

**Inquiry by the Independent Broad-based Anticorruption
Commission Committee of the Parliament of Victoria into the
external oversight of police corruption and misconduct in Victoria**

Submission by the Accountability Roundtable

The Committee is tasked to

- Examine the current system for the oversight of police corruption and misconduct in Victoria, in particular the role of IBAC and the Victorian Inspectorate
- Identify and assess best practice models for the oversight of police
- Identify and review the main challenges to the effective oversight and investigation of complaints and disclosures about police in Victoria.
- Consider best practice strategies to improve the oversight and investigation of police corruption and misconduct and how they may be implemented in Victoria

Victorian Inspectorate

The Accountability Roundtable (ART) does not have access to sufficient information to permit useful comment on the role of the Victorian Inspectorate.

IBAC – Its resources

IBAC had 134 employees FTE as at 30 June 2016 (IBAC Annual Report 2015/2016). We are unaware how that number now stands, though we are led to believe IBAC has not found it easy to attract experienced investigators. The Office of Police Integrity had approximately 125 FTE staff at its peak (so we are informed). Yet IBAC's remit is far more extensive (whole of public sector) than the OPI's (sworn police only).

In its police personnel jurisdiction, IBAC has investigative and oversight powers with respect to sworn police, Protective Services Offices (PSOs) and unsworn Police staff. The number of sworn officers is increasing and will continue to do so.

It is difficult to determine the allocation of resources within IBAC between its police personnel work and its rest-of-public-sector work. In his 2015/2106 Annual Report the Commissioner said approximately 47% of IBAC's investigations related to police conduct. Assuming, for the purposes of this submission, that the allocation resources between police and non-police work is approximately 50/50, the inevitable conclusion is that external oversight of police in this State has declined significantly (perhaps even halved) since the abolition of the OPI.

Community Concerns.

It is clear there are broad and strongly held concerns about the way allegations of misconduct by police are investigated in this State. These concerns were ventilated at a Police Accountability Roundtable held at the Law Institute of Victoria (LIV) on 26 July 2017. The event was well attended: all major stakeholders appeared to be represented – including your Committee.

We accept those whose voices are loudest in such settings tend to be those least satisfied, rather than those who are satisfied or indifferent. It was, however, evident that the majority of attendees at the Roundtable are gravely concerned about the sufficiency of the present framework in two respects:

- first, the capacity of IBAC to achieve its police personnel mandate and,
- secondly, the lack of a requirement for fully independent investigation of complaints (at least of the more serious complaints).

The keynote address at the LIV event was delivered by Professor Tim Prenzler of the University of the Sunshine Coast. Professor Prenzler is co-author of *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (Tim Prenzler, Garth den Heyer : CRC Press). In his presentation Professor Prenzler summarised the conclusions in Chapter 12 of his book. We assume the Committee has access to this research. We commend Professor Prenzler's conclusions to the Committee.

Scope of IBAC's current role

IBAC investigates but a fraction of the complaints it receives of police misconduct. The vast majority are sent to Victoria Police for investigation under

an oversight arrangement that comprises, for the most part, random *ex post facto* review. Such arrangements (the 'oversight model') will increasingly be viewed as, at best, a compromise and, at worst, an abdication by government of its responsibility to victims of police misconduct. They will rarely satisfy the genuine and reasonable concerns of complainants.

On the other hand, Victoria Police, like any employer, must maintain responsibility for managing the performance of its staff. Therefore, in our view, complaints about service delivery not involving allegations of criminality, corruption or a systemic failure of professional standards should continue to be managed by Victoria Police. That isn't to say IBAC should have no visibility of such complaints. As was the case with the OPI (and, presumably, remains so) all complaints should be notified to IBAC to permit IBAC to discharge its overarching responsibility to ensure that the highest ethical and professional standards are maintained within Victoria Police.

Action needed

ART contends the time has come for the government to undertake reforms of the kind suggested by Professor Prenzler (and many others). ART appreciates that transition to such a model would be a major undertaking and would require not only a new legislative framework but also complex protocols with Victoria Police and substantial resourcing and funding. ART has become aware that Government is, indeed, currently giving consideration to a requirement that IBAC fully and independently investigate all allegations of **serious** offending by police (where that line is to be drawn is not at all clear). If this is so, it is disappointing Government is not being more open about its intentions. There are a number of organisations – including ART – which could very usefully contribute to the development of a new model.

If we may say so, the IBAC experience has demonstrated the folly of getting things half right. True, we have the opportunity through this submission to express our views, but we could do so to much better effect if Government shared its thinking with us – and, even more importantly, with other individuals

and entities who are so vitally interested. By the time the Committee reports to the Parliament, the landscape will probably have changed completely.

The immediate and major concern

The point we do urge most strongly is that any increase in IBAC's activity in its police personnel jurisdiction should not come at the expense of its excellent work in its rest-of-government jurisdiction. Indeed if (as appears to be the case) IBAC is allocating its resources to its police and non-police work on a 50/50 basis (approximately), ART contends that such a balance should be maintained through whatever reforms are implemented. Any such reforms will require a dramatic increase in IBAC's budget, and a major addition to its investigative workforce.

As the Committee will be aware, powers without adequate resources translate, in practice, to powers that are rendered dormant. This is a situation ART is confident the Committee would wish to avoid. For this and other reasons, it is absolutely crucial IBAC is appropriately funded.

Conclusion

Victoria waited far too long for an effective whole-of-public-sector integrity agency. We strongly support the performance of IBAC since it was established. It has performed numerous investigations without the distracting battles that ICAC has faced in NSW. The public hearings it has conducted have been few (5 in number) but very effective and each has justified the decision to proceed in public.

IBAC is however still seriously hampered in its important work by obstacles to its power to investigate – deliberately built into the structure of its enabling legislation. Only when these obstacles have been removed (as the ART has repeatedly urged upon the Government) will IBAC become fully effective. IBAC must continue to be strengthened across the breadth of its work.

ART would welcome any opportunity to further assist the Committee, and Government, in this vital area of accountability. (End of submission)