland and I differed on media strategy and our relationship was strained.

My recollection was that I initiated the conversation where I discussed my unhappiness on a number of levels and the fact that I was considering my future. As part of that conversation Mr Overland and I came to a mutual agreement that it was time to leave and as a result he said that he would terminate my employment.

... Mr Overland was happy for me to send out a resignation note regarding my departure, it was a mutual decision.
35. At interview, Mr Overland was asked about the circumstances which led to Ms McKechnie's termination. He said that he had a number of discussions with Ms McKechnie about her career and that it was agreed she would leave after the 2010 State election. Mr Overland said that he thought he 'probably initiated the conversation' about Ms McKechnie leaving Victoria Police and told her it was time to go. He said he had made similar arrangements with other staff who left Victoria Police and that he understood it was common practice across the public sector. Mr Overland considered that the payments made to Ms McKechnie were an appropriate use of funds.
36. In response to my draft report, Mr Overland said:

... Ms McKechnie is wrong. I terminated her contract triggering the payment of four months' salary in lieu as per the terms of the contract. The public account she gave was to indicate that she had resigned, so as to not suffer any entirely undeserved reputational damage.

...

In this case, Ms McKechnie may have been entitled to expect renewal of her contract, she was entitled to compensation in any event because 'notice' provisions in the contract about intention not to renew had not been complied with, and my judgment was that the risk of things going wrong could (and often does) cost a lot more than four months' salary to fix.

37. My investigation identified that there was some confusion within Victoria Police's People Department about whether Ms McKechnie had resigned or whether the contract had expired. In an email dated 19 April 2011 to the Ethical Standards Division, an officer of the Victoria Police People Department requested a probity check for the cessation of employment, stating the reason for Ms McKechnie leaving Victoria Police was 'resignation'. In a further email to Corporate Payroll dated 30 May 2011, the officer stated:

Please note that the ... cessation is due to "END of CONTRACT" and not resignation.

38. In either of these circumstances, Ms McKechnie was not contractually entitled to the payments that she received.
39. The termination payment to Ms McKechnie did not appear to be an isolated incident. At interview, the former Executive Director, People Department said that executives commonly receive termination payments when they leave organisations and that arrangements regarding end of service, notice period, and payments are often negotiated. She said:

From my understanding – and I think it's completely fair and reasonable in terms of [Ms McKechnie] – her contract was terminated, whether or not publicly it was said she resigned or not, her contract was terminated and she was paid out four months in lieu of notice from the date that she left. And I don't see anything wrong with that.

## Conclusions

40. I consider that the allegation that Ms McKechnie received an unnecessary termination payment is substantiated by the evidence available to me.
41. Mr Overland, who said he had given consideration to Ms McKechnie's future over some period of time, failed to exercise the method provided for by the contract for dealing with non-renewal of an executive's contract. Instead, he chose to terminate the contract at a time which required Victoria Police, on his analysis of the contract, to make a payment in lieu of four months notice, when Ms McKechnie had less than four months of her contract to serve. I also find it concerning that the payment in lieu of notice was made effective from 27 May 2011 when notice had effectively been given some eight weeks earlier and both parties had mutually agreed that Ms McKechnie would leave Victoria Police.

42. The employment of executives in the public service by contract in the current form commenced with the enactment of the Public Sector Management Act in 1992. One of the objectives of doing so was to prevent, to use the terminology of the day, 'golden parachutes'<sup>2</sup> to departing public servants. I find it difficult to see how the amount paid to Ms McKechnie should not be so described, whoever initiated the discussions regarding her departure.
43. While Ms McKechnie and Mr Overland provided differing accounts as to how the termination came about, Ms McKechnie said that she approached Mr Overland with the intention of resigning and he offered to terminate her contract. If Ms McKechnie intended to resign, in my view there is simply no justification for Mr Overland converting a resignation into a termination. However, if as Mr Overland maintains, he initiated the conversation with Ms McKechnie on or around 1 April 2011 regarding her departure, it is clear that he should have initiated that conversation some months earlier and there is no justification for providing eight weeks notice followed by four months payment of salary in lieu of notice, particularly when that payment is made on a date when Ms McKechnie had but three weeks remaining on her contract.
44. In response to my draft report, Mr Overland said:
- Ms McKechnie had done a good job, but it was time for her to go because she was "tired" and a new direction needed to be pursued in her area. This was an employment matter entirely within my discretion as Chief Commissioner ...
- ...
- My considerable experience in managing the way senior executives leave organizations tells me that there are invariably complications in these processes, which can result in litigation (or at least the involvement of lawyers and therefore costs), assertions of reputational damage and confrontations, all of which can be avoided by structuring a person's departure (where there is no suggestion of misconduct) in a way which affords them some dignity and provides some compensation for them having to substantially change their working lives.
45. Both Mr Overland and Ms McKechnie denied that the payments were made to discourage her from speaking with others about any matter involving Victoria Police and I did not find any evidence to the contrary, other than circumstantial evidence relating to the nature and timing of the payment made to Ms McKechnie. That is not sufficient for me to conclude that Mr Overland's decision to provide a termination payment to Ms McKechnie constitutes improper conduct as defined in the WPA.
46. The evidence of Mr Overland and the former Executive Director of the Victoria Police People Department suggests that the termination payment to Ms McKechnie may not be an isolated incident. I therefore consider that Victoria Police should review its practices regarding paying out senior officers before the end of their employment contracts, especially in circumstances where officers have indicated their intention to resign or their contract is due to expire within four months.

<sup>2</sup> Victoria, Parliamentary Debates, Legislative Assembly, 4 November 1992, page 354, the then Premier, Mr Jeff Kennett MP.

## Recommendation

I recommend that Victoria Police:

### Recommendation 1

Review its human resources practices to ensure that employees do not receive unnecessary payments upon resignation or termination of their employment contracts.

#### *Victoria Police's response*

Victoria Police supports this recommendation.

## Reappointment of a superintendent

47. The disclosure included the allegation that a retired Victoria Police officer, referred to in my report as Mr A, was reappointed as a superintendent without an open and competitive recruitment process.
48. Mr A had worked 38 years for Victoria Police before retiring at the rank of superintendent in October 2007. After his retirement, Mr A returned to work as a consultant for Victoria Police in December 2008 to undertake an examination of police shooting critical incidents between July 2005 and December 2008. After having worked as a consultant for Victoria Police for approximately 12 months, Mr A was approached by Chief Commissioner Overland about accepting a permanent position with Victoria Police. At interview, Mr A said:
- He [Mr Overland] said, "Do you want to come back into the job?", and I said, "How's that going to work?", and he said, "We'll get some legal advice". And I - I actually tried to talk him out of it in a way. Because I said, "Well, you need to be careful, because this will create a real precedent". And he said, "No, I want to do more of bringing people back with experience for certain work".
49. In response to my draft report, Mr Overland said:
- The report ... fails to reproduce my evidence that it was [Deputy Commissioner] Kieran Walshe who suggested this idea to me [to re-appoint Mr A as a superintendent] - the importance of this was that ... [Mr A] was seen as a good and appropriate candidate for the role by other members of the senior executive, who are as familiar with employment practices as I am ...
50. Victoria Police obtained legal advice from the Victorian Government Solicitor's Office (VGSO) about Mr A's reappointment. In its advice, the VGSO advised:
- We are unable to identify any legal impediment to the reappointment of a person to the force at their former rank of Superintendent on an ongoing basis.
- We expect that the position will need to be advertised and the person will be required to apply in the usual way. We presume the Human Resources Department will advise you on that issue.

51. In a letter dated 1 December 2009, Mr A was offered re-employment with Victoria Police as a superintendent on a salary of \$130,485. Mr A accepted the offer on 4 December 2009. The VGSO's expectation that 'the position will need to be advertised and the person will be required to apply in the usual way' was not met.
52. In accordance with the *Police Regulations 2003*, in order to qualify for appointment to Victoria Police, a person must have 'completed a medical examination to the satisfaction of a medical practitioner nominated by the Chief Commissioner'.<sup>3</sup> The regulations also require that the person pass the following tests set by the Chief Commissioner:
- a general intelligence test
  - a written examination
  - an agility test.<sup>4</sup>
53. At interview, Mr A said that he had not been required to meet any criteria or pass any tests prior to his reappointment, including a medical examination.
54. There is also a requirement under the *Police Regulation Act 1958* for specific positions within Victoria Police to be advertised. The regulations state that the Chief Commissioner must advertise a vacant position unless the vacancy is:
- to be filled by the transfer of a member
  - to be filled by the temporary promotion of a member
  - for a constable or senior constable position.<sup>5</sup>
55. At interview, the former Director of the Education Department at Victoria Police, said the position Mr A obtained was not advertised because it was generally believed there was not a better candidate within Victoria Police. The former Director stated that Victoria Police was not required to advertise all positions. She went on to say:
- Now, it's always better to go to open market, one would say good recruiting practices are [to go to open market], but [that] doesn't mean we have to.
56. However, this view does not reflect the advice provided by the VGSO that it was necessary for Victoria Police to advertise the superintendent position which Mr A was appointed to.
57. In response to my draft report, the former Director also said:
- ... the role ... [Mr A] had being doing ie review of police shootings is the reason why it was considered that he was most suitable to take on the review and restructure of OTST [Operational Tactics and Safety Training].

<sup>3</sup> See regulation 5(c) of the *Police Regulations 2003*. Section 8(1) of the *Police Regulation Act 1958* requires that appointments be made in accordance with the regulations.

<sup>4</sup> *Police Regulations 2003*, regulation 5. However, some of the regulations do not apply for specialist areas of Victoria Police – see *Police Regulations 2003*, regulation 6.

<sup>5</sup> *Police Regulations 2003*, regulation 23.

58. At interview, Mr A said that when he came back to work for Victoria Police as a consultant he did not have expertise in training or tactics and safety. He also said:
- ... what you need to understand is I'm not from a training background; I'm not from a tactics and safety background at all. I mean, at the time, my skills were more perhaps around managing a large police division and [I] certainly have some expertise around major event management.
59. In relation to Mr A's reappointment at the rank of superintendent by Victoria Police, Mr Overland said:
- He [Mr A] had, as a consultant, reviewed a series of police shootings and identified causal issues with policy and training that needed to be addressed as a priority. ... [Mr A] is a very laid back, self-effacing person and I am not surprised he has been so reticent about his abilities, but the facts were he was a recently-retired and well respected Superintendent, he knew the issues through the review he had conducted, he was driving major change in training etc. to deal with these, and I gave a priority to getting that right in order to stop police shootings and save lives.
60. The Police Regulation Act provides that a person who is appointed to a position of Inspector or above becomes 'an officer of the force' when the appointment is certified by the Governor in Council.<sup>6</sup> Under the Police Regulation Act, 'officers' are granted special authority in relation to the 'superintendence and control' of Victoria Police.<sup>7</sup>
61. Victoria Police's application to the Governor in Council for the appointment of Mr A was not sought until nine months after Mr A accepted the offer of re-employment as a superintendent. Mr A's personnel file did not contain any documents showing whether the appointment was certified by the Governor in Council.

## Conclusions

62. I consider that the allegation concerning Victoria Police's failure to conduct an open and competitive recruitment process in the reappointment of Mr A is substantiated. However, I do not consider that Mr Overland engaged in improper conduct, as defined in the WPA, in relation to Mr A's reappointment.
63. The VGSO provided advice to Victoria Police that it expected the superintendent position to be advertised. Failure to comply with this advice was not a decision made by Mr Overland. Mr Overland relied on advice from his staff that he was able to reappoint Mr A as a superintendent.
64. In response to my draft report, Mr Overland said:
- The appointment process for ... [Mr A] may show administrative failings, but that is all.
- ...
- As far as my own involvement goes, while it is true that I wanted to re-appoint him, I asked for advice, was verbally advised that it was permissible and then had no further role in the process ...

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<sup>6</sup> *Police Regulation Act 1958*, section 8(2).

<sup>7</sup> *Police Regulation Act 1958*, section 5(1).

...

As Chief Commissioner I was entitled to assume and expect that any appointments which, I in consultation with my senior management, thought should be made would be made regularly and in accordance with law. The lawful implementation of those decisions was the responsibility of others, and that is the only reasonable way a large organization can function.

65. Victoria Police did not comply with a number of requirements in the reappointment of Mr A. In this regard, my investigation identified that:
- As Mr A did not hold a position within Victoria Police prior to being reappointed, he should not have been appointed to the superintendent position he obtained.<sup>8</sup>
  - The superintendent position was not advertised as is required by the Police Regulation Act.
  - Mr A was not subject to the required tests and medical examinations.
  - Victoria Police failed to seek certification from the Governor in Council for Mr A's reappointment until some nine months after Mr A accepted the reappointment. Mr A would not have been an 'officer' of the force capable of exercising the functions provided by the Police Regulation Act until his appointment was certified by the Governor in Council.<sup>9</sup>
66. Despite the above deficiencies, I am satisfied that Mr A was appointed because he was considered a good candidate for the position. I did not find evidence that supported the allegation that he was appointed as a result of inappropriate partiality or favouritism, although it could be perceived as such by an uninformed observer.
67. I would also be concerned if Victoria Police had appointed other members to the force but failed to do so in accordance with the regulations. It is important that any such appointments are done correctly given the impact that a faulty appointment process has on Victoria Police.

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<sup>8</sup> *Police Regulation Act 1958*, section 8(2)

<sup>9</sup> Despite the defects in Mr A's appointment, I am of the view that his actions since his appointment are protected by the 'de facto officer doctrine'. Campbell and Lee describe the 'de facto officer doctrine' as 'a common law doctrine of some antiquity which serves to validate the acts of persons who presume to carry out the functions attached to a public office which exists *de jure* (that is, in point of law) but who have no entitlement to occupy the office. However, the doctrine will apply only when the person purporting to act as an officer *de jure* has some 'colour' of authority. It does not apply when the person's lack of entitlement to occupy the office is notorious, but it can apply when the defect in title is not apparent to, or readily discoverable by, members of the public who submit to or invoke the jurisdiction of the officer.' See Campbell, E and Lee, H P, *The Australian Judiciary*, Cambridge University Press, 2001, page 92.

However, since the defects in appointment have now been identified, it is likely that this doctrine will cease to have effect. As a result, I consider that it is necessary for the Chief Commissioner to take prompt steps to remedy the defects in Mr A's appointment.

68. In its report on the *Inquiry into the command, management and functions of the senior structure of Victoria Police*, which was led by Mr Jack Rush QC, the State Services Authority recommended that Victoria Police undertake planning to 'allow for lateral entry at all ranks and for reappointment at rank'.<sup>10</sup> The government's support for this recommendation<sup>11</sup> indicates that appointments to positions of commissioned rank within Victoria Police may occur in the future. This emphasises the need for Victoria Police to review its appointment processes to ensure they meet the requirements of the law.

## Recommendations

I recommend that Victoria Police:

### Recommendation 2

Immediately seek advice from the Victorian Government Solicitor in relation to the legality of Mr A's appointment to the rank of superintendent and take appropriate action needed to address issues arising from such advice.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

### Recommendation 3

Conduct a review to determine whether it has complied with the regulations in relation to the reappointment of any other officers.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### Recommendation 4

Review its appointment processes in light of the issues identified in this report and advice from the Victorian Government Solicitor.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

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<sup>10</sup> State Services Authority, *Inquiry into the command, management and functions of the senior structure of Victoria Police*, November 2011, page 26.

<sup>11</sup> *Government response to the Inquiry into the command, management, and functions of the senior structure of Victoria Police*, March 2012, page 5.

### 3. Inappropriate emails

69. The disclosure to my office included the allegation that Victoria Police gave preferential treatment to two superintendents in relation to Operation Barrot, a Victoria Police investigation into the inappropriate use of email by Victoria Police employees.
70. In the course of my investigation, I also identified several other issues of concern regarding the management of Operation Barrot and the ongoing inappropriate use of email by Victoria Police staff.
71. Operation Barrot (the operation) ran from 4 June 2010 to 31 December 2010. The operation commenced after the Office of Police Integrity (the OPI) identified that some Victoria Police employees had misused the Victoria Police email system. The OPI was concerned that this use of email could be a breach of Victorian legislation<sup>12</sup> and the Victoria Police Manual.<sup>13</sup>
72. The OPI referred the matters to Victoria Police for investigation. At that time, Victoria Police had started a number of similar investigations into separate instances of inappropriate email use by employees. Victoria Police incorporated these matters into Operation Barrot to provide consistency between the investigations.
73. The operation was conducted by an investigation team established by the Ethical Standards Department of Victoria Police, with staff brought into the team from across Victoria Police. The Assistant Commissioner in charge of the Ethical Standards Department had oversight of the operation.
74. The operation investigated 207 Victoria Police employees, including 189 sworn members and 18 Victorian public sector employees. The operation found emails containing a range of inappropriate and offensive content, including:
- obscene, pornographic and sexually explicit material
  - violence
  - material that depicted death and dying
  - threatening and harassing language
  - material that was discriminatory or offensive towards race, ethnicity, religion, sex, and sexual orientation
  - material that contained discriminatory and vilifying language relating to individuals' personal characteristics.
75. Many employees investigated by the operation were disciplined by Victoria Police. Disciplinary action resulting from the operation, included:
- the dismissal of a number of employees

<sup>12</sup> Including the *Police Regulation Act 1958*, the *Constitution Act 1975*, the *Information Privacy Act 2000*, the *Equal Opportunity Act 1995*, and the *Racial and Religious Tolerance Act 2001*.

<sup>13</sup> Sections relating to information security; access, use and management of the email system and the internet; and access, use and disclosure of information.

- demotion
- the imposition of fines and good behaviour bonds
- formal counselling
- warning letters.

## Operation Barrot investigations

76. My investigation identified that Victoria Police allowed some employees to retire or resign while under investigation during Operation Barrot. Where this occurred, Victoria Police did not pursue disciplinary action. Initial assessments of the officers' emails by the operation indicated that, had they not retired, they would have been required to attend disciplinary hearings.
77. During the course of my investigation, one of the members of the Operation Barrot investigation team raised concerns that commissioned officers may have received favourable treatment. The officer said he had raised concerns about the limited scope of the audit, including the failure to look at the emails of higher ranked officers, however had been advised by a lead investigator to 'just do his job'.
78. The Operation Barrot investigation did not follow all email trails, which meant that the investigation team knew of employees who received inappropriate emails but did not check whether the employees also forwarded them on.
79. My investigation identified that the scope of Operation Barrot was limited in several ways. For the most part, these limitations were reasonable as practical restrictions needed to be placed on the operation in order for it to be timely and effective. However, issues of fairness and favourable treatment were raised by a number of witnesses during my investigation.

## Superintendents B and C

80. The operation identified nine commissioned officers<sup>14</sup> as having received or distributed inappropriate emails. Two of these officers, referred to in my report as Superintendents B and C, retired while under investigation. Disciplinary action against the two officers was therefore not finalised.
81. It was alleged that Superintendents B and C:
- were approached by Deputy Commissioner Kieran Walshe, who notified the officers that they were under investigation
  - Deputy Commissioner Walshe promised Superintendents B and C that, if they resigned, they would be allowed to leave Victoria Police 'without any fuss' and would receive Certificates of Service, which they ordinarily would not be entitled to if they ended their service while under investigation.

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<sup>14</sup> A commissioned officer is a person employed by Victoria Police who holds the rank of Inspector or above.

82. My investigation identified that, prior to Superintendent B's retirement, Deputy Commissioner Walshe had a private conversation with him regarding his use of email. During interview by my investigators, Deputy Commissioner Walshe said:
- I'd had some ... discussions with .... [Superintendent B] about his future and where he was going ... at one stage there was a discussion around [Operation] Barrot. I think ... [Superintendent B] knew that there had been some emails, and I just had a discussion with him about, you know, what his future looked like and what he thought. And we discussed, you know, what his future in the organisation might be and he later submitted his resignation.
83. Deputy Commissioner Walshe said that he did not think he suggested to Superintendent B that he should retire and did not inform Superintendent B that he was under investigation.
84. In response to my draft report, Deputy Commissioner Walshe also said:
- ... I made him [Superintendent B] no promises about what would happen if he did retire.
85. Superintendent B said that he was not told that he was under investigation, only that his name was likely to come up and that because of his rank and position he should consider his future. He also said that there was no allegation of misconduct or impropriety raised against him and no criminal or disciplinary charges brought against him in relation to Operation Barrot, or any other matter.
86. My investigation did not identify that Deputy Commissioner Walshe had spoken to Superintendent C about his use of emails or the likelihood that he would be considered by Operation Barrot for disciplinary action. Superintendent C resigned from the force for health reasons.

## Accoutrements

87. Sworn members who retire or resign from Victoria Police are entitled to retain their police accoutrements<sup>15</sup> provided they meet certain conditions. The Victoria Police Manual (the Manual) sets out the circumstances in which employees are allowed to keep their accoutrements. Up until 15 March 2011, the Manual stated that employees who left Victoria Police under investigation for a disciplinary or criminal offence were ineligible to retain any items, but applications for special consideration could be made to the Director of the Human Resource Department.
88. On 15 March 2011, the Victoria Police Manual was changed so that employees were eligible to retain accoutrements after serving five years of 'continuous diligent and ethical service'. The updated Manual gives discretion to the Assistant Commissioner, Ethical Standards Department in relation to determining diligent and ethical service. The policy allows for retrospective applications for accoutrements to be made up to two years after an employee has left Victoria Police.

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<sup>15</sup> See footnote 1.

89. Superintendent B was initially given approval to retain his accoutrements. However, it was later identified that he was under investigation and therefore would not be entitled to keep them.
90. My investigation identified that, following the retirement of Superintendents B and C, a number of emails were exchanged between the Assistant Secretary of The Police Association and Deputy Commissioner Walshe regarding the two superintendents' accoutrements. In an email on 10 December 2010, the Assistant Secretary wrote:
- During our discussions around ... [Superintendent C's] situation it was determined that he would be entitled to all of the normal courtesies afforded any other retiring member. As you may recall, ... [Superintendent C] retired on 3 December and unfortunately those courtesies were not extended to him on the basis of a decision apparently made by [then Deputy Commissioner] Ken Jones who may not have been aware of the tenor of our conversation around this matter.
91. Deputy Commissioner Walshe replied on the same day that he was aware of the matter, was 'working to resolve it' and would keep the Assistant Secretary informed. On 23 December 2010, the Assistant Secretary again wrote to Deputy Commissioner Walshe stating:
- Have things gone from bad to worse ... I hear that ... [Superintendent B] has had his Certificate of Identity removed from him after it was provided to him post retirement ... If they [Superintendents B and C] knew that these impediments were going to be put in their way they may not have quietly retired.
92. At interview, Deputy Commissioner Walshe said he thought the 'discussion' the Assistant Secretary referred to was a telephone conversation between them that took place prior to the exchange of emails. He said that, during that discussion, he advised the Assistant Secretary that Superintendents B and C would be entitled to receive their accoutrements and Certificates of Service. Deputy Commissioner Walshe said that he referred the matter to then Deputy Commissioner Jones and that Superintendents B and C both received their accoutrements after Deputy Commissioner Jones resolved the issue.
93. In response to my draft report, Deputy Commissioner Walshe said:
- ... I did not make any promises to either ... [Superintendent B or C] regarding what would happen if they retired. I had assumed the [accoutrements policy] would permit people in ... [Superintendent B and C's] circumstances to apply to retain their accoutrements.
- ...
- ... the policy regarding permission to retain accoutrements was revised by Sir Ken Jones in his capacity as Deputy Commissioner with responsibility for Ethical Standards and it was my understanding that those changes would have meant that anyone who resigned before being interviewed [about Operation Barrot] would be entitled to apply for consideration for retention of accoutrements.

94. In response to my draft report, Mr Overland said:
- Allowing long serving officers who have otherwise given unblemished service to leave with some of their entitlements intact recognizes the very great impact on a person's personal and professional life when they leave the police force. The cases of ... [Superintendents B and C] highlighted these issues and in that sense may have been the catalyst for change in the policy, but the policy was not changed only **for** [Mr Overland's emphasis] them.
95. The Assistant Commissioner in charge of the Ethical Standards Department authorised the provision of Superintendent C's accoutrements after his application had initially been rejected. At interview, the Assistant Commissioner said:
- ... some of the officers involved [in Operation Barrot] were close friends of mine who I'd worked with, you know, had been friends with for thirty-plus years, but we had to apply the same approach to everyone and we did.
96. When asked which of the commissioned officers were his friends, the Assistant Commissioner said:
- Two Superintendents ... [Superintendents B and C] ... Particularly ... [Superintendent C], we worked together as constables ... thirty-plus years ago.
97. The Assistant Commissioner said that he exercised his discretion when he approved Superintendent C to receive his accoutrements and had done so because of Superintendent C's service history and because it appeared his accoutrements had been approved when he first sought to resign.
98. In response to my draft report, the Assistant Commissioner said:
- I applied the provisions of the revised [accoutrements] policy when I considered the subsequent application that was made on Superintendent ... C's behalf.
- ...
- The decisions I was required to make in relation to Superintendent ... C were administrative in nature and of a type I am regularly required to make in relation to Victoria Police employees that I have met and developed friendships with during my 37 year career.
- My decisions were documented, supported by policy and evidence to ensure there was transparency, accountability and if necessary, scrutiny in the exercise of my discretion.
- Withdrawing from making decisions of this nature and in similar circumstances would severely limit and hamper the ability of an Assistant Commissioner to undertake their role.

## Certificates of Service

99. The Victoria Police Manual provides for Certificates of Service to be issued to employees of Victoria Police on their retirement or resignation. A Certificate of Service shows the rank or classification of the employee, their length of service with Victoria Police, and any honours, awards, commendations or decorations received.

100. Where an employee has been dismissed, or has resigned or retired while under investigation, they are not eligible to receive a Certificate of Service, but can be given a Statement of Service instead. Certificates of Service and Statements of Service are issued by the Chief Commissioner.
101. My investigation identified that Superintendents B and C received Certificates of Service signed by Mr Overland. Mr Overland said that he remembered 'agonising' over whether he should sign the Certificates of Service given that the members were identified during Operation Barrot. When asked why he didn't adhere to the policy, he said:
- [I] didn't have the policy in front of me ... I would expect that whoever is providing that advice to me would know what the policy was and that I would be entitled to rely on that ... But I do remember looking at all of those things and thinking, "Do I sign them or not?".
102. In response to my draft report, Mr Overland also said:
- ... I submit I was entitled to assume any certificates I signed were assessed to be consistent with Victoria Policy unless the contrary was drawn to my attention. In the cases of ... [Superintendents B and C], I was **not** [Mr Overland's emphasis] told signing these certificates was contrary to any policy, and if I had, I would not have signed them.

## Conclusions

103. Deputy Commissioner Walshe maintains that he did not inform Superintendents B and C that they were under investigation in relation to Operation Barrot. He also said that he made no promises regarding what would happen to them if they were to retire. This evidence is supported by Superintendents B and C.
104. In spite of this, I can appreciate how an independent observer could form the view that Superintendents B and C received preferential treatment because of their senior rank. For example, the email exchange between the Assistant Secretary of The Police Association and Deputy Commissioner Walshe, where reference is made to the two superintendents not having 'quietly retired' if they knew of the impediments being placed in front of them is puzzling. In addition, the evidence shows that Deputy Commissioner Walshe alerted Superintendent B that he may be identified by Operation Barrot.
105. I consider employees that are under investigation should not be alerted to this fact outside of the normal processes of the investigation. Informal notification has the potential to negatively impact on investigations.
106. In response to my draft report, the Assistant Commissioner in charge of the Ethical Standards Department said:
- I note and agree in general with your comments that alerting employees that they are under investigation has the potential to negatively impact on investigations. This was not the case however with Operation Barrott [sic] as there was no risk of loss, destruction or contamination of the electronic evidence. This also meant that collaboration and concoction by subject members with witnesses would not have undermined the integrity of Barrott [sic] investigations.

It has been necessary for me from time to time for contingency and other purposes to advise members of the Victoria Police Executive of the existence of investigations and of the identity of those members involved. This was particularly necessary in Operation Barrott [*sic*] as the commissioned officers who were involved held senior management roles, responsibilities and accountabilities.

107. According to the policy in place at the time when Superintendents B and C initially sought to retain their accoutrements, neither were eligible to do so. Victoria Police subsequently changed its accoutrements policy, enabling Superintendents B and C to retain their accoutrements. The new policy applies to all employees and allows for retrospective applications.
108. I consider that the Assistant Commissioner in charge of the Ethical Standards Department should not have given approval for Superintendent C to receive his accoutrements given their long friendship. This created a conflict of interest. In my view, the Assistant Commissioner should have managed this conflict by excusing himself from any involvement in this matter. His failure to do so gives rise to the perception that his decision might have been influenced by a perceived friendship.
109. Chief Commissioner Lay also responded to this issue:
- I have carefully considered your conclusions relating to the actions of [the] Assistant Commissioner ... , in particular your comments relating to his management of members who resigned from the organisation whilst under investigation. You have suggested in your report that [the] Assistant Commissioner ... failed to manage a conflict of interest in regard to Superintendent ... [C]. I note that there is no suggestion that he failed to apply current policy or that he failed to act in good faith at all times.
110. The provision of Certificates of Service to Superintendents B and C was not in line with policy provisions for officers resigning or retiring, given that the superintendents had been identified during Operation Barrot. I am of the view that the policy should have been brought to the attention of Mr Overland to ensure fairness in the provision of Certificates of Service.

## Recommendation

I recommend that Victoria Police:

### Recommendation 5

Review its policy regarding the retention of accoutrements by police members upon their resignation or retirement.

### ***Victoria Police's response***

Victoria Police supports this recommendation.

## Other issues

### Integrity of Operation Barrot investigators

111. While Operation Barrot was run by the Ethical Standards Department, the investigation team was sourced from across the police force. Of the 15 sworn Victoria Police members on the investigation team, three came from the Ethical Standards Department.
112. My investigation identified that email audits were not conducted on Operation Barrot staff prior to their joining the investigation team to identify whether they had received or sent inappropriate emails.
113. At interview, an Inspector who was responsible for establishing the Operation Barrot investigation team, said that while no audits of staff emails were conducted, probity checks were done on staff before they began work on the operation. The Inspector advised that members of the Ethical Standards Department who joined Operation Barrot were not subject to a probity check because those checks are done on the staff before they join the department and any other matters that arose in relation to those members would be known by the Ethical Standards Department.
114. My investigation identified that two members of the Operation Barrot investigation team were themselves investigated for inappropriate use of email. In one case, an officer from the Ethical Standards Department identified with inappropriate emails was also under investigation for falsifying police documents. In my view, it was not appropriate for this officer to be selected for the Operation Barrot investigation team in the first instance. In response to my comments regarding this matter, the Assistant Commissioner in charge of the Ethical Standards Department, said:

I understand the concerns mentioned in the draft report regarding the retention of [the officer] ... at ESD [Ethical Standards Department] and on Barrott [*sic*] whilst ... under investigation ... however this was a considered decision of mine based upon a number of issues.

After considering all the issues and in particular not wishing to abrogate my responsibilities I directed [the officer] ... to work on Barrott [*sic*] where ... [the officer] could be supervised and supported.

### Use of emails after Operation Barrot

115. My investigators asked a number of Victoria Police employees at interview for their views on how well the policy regarding email use is known within Victoria Police and whether it is being communicated effectively since Operation Barrot. Most witnesses said that the message regarding emails is getting through and employees should be aware of the expectations regarding appropriate email use. However, several staff said that there are still people within Victoria Police who misuse the system.

116. At interview, the Assistant Commissioner in charge of the Ethical Standards Department said that there had been further instances of misuse of the email system since Operation Barrot. The Assistant Commissioner said that these matters had been handled consistently with the matters investigated under Operation Barrot.
117. My investigation included a review of the email accounts of a small number of Victoria Police employees and found examples of some staff misusing email since Operation Barrot. This included commissioned officers.
118. In one case involving a senior officer, approximately 2,000 emails were exchanged with a female acquaintance in a six month period using the officer's Victoria Police email account. Some of these emails involved sexually suggestive language and sexually suggestive images. The number of emails exchanged would often be more than 40 per day, with 81 emails exchanged during business hours on one day. This suggests there was a significant adverse impact on the officer's ability to perform his duties. At no stage did the officer indicate to the acquaintance that any of the emails they exchanged were inappropriate. This is despite evidence that the officer was well aware of Operation Barrot and the standards required for appropriate email use.
119. In another case, I identified that a senior officer had also received sexually suggestive images from an acquaintance sent to the officer's Victoria Police email account. This was done just after the outcomes of Operation Barrot and the warnings about inappropriate email usage had been communicated throughout Victoria Police. The senior officer did not advise the acquaintance to stop sending the inappropriate emails.
120. Operation Barrot was discussed at interview with the Assistant Commissioner in charge of the Intelligence and Covert Support. He said:
- ... I understand that we don't have that capability at our firewall to detect those sorts of images and bounce them back, which I was quite alarmed by and concerned by.
121. The Assistant Commissioner also said that police often had valid, work-related reasons for sending offensive material and technology could hamper the communication of such material. He said that, if new technology was adopted, it is important to find a balance that would allow employees to continue to do their work.

## Conclusions

122. The identification of inappropriate emails by staff on the Operation Barrot team has the potential to raise doubts about whether the operation was conducted effectively and impartially. While members of the investigation team were subject to probity checks, I am concerned that their emails were not audited.

123. In response to this issue in my draft report, the Assistant Commissioner in charge of the Ethical Standards Department said:
- ... examining the hard drives of the 15 staff who worked on Barrott [sic] would have extended the time taken to conclude the Operation considerably. Probity checks were undertaken of staff when they transfer to ESD [Ethical Standards Department] and were conducted on the external staff who volunteered to work on Barrott [sic].
124. While Operation Barrot and related communication efforts by Victoria Police have raised employees' awareness of policy and expectations regarding appropriate email use, there are employees within Victoria Police who continue to break the rules. I am concerned that, despite the small number of email accounts reviewed, my investigation identified a number of inappropriate emails sent and received by police subsequent to Operation Barrot.
125. Inappropriate use of email represents an ongoing risk to Victoria Police and further instances of misuse of email could cause significant damage to the organisation and its reputation. This is something that Victoria Police should continue to address.

## Recommendations

I recommend that Victoria Police:

### Recommendation 6

Ensure that, in future investigations regarding inappropriate use of email by staff, investigators follow the trails of high risk and highly inappropriate emails to identify all recipients and the action they have taken in relation to those emails.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### Recommendation 7

Develop robust measures for screening staff in relation to high profile internal investigations, including conducting audits of their emails.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

### Recommendation 8

Develop an information technology solution for detecting and preventing inappropriate use of its email system.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

## **Recommendation 9**

Conduct a yearly audit of email use by Victoria Police employees, sampling staff emails at various levels across the organisation until an information technology solution is implemented.

### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

## 4. Gifts and benefits

126. The disclosure included the allegation that Mr Overland, in exercising his powers of superintendence and control of Victoria Police during his time as Chief Commissioner acted inappropriately, by:

- accepting a temporary membership from the Melbourne Cricket Club (MCC);
- accepting other offers of corporate hospitality; and
- allowing and accepting behaviour of Victoria Police employees regarding the acceptance of gifts and benefits;

that could adversely affect the honest performance of functions of Victoria Police employees regarding the acceptance of gifts and benefits.

127. The whistleblower also raised concerns with my office about the policies and procedures within Victoria Police governing gifts and benefits, stating that they are too lenient.

128. In the course of investigating these allegations, I examined Victoria Police's approach to gifts and benefits and its policies and procedures. My conclusions on this issue and Mr Overland's alleged acceptance of gifts and benefits are detailed in the following section of my report.

### Acceptance of gifts and benefits by the former Chief Commissioner

#### Melbourne Cricket Club membership

129. My investigation obtained documents from the MCC which showed that Mr Overland accepted a temporary membership offered by the MCC when he was Chief Commissioner of Victoria Police. My investigation identified that the temporary membership is offered to the person occupying the Chief Commissioner role and ceased when Mr Overland resigned from this position in June 2011.

130. The MCC is a membership-based private club that has the contract to manage the Melbourne Cricket Ground (MCG). The number of MCC members is restricted and there are currently more than 217,000 people on the waiting list to join the club. The most recent members to join the MCC had been on the waiting list since 1995.

131. Victoria Police has a significant role at events at the MCG in ensuring public safety and preserving law and order. As such, operational decisions by Victoria Police directly impact on the safety and amenity of events at the MCG.

132. During interview, an employee of the MCC advised that memberships were generally provided to positions of authority, such as the Chief Commissioner of Police, rather than to a specific person. The employee said that a temporary membership had been offered to and accepted by previous Chief Commissioners of Victoria Police. Records obtained

from the MCC confirm that Mr Overland paid an annual membership fee of \$541 for the first year he held the membership and \$571 for the second year.

133. At interview, Mr Overland said that he accepted the membership because it was offered by the MCC ‘as a matter of course’ and he believed it had been offered to every previous Chief Commissioner. Mr Overland said that ‘he felt that it would have been rude to refuse the membership’, so he decided to accept it and pay for it himself.
134. Mr Overland said that he did not think that the membership could reasonably be perceived as an attempt to win favour with him or Victoria Police. He agreed that Victoria Police has a role in relation to public safety and preserving law and order at events at the MCG, but said that this was at ‘arm’s distance’ from him.
135. My investigation identified that Mr Overland’s decision to accept the MCC membership was questioned by some officers within Victoria Police. In response to a media enquiry regarding Mr Overland’s acceptance of the MCC membership, an officer in the Victoria Police media unit sent an email to her supervisor dated 23 December 2010, stating:
- ... for the rest of us plebs it takes 30 years to get one of those [MCC memberships], has he [Mr Overland] been on a waiting list for 30 years?
136. In response to my draft report, Mr Overland said:
- It is simply wrong to assert that there is any “queue jumping” involved in the MCC practice of offering temporary memberships, because the incumbent in the office does not get to keep the membership (in contrast to a regular MCC member) – the membership passes (at the discretion of the MCC, not the office holder) to the next office holder.
137. While I accept Mr Overland’s argument, there is a perception that officials in senior positions such as the Chief Commissioner are given preferential treatment because of their position. In addition, there can be a perceived conflict of interest when a gift or benefit of more than token value is accepted by a government officer from an organisation which their office of employment regulates or has a professional relationship with.

## Corporate invitations

138. An analysis of Victoria Police email data showed that Mr Overland accepted some invitations to corporate events when he was Deputy Commissioner. The Gifts and Benefits Register for the Chief, Deputy and Assistant Commissioners also showed that Mr Overland accepted invitations to events during his time as Chief Commissioner, including:
- an invitation from the Chairman of the AFL for Mr Overland and partner to attend the Grand Final and luncheon in 2010, estimated value \$400
  - an invitation from the Chief Executive Officer of the North Melbourne Football Club to attend the Grand Final breakfast for 2010, estimated value \$200

- an invitation from Cricket Victoria to attend the Boxing Day Test and luncheon in 2010, estimated value \$250.
139. The Victoria Police gifts and benefits policy provides little guidance in relation to the acceptance of event invitations. However, the procedures and guidelines state that, provided there is no conflict of interest, employees are permitted to accept invitations:
- where attending an event as part of professional or community networking, e.g. indigenous networks dinner; TAC [Transport Accident Commission] event.
140. My investigators asked Mr Overland why he had attended these events, to which he replied:
- Because I saw it as part of the role ... I understand that this is a vexed issue. But I think that, as the Chief Commissioner, you have a particular standing within the community, you need to relate across the community.
- ...
- The point I make is the top end of town engages this way. This is what they do, they invite you to events.
141. Mr Overland said that he had spoken to the Secretary of the Department of Premier and Cabinet, about this 'at length' and she had advised him that it was part of his role to attend such events.
142. In response to my draft report, the Secretary said the following about this matter:
- Mr Overland and I did discuss broader issues regarding representation at events in an official capacity. I do recall that I referred him to the Public Sector Standards Commissioner's *Gifts, Benefits and Hospitality Policy Framework*. I also suggested to Mr Overland that he could consult the Public Sector Standards Commissioner or the Chair of the State Services Authority if he required any further specific guidance. The decision as to whether it was appropriate for Mr Overland to attend any particular event as part of his official business/role was a matter for his judgement in the circumstance.
143. Mr Overland was asked why Victoria Police did not pay for his attendance if he considered it appropriate for the Chief Commissioner to be present at certain events. Mr Overland said:
- Because, my experience of these things is that it becomes incredibly problematic if that's what you want to do.
- ...
- ... it's corporate hospitality ... corporates [*sic*] don't know how to deal with this ... they get entirely confused and it becomes ... a relationship issue.
144. Mr Overland was also asked whether he thought there was an issue with how his acceptance of the invitations could be perceived. He said:
- No ... because every Chief Commissioner of the day before me has done exactly these things ... I have been cautious ... I do appreciate, you know, the sensitivities around this, but I think it is quite legitimate for the Chief Commissioner of the day to be mixing in these circles and I think there's a real need for that to continue to happen.

## Law firm hospitality

145. Evidence obtained during my investigation identified that Mr Overland also received several corporate hospitality invitations from a partner of a law firm providing legal services to Victoria Police. The offers, which dated back several years and began before he became Chief Commissioner, included invitations to sporting events and art exhibitions, as well as a 2008 Brownlow Medal dinner. My investigation identified that Mr Overland accepted some invitations from the law firm.
146. At interview, Mr Overland said that the partner of the law firm was the brother of a close friend of his and that Victoria Police occasionally did business with the law firm. He said that he attended some events he was invited to by the partner, but that he was not involved in making decisions relating to work provided to the law firm by Victoria Police.
147. In December 2010, the partner sent an email to Mr Overland inviting him and his wife to the Australian Open Tennis Tournament. At interview, Mr Overland said he did not think he accepted the invitation to the tennis.
148. When asked whether he thought it was appropriate for him to attend events at the invitation of the partner and the law firm, Mr Overland said:
- Yes, I think it is ... I think there are times when it may not be, I mean if you are then and there renegotiating contracts ... But, when you have existing relationships, I think it is appropriate to manage those relationships.
149. My investigation identified emails that show that, approximately two months after inviting Mr Overland to the tennis, the partner raised concerns with Victoria Police's legal department about the lack of work the law firm was receiving from Victoria Police. In an email to the Director of Legal Services on 28 February 2011, a senior legal officer at Victoria Police said:
- [The partner was] very keen on a catchup re his concerns about lack of work for [the partner's law firm].
150. The partner also emailed the senior legal officer at Victoria Police on 16 March 2011 to arrange a meeting to discuss the role of the law firm in providing legal services to Victoria Police in 2011. The senior legal officer raised this matter with the Director of Legal Services who told the senior legal officer to have another employee arrange the meeting.
151. In response to my draft report, Mr Overland said:
- ... what underlies the allegations ... is an assertion that the partner and the firm were engaged in impropriety ... I deny that this is the case ...
- ...
- The selectivity in not naming this partner, or his firm [in this report], seems at odds with the rest of this report and indeed previous [Victorian Ombudsman] reports and it creates, in my submission, an apprehension of preferential treatment for this person and his firm in contrast to the way that you have elected to treat me, and others.

152. I did not consider it necessary or in the public interest to name the partner and the law firm, as the focus of my investigation was on the alleged acceptance of gifts and benefits by Victoria Police employees.

153. In response to my draft report, the Director of Legal Services said:

I have no knowledge of invitations received by the then Chief Commissioner and the Chief Commissioner was not involved in the selection of panel [law] firms.

...

My understanding was that the law firm had not received work because of a lack of suitable claims received by Victoria Police. The delay in responding to the lawyer occurred because I was on leave during the period and forgot to respond until the second request was received. It is quite proper and normal for the Partner of a Law Firm to contact the Director of Legal Services to discuss workload issues.

## Conclusions

154. I acknowledge that Chief Commissioners, both before and after Mr Overland, as well as other heads of agencies, have accepted temporary MCC memberships. However, I remain concerned about the perception of preferential treatment provided to officials in senior positions such as the Chief Commissioner.

155. I do not see how the acceptance of a temporary MCC membership can be considered as being in accordance with the Victorian public sector gifts, benefits and hospitality framework when no clear operational advantage or benefit has been identified for acceptance of that entitlement. I question the wisdom of this position and the message it sends to members of the force and to the Victorian public sector about senior public officers accepting gifts and benefits.

156. In response to my concerns regarding the acceptance of the temporary MCC membership, Mr Overland said:

... your criticisms of me accepting membership are out of the context in which the MCC offers these memberships, and my conduct is (wrongly) shown as being different from the conduct of others in commensurate positions within the community.

157. Chief Commissioner Lay also commented on this issue when responding to my draft report. He said that since becoming Chief Commissioner he had accepted a temporary membership offered to him by the MCC. Mr Lay said:

Prior to acceptance [of the MCC membership] I consulted widely, including discussions with Mr Bruce Hartnett, the Chair of the State Services Authority. He advised that my acceptance was in accordance with the Gifts, Benefits and Hospitality Framework of the Victoria Public Sector. I also consulted with members of my executive command team as well as other people external to Victoria Police.

158. Mr Hartnett confirmed that he gave this advice.

159. The acceptance of any gift or hospitality must only occur where there is a clear and obvious public interest. As the then Director, Police Integrity said in 2009 when considering an instance of an inappropriate acceptance of a gift by a former Chief Commissioner:
- Pursuit of the public interest must not only be the **dominant** purpose, but must **manifestly** be so. That purpose will not be manifest if the link is tenuous or woolly.<sup>16</sup> [emphasis in original]
160. The Chief Commissioner is also subject to the seven values that apply to all public sector employees established by the *Public Administration Act 2004*. These values recognise the ethical basis of the public sector and are fundamental to the performance of the public sector and good governance in this State.
161. The values distinguish the public sector and those who serve in it from those who work in the private sector. At the core of those seven values is the public interest and the priority that those who work in the public sector must put the public interest above their own interests. The variety of enforcement and regulatory powers provided to senior officers in the public sector are to be used to benefit the community, not to benefit or be perceived as benefiting those officials or to provide largesse to particular individuals or organisations that have a special relationship with those office holders.
162. As the then Queensland Integrity Commissioner, Mr Gary Crooke QC said in 2007:
- A decision to devote ones career to the service of the public bespeaks selflessness. It embodies the acknowledgement that actions will be governed by the public interest and not self interest.<sup>17</sup>
163. Similarly, the then Public Sector Standards Commissioner in the Conflict of Interest Policy Framework stated:
- All public sector employees have a duty always to put the public interest above their private interests when carrying out their official duties.<sup>18</sup>
164. This is a very different requirement from that placed on those who work in the private sector.
165. The particular public sector values relevant to conflicts of interest and gifts and hospitality are those referred to in sections 7(1)(b)(iv) and 7(1)(c)(i) of the Public Administration Act. That is, the public sector values of:
- Integrity** - which public officials should demonstrate by “avoiding any real or apparent conflicts of interest”; and
- Impartiality** - which public officials should demonstrate by “making decisions and providing advice on merit and without bias, caprice, favouritism or self-interest”.

16 The Office of Police Integrity, *Offers of gifts and benefits to Victoria Police employees*, June 2009, page 16.

17 Paper presented at the Australian Public Sector Anti-Corruption Conference on Wednesday 24th October 2007 by Mr Gary Crooke QC, Queensland Integrity Commissioner, *The Queensland Integrity Commissioner Role and functions: Conflicts of Interest matters and examples*, page 5.

18 Public Sector Standards Commissioner, Conflict of Interest Policy Framework, Victorian Public Sector (State Services Authority 2009) page 3.

166. The other public sector value which is particularly relevant to the Chief Commissioner, as well as to heads of agencies and chief executive officers in the public sector, is that established by section 7(1)(f) of the Public Administration Act:

**Leadership** – public officials should demonstrate leadership by actively implementing, promoting and supporting these values.

167. In essence, as the Code of Conduct for Victorian Public Sector Employees describes it, this value means ‘leading by example’ as ‘Leadership is about positive influence, inspiring and empowering others’. This is an essential function for all leaders in the public sector as has been recently observed by the then Public Sector Standards Commissioner when he stated:

Nothing will undermine the credibility of policy adherence more quickly than a manager who does not, or appears not to follow due process.<sup>19</sup>

168. Given these values and the lack of any operational advantage for the Chief Commissioner to have privileged seating at the MCG during his or her term of office, I can only disagree with any advice provided to the Chief Commissioner that temporary membership of the MCC is consistent with the Gifts, Benefits and Hospitality Framework of the Victoria Public Sector.

169. Mr Overland’s acceptance of invitations from a partner of a law firm providing legal services to Victoria Police, is also of concern as it could lead an objective observer to question whether there was an attempt to encourage Victoria Police to show favour to the partner’s law firm.

170. Mr Overland maintains that Victoria Police’s gifts and benefits policy is not well suited to the Chief Commissioner. In response to my draft report, Mr Overland made the following comment:

You fail to recognize that there must be some differences in the way a Chief Commissioner discharges her or his responsibilities on community engagement from the way other ranks do.

171. However, I agree with the then Director, Police Integrity when he said in 2009 that:

... there will continue to be a single policy for the whole of Victoria Police, so it must be as effective in guiding a senior constable in a ‘one-man’ station in the bush as it is guiding the Chief Commissioner.<sup>20</sup>

172. To the extent that the application of the policy is to vary between ranks, that nature and basis of such variations should be set out in the policy.

173. Victoria Police has a troublesome history regarding inappropriate acceptance of gifts and benefits by officers at all levels (as the then Director, Police Integrity discussed in his two reports from 2009 and 2010<sup>21</sup> on gifts and benefits and conflict of interest). It is therefore important that the Chief Commissioner lives up to the highest standard to set an example for his or her officers.

<sup>19</sup> Public Sector Standards Commissioner, *Conflict of Interest policy Framework, Victorian Public Sector* (State Services Authority 2009) page 6.

<sup>20</sup> The Office of Police Integrity, *Offers of gifts and benefits to Victoria Police employees*, June 2009, page 165.

<sup>21</sup> The Office of Police Integrity, *Offers of gifts and benefits to Victoria Police employees*, supra; and *Managing conflict of interest in Victoria Police*, October 2010.

## Victoria Police gifts and benefits policy

174. In the public sector, a ‘conflict of interest’ arises when a person has a private interest that is in conflict with their public duty. As noted in my report *Conflict of interest in the public sector*<sup>22</sup>, the term ‘conflict of interest’:
- refers to circumstances where a public official could be influenced, or could be reasonably perceived to be influenced, by a private interest when performing an official function. A range of private interests are relevant to the term conflict of interest.
175. Issues of conflict of interest commonly arise when gifts and benefits are accepted because there can be:
- a sense of obligation to reciprocate or assist in building a relationship that leads to favourable treatment
  - a perception that a public officer has not acted impartially or that there has been an attempt to influence their behaviour.
176. As stated in my report titled, *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police*<sup>23</sup>:
- I question the need for employees of any government agency to accept gifts or hospitality, unless it can be demonstrated that it is in the public interest to do so.
177. In 2009 two reports were provided to Parliament that were critical of Victoria Police’s handling of offers of gifts and benefits:
- my November 2009 report, *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police* (November 2009)
  - the Office of Police Integrity’s (the OPI) June 2009 report, *Offers of gifts and benefits to Victoria Police employees*.<sup>24</sup>
178. At the time these reports were released, the Victoria Police policy on gifts and benefits consisted of a small section within its conflict of interest policy and provided limited guidance to staff about dealing with gifts and benefits.
179. In my 2009 report, I considered Victoria Police’s approach to the acceptance of gifts and benefits in relation to the procurement of information and technology (IT) services. My investigation identified that Victoria Police employees responsible for IT procurement had accepted a number of hospitality invitations to sporting events, such as the AFL Grand Final, from IT vendors. The IT companies said that the hospitality invitations were extended to further the interests of the companies and to increase their range of contacts when dealing with government agencies. I made the following recommendation which was accepted by Victoria Police:

22 Victorian Ombudsman, *Conflict of interest in the public sector*, March 2008.

23 Victorian Ombudsman, *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police*, November 2009.

24 Op cit.

Develop and implement a policy that requires formal approval and recording of all hospitality, gifts and donations accepted by Victoria Police members and VPS [Victorian Public Sector] employees.

180. Victoria Police subsequently reviewed its gifts and benefits policy and introduced its current policy on 25 June 2010. The policy in part follows the Public Sector Standards Commissioner's *Gifts, benefits and hospitality policy framework* (March 2010).<sup>25</sup>

### Gifts and benefits registers

181. A clear process for registering and approving gifts and benefits is a key element of an effective gifts and benefits policy. Registration and authorisation assists organisations to monitor compliance with the policy and helps ensure that offers of gifts and benefits are handled appropriately and consistently.

182. The current Victoria Police policy requires that all accepted gifts and benefits must be recorded in a register using the prescribed *Gifts and Benefits Declaration Form*. The policy defines gifts and benefits as follows:

A gift or benefit is anything that you are offered, such as goods or services, which has a value and is above and beyond your normal salary or entitlements and is for personal use. They can include physical items such as chocolates, wine, or other foodstuffs, flowers, vouchers for goods or services or tickets for an event. They may also include intangible benefits, such as preferential treatment, discounts or other favours.

183. While the gifts and benefits policy does not stipulate that registers must be in a standardised format, such as a template, the Procedures and Guidelines<sup>26</sup> state that each register 'should include':

- the date the gift or benefit was received
- the name of the recipient
- the name of the supervisor authorising acceptance
- a description of the gift or benefit
- the value or estimated value
- details of the provider.

184. The policy does not make reference to recording whether a gift was kept by the recipient, returned to the person offering it or otherwise disposed of. While declined offers of gifts and benefits must be recorded in an official diary or on a patrol duty sheet, the policy does not require employees to declare declined offers or enter them on the register.

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<sup>25</sup> Public Sector Standards Commissioner, *Gifts, benefits and hospitality policy framework*, March 2010.

<sup>26</sup> The Victoria Police gifts and benefits policy is divided into Policy Rules, which contain the minimum mandatory requirements for employees, and Procedures and Guidelines, which provide additional information and guidance. Some Policy Rules require that Victoria Police employees must have regard for Procedures and Guidelines when making decisions.

185. At interview, the Assistant Commissioner in charge of the Ethical Standards Department was asked about the approval process for gifts and benefits. The Assistant Commissioner said that the gifts and benefits policy implies that supervisors and the Professional Development Committees<sup>27</sup> would check that the acceptance of gifts and benefits was appropriate and take action as necessary.

### Use of gifts and benefits registers

186. Victoria Police provided information to my investigation regarding the regional and departmental gifts and benefits registers as at July 2011. Of the 18 regions and departments within Victoria Police, only nine registers were provided. A register was also provided for the offices of the Chief and Deputy Commissioners.
187. Victoria Police advised that it had not provided registers for eight of the 18 regions and departments because no entries were recorded in those registers.
188. Victoria Police also advised that the Information Management, Standards and Security Department did not have a Professional Development Committee and had not kept a register. This issue is now being addressed.
189. Of the nine regional and departmental registers provided by Victoria Police, only four had the capacity to record all the information as required by the procedures and guidelines, however a significant number of entries were incomplete. The other five registers did not make provision to capture all relevant information. This meant that important information was missing from these registers.
190. For example, in one case an employee accepted an Xbox gaming console valued at \$299 from a retailer as a 'promotional offer' that came with items purchased for a Victoria Police taskforce. While I established that the Xbox was provided to the Victoria Police social club to be raffled for charity, the gifts and benefits register failed to record this information.

### Monitoring and oversight

191. Monitoring and oversight of gifts and benefits registers is integral to ensuring compliance with the gifts and benefits policy, identifying issues, and taking action to address problems. Responsibility for overseeing the gifts and benefits registers in Victoria Police rests with the officer in charge of the Ethical Standards Department.
192. The procedures and guidelines state that the gifts and benefits registers are to be provided to the Assistant Commissioner in charge of the Ethical Standards Department 'at the end of each calendar year so that an organisation-wide audit may be conducted'. As the current gifts and benefits policy was introduced in June 2010, the first organisation-wide audit should have been conducted at the end of 2010.

<sup>27</sup> Victoria Police has 18 departments and regions, each of which is required to have a Professional Development Committee. The Professional Development Committees have responsibility for establishing the gifts and benefits registers. The Professional Development Committees were introduced to improve ethical health and manage ethical risk across Victoria Police, and include senior members of staff as well as an Ethics and Professional Standards Officer.

193. At interview, the Assistant Commissioner said that audits of the gifts and benefits registers had not been conducted. He has since advised that audits were not conducted because the development of an appropriate register 'took some time and it was only well into the calendar year 2011 that each [Professional Development Committee] had set up a process and a register'.
194. In emails dated 16 December 2011 and 27 January 2012, the Assistant Commissioner advised that, since his interview with my investigators, he had taken steps to address issues with the gifts and benefits registers, including:
- promoting awareness of the gifts and benefits policy
  - reminding the Professional Development Committees that gifts and benefits registers should be formatted in accordance with the procedures and guidelines
  - arranging an internal audit of the gifts and benefits registers to be conducted which would cover the period from 26 June 2010 to the end of the 2011.

### **Education and awareness**

195. During interviews with Victoria Police, a number of staff were asked about the level of understanding of the gifts and benefits policy throughout Victoria Police. Several senior staff said that they thought the gifts and benefits policy was not as well understood as it should be. Some employees also said that they did not think there was sufficient focus on gifts and benefits or educating employees about the policy. Other senior employees said they thought the gifts and benefits policy was well communicated and understood, however a number of staff could not provide a description of what is expected of them if a gift or benefit was accepted.
196. In one case, my investigation identified that a senior officer had accepted an invitation from a private security company to attend a corporate box at an AFL match in March 2010. The senior officer was an ex-employee of the security company and had previously worked in the major events area of Victoria Police. At the time the senior officer accepted the invitation, the security company had a contract to provide security services at an events facility where the major events area of Victoria Police was frequently involved in providing policing services. The senior officer said that the offer to attend the AFL match had been made to them in their personal capacity and did not relate to their employment with Victoria Police. As a result, their acceptance of this invitation was not recorded in the gifts and benefits register as is required.
197. The conflict of interest policy rules set out the circumstances under which gifts and benefits must not be accepted. This includes when:
- the offer is from a person connected with activities directly or indirectly regulated or supervised by Victoria Police

- the offer is or could be perceived as an attempt to encourage a Victoria Police employee to show favour or disregard a law, regulation or instruction
- the gift or benefit is more than token value<sup>28</sup>
- the nature of the offer, or the person making the offer, is likely to bring Victoria Police into disrepute.

## Conclusions

198. A properly maintained gifts and benefits register is an important accountability mechanism that organisations can use to monitor offers of gifts and benefits to staff. If registers are inadequately maintained or key information is omitted, registers are of limited value and opportunities for inappropriate or improper conduct increase. Auditing the gifts and benefits registers is also an important accountability mechanism to identify and address non-compliance, as well as highlighting any policy gaps.
199. A review of Victoria Police's gifts and benefits policy and registers identified that:
- there is little guidance on the role of supervisors or the Professional Development Committees in relation to gifts and benefits
  - the policy omits information about how approvals are to be conducted, or what action can be taken when inappropriate behaviour is identified
  - the policy is unclear about which areas of the procedures and guidelines regarding gifts and benefits are mandatory
  - the process for monitoring the use of gifts and benefits registers is not clearly articulated
  - the policy does not detail who has responsibility for maintaining registers
  - a number of Victoria Police employees, including senior staff, have a poor understanding of the gifts and benefits policy
  - gifts and benefits registers are being used inconsistently and often fail to include important information
  - Victoria Police employees, including staff at senior levels, have accepted gifts and benefits which contravene the gifts and benefits policy.
200. It is important that entries in gifts and benefits registers contain enough information to determine whether acceptance of a gift or benefit was appropriate and in line with the policy. It should be mandatory for entries in Victoria Police's gifts and benefits registers to include the details set out in the procedures and guidelines, as well as the method of disposal of the gift or benefit. In addition, where accepted offers are provided to third parties (for example charities), appropriate records, such as receipts, should be kept to ensure there is an auditable trail.

<sup>28</sup> The procedures and guidelines do not set a dollar limit on what constitutes token value, but state that '[t]oken value generally means minimal or nominal' and that gifts 'must be in the nature of a token'.

201. In addition to recording accepted gifts and benefits, it is important to maintain records of declined gifts and benefits to provide transparency around offers made to staff and to assist in identifying potential bribery. Recording declined offers in a diary or on a patrol duty sheet is of limited benefit as there is no oversight or review of the offer. I consider that, in order to improve transparency and mitigate risks of bribery, declined offers greater than \$20 in value should be recorded in the gifts and benefits registers.
202. Prior to the acceptance of any gift or benefit, including those accepted in a private capacity, Victoria Police employees need to consider whether there is a perception of a conflict of interest; or whether there is any connection with their policing role or duties. If there is any doubt as to how the acceptance of a gift or benefit could be perceived by an objective observer, in my view the gift or benefit should be declined.
203. In several instances, senior Victoria Police employees accepted invitations for corporate hospitality. It may be appropriate for Victoria Police to accept invitations to attend events, for example, to lend support to an important initiative (such as road safety) or to build relationships with members of the community. However, employees must be mindful that corporate hospitality is frequently offered because something may be expected in return. This is an area that must be navigated carefully. There should always be a clearly discernible public interest in attending if an invitation is to be accepted. It may also be appropriate in certain cases where there is a clear public interest in Victoria Police employees attending a corporate event, for Victoria Police to either pay for their attendance or to make a donation to charity for the equivalent cost.
204. The issues identified in this investigation demonstrate that the understanding of the gifts and benefits policy by Victoria Police employees is inadequate and Victoria Police has not adequately promoted awareness of and compliance with the policy. A gifts and benefits policy will not be effective if it is not well understood within an organisation.
205. In response to my draft report, the Assistant Commissioner in charge of the Ethical Standards Department said:
- A number of resulting activities [in relation to gifts and benefits] are being undertaken by my Department including the progression of policy changes which will assist to address many of the issues you have raised in your report.
- ...
- Your investigation has assisted in enhancing the Victoria Police approach to gifts and benefits.
206. The evidence available to me shows that gifts and benefits have been accepted without adherence to Victoria Police's policy. However, the evidence does not suggest that gifts and benefits have been accepted so as to adversely affect the honest performance of a public officer's or Victoria Police's functions.

207. However, I consider that in some instances a perception of a conflict could be drawn from the acceptance of gifts and benefits particularly where favourable treatment or financial benefit are in question.

## Recommendations

I recommend that Victoria Police:

### Recommendation 10

Review and update its gifts and benefits policy. The review should consider amending the policy to include:

- clarification of the mandatory requirements for reporting gifts and benefits
- more information about the roles and responsibilities of supervisors and Professional Development Committees and the authorisation process regarding gifts and benefits
- a requirement that the method of disposal for gifts and benefits be recorded in the gifts and benefits registers
- a requirement that employees record declined offers of gifts and benefits, greater than \$20 in value, in the gifts and benefits registers
- more information about audits of the gifts and benefits registers, particularly what constitutes an audit and how audits are to be conducted.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle. Review of policy currently being undertaken.

### Recommendation 11

Establish a template for the gifts and benefits registers to ensure consistency throughout Victoria Police. The template should include minimum requirements for information to be recorded.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### Recommendation 12

Ensure that there is a gifts and benefits register for all areas within Victoria Police, including the Chief Commissioner and the Deputy Commissioners' offices, and that those with responsibility for maintaining the registers are made aware of their responsibilities.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### **Recommendation 13**

Ensure that the gifts and benefits registers are audited annually and review the gifts and benefits policy following each audit in light of the audit results.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle. Proposal for online register is under consideration.

### **Recommendation 14**

Develop and implement a comprehensive communication and education plan to raise awareness and understanding of the gifts and benefits policy for all employees.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

## Summary of recommendations

I recommend that Victoria Police:

### Recommendation 1

Review its human resources practices to ensure that employees do not receive unnecessary payments upon resignation or termination of their employment contracts.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### Recommendation 2

Immediately seek advice from the Victorian Government Solicitor in relation to the legality of Mr A's appointment to the rank of superintendent and take appropriate action needed to address issues arising from such advice.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

### Recommendation 3

Conduct a review to determine whether it has complied with the regulations in relation to the reappointment of any other officers.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### Recommendation 4

Review its appointment processes in light of the issues identified in this report and advice from the Victorian Government Solicitor.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### Recommendation 5

Review its policy regarding the retention of accoutrements by police members upon their resignation or retirement.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### **Recommendation 6**

Ensure that, in future investigations regarding inappropriate use of email by staff, investigators follow the trails of high risk and highly inappropriate emails to identify all recipients and the action they have taken in relation to those emails.

#### ***Victoria Police's response***

Victoria Police supports this recommendation.

### **Recommendation 7**

Develop robust measures for screening staff in relation to high profile internal investigations, including conducting audits of their emails.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

### **Recommendation 8**

Develop an information technology solution for detecting and preventing inappropriate use of its email system.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

### **Recommendation 9**

Conduct a yearly audit of email use by Victoria Police employees, sampling staff emails at various levels across the organisation until an information technology solution is implemented.

#### ***Victoria Police's response***

Victoria Police supports this recommendation in principle.

### **Recommendation 10**

Review and update its gifts and benefits policy. The review should consider amending the policy to include:

- clarification of the mandatory requirements for reporting gifts and benefits
- more information about the roles and responsibilities of supervisors and Professional Development Committees and the authorisation process regarding gifts and benefits
- a requirement that the method of disposal for gifts and benefits be recorded in the gifts and benefits registers

- a requirement that employees record declined offers of gifts and benefits, greater than \$20 in value, in the gifts and benefits registers
- more information about audits of the gifts and benefits registers, particularly what constitutes an audit and how audits are to be conducted.

### ***Victoria Police's response***

Victoria Police supports this recommendation in principle. Review of policy currently being undertaken.

## **Recommendation 11**

Establish a template for the gifts and benefits registers to ensure consistency throughout Victoria Police. The template should include minimum requirements for information to be recorded.

### ***Victoria Police's response***

Victoria Police supports this recommendation.

## **Recommendation 12**

Ensure that there is a gifts and benefits register for all areas within Victoria Police, including the Chief Commissioner and the Deputy Commissioners' offices, and that those with responsibility for maintaining the registers are made aware of their responsibilities.

### ***Victoria Police's response***

Victoria Police supports this recommendation.

## **Recommendation 13**

Ensure that the gifts and benefits registers are audited annually and review the gifts and benefits policy following each audit in light of the audit results.

### ***Victoria Police's response***

Victoria Police supports this recommendation in principle. Proposal for online register is under consideration.

## **Recommendation 14**

Develop and implement a comprehensive communication and education plan to raise awareness and understanding of the gifts and benefits policy for all employees.

### ***Victoria Police's response***

Victoria Police supports this recommendation.

# Ombudsman's Reports 2004-12

## 2012

*Whistleblowers Protection Act 2001* Investigation into allegations against Mr Geoff Shaw MP  
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program  
October 2012

Investigation into an alleged corrupt association  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of detrimental action involving Victoria Police  
June 2012

Own motion investigation into Greyhound Racing Victoria  
June 2012

The death of Mr Carl Williams at HM Barwon Prison - investigation into Corrections Victoria  
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*Whistleblowers Protection Act 2001* Conflict of interest, poor governance and bullying at the City of Glen Eira Council  
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Investigation into the storage and management of ward records by the Department of Human Services  
March 2012

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SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request  
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Investigation into an allegation about Victoria Police crime statistics  
June 2011

Corrupt conduct by public officers in procurement  
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Investigation into record keeping failures by WorkSafe agents  
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*Whistleblowers Protection Act 2001* Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee  
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Ombudsman investigation - Assault of a Disability Services client by Department of Human Services staff  
March 2011

The Brotherhood - Risks associated with secretive organisations  
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Ombudsman investigation into the probity of The Hotel Windsor redevelopment  
February 2011

*Whistleblowers Protection Act 2001* Investigation into the failure of agencies to manage registered sex offenders  
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*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a councillor at the Hume City Council  
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Investigation into the issuing of infringement notices to public transport users and related matters  
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Ombudsman's recommendations second report on their implementation  
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*Whistleblowers Protection Act 2001* Investigation into conditions at the Melbourne Youth Justice Precinct  
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*Whistleblowers Protection Act 2001* Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) - Aerospace  
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Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments  
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Own motion investigation into Child Protection - out of home care  
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat  
April 2010

*Whistleblowers Protection Act 2001* Investigation into the disclosure of information by a councillor of the City of Casey  
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## 2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
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Own motion investigation into the Department of Human Services – Child Protection Program  
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Own motion investigation into the tendering and contracting of information and technology services within Victoria Police  
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Brookland Greens Estate – Investigation into methane gas leaks  
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A report of investigations into the City of Port Phillip  
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing  
July 2009

*Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council  
June 2009

*Whistleblowers Protection Act 2001* Investigation into the alleged improper conduct of councillors at Brimbank City Council  
May 2009

Investigation into corporate governance at Moorabool Shire Council  
April 2009

Crime statistics and police numbers  
March 2009

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*Whistleblowers Protection Act 2001* Report of an investigation into issues at Bayside Health  
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services  
August 2008

Investigation into contraband entering a prison and related issues  
June 2008

Conflict of interest in local government  
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Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters  
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre  
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007  
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Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong  
February 2007

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April 2006

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March 2006

## **2005**

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons  
December 2005

*Whistleblowers Protection Act 2001* Ombudsman's guidelines  
October 2005

Own motion investigation into VicRoads registration practices  
June 2005

Complaint handling guide for the Victorian Public Sector 2005  
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper  
May 2005

Review of complaint handling in Victorian universities  
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton  
March 2005

Discussion paper on improving responses to sexual abuse allegations  
February 2005

## **2004**

Essendon Rental Housing Co-operative (ERHC)  
December 2004

Complaint about the Medical Practitioners Board of Victoria  
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria  
June 2004

