

TRANSCRIPT

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

Inquiry into the external oversight of police corruption and misconduct in Victoria

Melbourne — 19 February 2018

Members

Mr Kim Wells — Chair

Ms Marsha Thomson — Deputy Chair

Mr Sam Hibbins

Mr Danny O'Brien

Mr Simon Ramsay

Mr Tim Richardson

Ms Jaclyn Symes

Witnesses

Sergeant Wayne Gatt, secretary, and
Senior Sergeant Chris Gorissen, legal manager, Police Association Victoria.

The CHAIR — I declare open the public hearing for the Independent Broad-based Anti-corruption Commission Committee’s inquiry into the external oversight of police corruption and misconduct in Victoria. All mobile phones should be turned to silent. I welcome our two guests this morning from the Police Association Victoria, Sergeant Wayne Gatt and Senior Sergeant Chris Gorissen. All evidence taken by this committee is protected by parliamentary privilege; therefore you are protected against any action for what you say here today, but if you go outside and repeat the same thing, including on social media, those comments may not be protected by this privilege. Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

Sgt GATT — Yes.

The CHAIR — All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee’s website as soon as possible.

In regard to the media, members of the media are to observe the following guidelines. Cameras must remain focused only on the persons speaking; operators must not pan the public gallery, the committee or witnesses, and filming and recording must cease immediately at the completion of the hearing. Broadcasting or recording of this hearing by anyone other than accredited media is not permitted. I now invite you to proceed with a 15-minute opening statement to the committee, which will be followed by questions from the committee.

Sgt GATT — Thank you, Chairperson. My name is Wayne Gatt. I am the secretary of the Police Association Victoria. With me is Chris Gorissen. He is our legal manager, primarily deals with a lot of the work that is relevant to the submission that we provided the committee in August last year. For the record, the police association is an organisation that is apolitical. We represent the interests of over 15 000 police and protective services officers in Victoria. Membership of our organisation is voluntary by virtue of our constitution and we are not affiliated with any political party. We want to thank you for allowing us to present here. We represent the interests of a large number of hardworking Victorian officers who do a very, very difficult job in Victoria, so it is not surprising that we have a significant and vested interest in any prospective changes to legislation and to the outcomes of this inquiry.

We have been on the record, and you have our submission, with respect to our positions to certain elements of the operation of IBAC presently and the way that matters are at times referred back to the Chief Commissioner of Police. We are also opposed to the expansion of IBAC oversights of fatal police incidents. We are similarly opposed to the creation of any new independent civilian body to investigate all police complaints. It is our view that the call for an independent civilian body is ill-informed and proceeds on the erroneous footing that the current system is deficient.

There is in our submission ample evidence to illustrate that Victoria Police is investigating their own, and that their position is neither hopelessly conflicted nor is it soft. We have a strong view that divesting Victoria Police entirely of its responsibility to investigate complaints about its employees and removing from them their important function of ensuring the performance of excellence of the organisation is an exercise that will involve unnecessary and significant expense of the state and indeed is a suggestion that appears contrary to the views currently held by IBAC itself. We are also of the view that it is a flawed process to remove the responsibility of any organisation to maintain its own integrity. Our written submission to the IBAC committee, upon which we rely, is reflective of our primary, overarching and enduring responsibility to look after the rights and interests of our members who perform day to day in the difficult and increasingly dangerous task of protecting the people of Victoria.

We also want to note that many, in fact the overwhelming majority, of interactions with our members and the Victorian community are overwhelmingly positive. Whilst we note that there will be some sweeping statements made to this inquiry about negative perceptions and interactions with the community, it is our advice that overwhelmingly our members enjoy very strong and supportive relationships with the community more broadly.

We also ask the committee to acknowledge and accept during its consideration of all submissions our advancement that police work is inherently susceptible to allegations of misconduct by its very nature and that complaints at times are merely lodged in response to the criminal conduct of people that at times Victoria Police members, by virtue of their role, need to deal with. This goes to the point of why our members act in what we

say is an incredibly difficult environment when it comes to acting with integrity. It is our first and foremost acceptance that our members must do that and that they do do that, and it is our firm view and belief that there is a current process that is operating effectively in terms of establishing that within Victoria Police. We will not go through our entire submission but we are happy to take any questions that you might have.

The CHAIR — Thank you. I note in your submission that it states the association is opposed to any proposal that seeks to expand to any extent the police oversight functions of IBAC, but if there were, would that not improve or increase public confidence in the system?

Sr Sgt GORISSEN — I believe that this might relate to question 3.

The CHAIR — Yes.

Sr Sgt GORISSEN — That particular part of our submission I suppose talks to our response to recent amendments that the integrity reform team put forward. I am not convinced by any of the evidence that we have read or any of the evidence that we have heard either orally today or in submissions that we have read that the system is broken to the extent that it requires what has been suggested, and I talk specifically about the creation of an entirely independent civilian staff body to investigate all police complaints. I am also not convinced that the public has lost confidence in the current system. I am yet to see any real hard and fast evidence of that. You can obviously read the tenor of our submission that there is probably a lot about IBAC that we as an organisation that looks after police members do not like, but I think the balance is just about right at the minute. The referrals that are given to Victoria Police are referrals because 90 per cent of the matters that are referred back relate to matters of incivility. We do not believe there is any real necessity, and if there is it would come at significant expense, to increase the oversight function of IBAC.

Ms THOMSON — My question will be about extending the capacity for IBAC to actually investigate and have ‘own’ investigations that are run by IBAC as opposed to ones that are handed back to police and what your attitude would be in relation to that, and whether that would not be a better of ensuring that the police force, in the main, which we all agree is probably, in the majority, acting appropriately. We all understand that the circumstances are more difficult for police to operate in at the moment. But the question is whether or not it would be better, and be seen to be better, to have IBAC able to do more independent investigations rather than hand them on to the police for self-investigation. That would in fact, I would have thought, be better for the force and its public perceptions, and also benefit those who have in some way been the victims of misconduct by individual police.

Snr Sgt GORISSEN — At first blush it might sound like an ideal model or a model that, as you say, might give the community a little more confidence. But as far as our members are concerned we would have significant problems with expanding the investigative role. You were talking, obviously, about the staffing levels, or were you just talking about a larger remit for IBAC?

Ms THOMSON — A larger remit and additional resources.

Snr Sgt GORISSEN — The problem I would see with that is that at the minute we would call into question, with all due respect to people who work at IBAC, the skill set that is necessary to actually complete those investigations with any real clarity and timeliness. It has been our experience that when IBAC have had carriage of certain files they do take a long time to actually resolve one way or another. I suppose the question of expanding their resources gets back to that perennial question: who will staff them — who will actually staff them, because as I said, it is a significant and nuanced skill set that they are going to have to attract. IBAC, I think, are on the record of saying that retaining and recruiting relevant people is a continuing challenge for them. Again, we go back to our initial arguments that we are not convinced that the system is such that the public have lost confidence in the way matters are handled at the minute.

Sgt GATT — I would say this: one thing that was said was that people involved in a complaint might have a view that the system is not as good as it could be, but we would argue that those people are as hopelessly conflicted, if you were to use some of the terminology that has been put out there, as the police themselves. They are a party to the complaint. They are not representative of the broad population of Victoria and its confidence in Victoria Police. So we think it is difficult to assess the current operation of the current law based on complainants’ experiences only. They are indeed conflicted. They are a party to the complaint and feel

perhaps in some cases rightly aggrieved, but one cannot argue that they are independent either in their assessment of the system.

Ms THOMSON — I accept that, but I would also say that even IBAC itself would suggest that they feel that they should be doing more in that space and undertaking more independent investigations. My concern is that where there are justified complaints of misconduct by police they have an independent body actually declare that as a way of ensuring that there is confidence in the system and that the system is working. It is also a signal to the police. I agree it is a small minority of police, but for those who think that it is okay to conduct themselves in a way which is not acceptable — that there is an independent body that is going to be there watching them and watching what they do and when a complaint is lodged will properly investigate.

In relation to the question around accessing investigators, it goes to my question to the previous submission, and that is that I would expect that it would have to have within it either former serving police or police from other jurisdictions to do that job. I cannot understand why the police association itself, which represents 1500 serving police —

Snr Sgt GORISSEN — 15 000, sorry.

Ms THOMSON — Sorry, 15 000 serving police officers — I am very pleased about that — that there would be an objection from you to ensure that for the majority of those police that that reputation is held intact and for any one where there is not a conviction, and there should be for misconduct, it looks bad for the police. I do not quite get why there is such a total closing off of an increased responsibility for IBAC in this and not a more balanced position.

Snr Sgt GORISSEN — You could probably say within the body of our submission that the force have no compunction in, dare I say, catching and killing their own. There have been a number of assertions made about this lack of independence or that they are soft or they have got a predisposition for writing complaints off. That is not our experience. If that wants to be shored up with additional resources to IBAC in its current manifestation, that might well be the case. I go back to expanding their remit — we would have significant concerns about expansion of a remit for IBAC. As I say, whether they are talking of resourcing IBAC in its current role, that is a decision for IBAC, but I am not convinced by arguments that the force is inherently soft or have a predisposition to simply writing files off. That is certainly not our experience and it is certainly not my experience as a legal manager, where our people are charged on a regular basis with significant Crimes Act offences and discipline offences.

Ms SYMES — Thank you, gentlemen. Knowing that you have put a position that there should not be changes to IBAC's powers, there is one that I was interested in direct comment on, and that is the power of arrest for IBAC, noting that the swings and roundabouts with power of arrest in terms of, if one of your officers was arrested per se, the different rights that would come from power of arrest versus coercive investigation powers.

Snr Sgt GORISSEN — I do not think you will find that that is in our submission. Is it a question of a general proposition?

Ms SYMES — Yes. Some of our submissions have proposed power of arrest for IBAC.

Snr Sgt GORISSEN — Okay. Arguably they already have it, I suppose, in terms of coercive powers. There are significant penalties that apply if you do not go. I have not turned my mind to it specifically, but I would suggest that we would be very cautious about any powers resting in IBAC to arrest people. We would have concerns that they would not exercise them judiciously, so it would be something we would have to turn our mind to. But again I see that as a significant, I suppose, divesting of power from Victoria Police into the hands of IBAC, and we will always have concerns in relation to expansion of IBAC powers to that extent, I must say.

Mr RAMSAY — Thank you very much for your time this morning. We heard evidence from a previous witness — and I understand you were here listening to that — who had strong support for an independent oversight structure. You have indicated you do not support that as such; in fact you have given more confidence in the professional standards command dealing with most of the complaints that have been referred back to IBAC or directly to yourselves. I just want to flag with you a recent survey that IBAC conducted in December 2017 under the title 'Victoria Police: Perceptions of corruption', in which it was found that 46 per cent of

respondents thought that they would experience personal repercussions and 18 per cent stated, ‘I could lose my job’, if they reported corruption.

Taking that on face value — many of our submissions have indicated that they do not have confidence in Victoria Police investigating themselves. In fact the survey from Victoria Police themselves indicates that many of their members would not voluntarily advise their superiors if there was corruption on the basis it may reflect badly on themselves. What confidence do you give to your own members then in coming forward, particularly in regional areas, where we have heard that regional command invariably investigates their own — that without an independent body, without the powers of IBAC even wanting to use the powers under the act, that they can come forward without repercussions to themselves with respect to potential repercussions, or even serious misconduct within the force themselves — and to give the community that confidence that there is a structure in place to deal with that?

Snr Sgt GORISSEN — I might just address that survey that you mentioned. It is interesting to note that only 6 per cent of our workforce responded to that, and of that 6 per cent apparently there were also unsworn members who were involved in that survey. I am not sure how much store you can put in the results of that survey. Again, it is not our experience that members are reluctant in coming forward at all. There might be a perception from a survey respondent, but I can tell you categorically from where I sit when I receive briefs of evidence, whether they be criminal or whether they be discipline matters, that they are replete with statements from serving members reporting misconduct.

As I say, I understand the purpose of the survey and I understand the responses and how they have been attributed. I think 46 per cent said they felt they would experience personal repercussions and 80 per cent stated they could lose their job. That is not our experience. I do not see any members having any significant reluctance to come forward and report this conduct. I cannot explain the results of that survey. I do not think anybody can in some respects. It is there. But it does only represent 6 per cent of the workforce, and it is not our experience.

The CHAIR — Just to follow up on the question, one of the concerns that has been raised with the committee over and over again is the issue of regional police being investigated by regional police. So you have a place like Omeo being investigated by Bairnsdale police or Bruthen or Buchan, and everyone knows each other. What is the position of the police association in that area, because it is coming up over and over again?

Snr Sgt GORISSEN — It is. One thing I will agree with is that there have been some concerns raised by our membership. You might be a sergeant or a senior sergeant who is given a file to investigate somebody that you know or somebody that you might well run into on the road in country Victoria or rural locations. So it is a concern which we have addressed with PSC, professional standards command. I do not know if they have given evidence yet or whether they have touched on any of this, but it is certainly something that we have raised.

I just want to make one point, and that will probably answer your question. I think it is in our submission. It is that the vast majority of investigations that were conducted into, at the very least, discipline matters which resulted in dismissal emanated at a regional level. I suppose what I am trying to underscore there is that even if there is a perception of conflict, if you run the ruler over it, statistically at least, it indicates that more members are being dismissed as a result of their conduct emanating out of regional investigations. So I think the committee can take some confidence that notwithstanding that perception of conflict, it is not actually manifesting in, dare I say, the writing off of complaints.

The other thing I will say about regional investigations is that because there is the potential of conflict, each member who receives a file, unless things have changed drastically — and I do not know whether Mr Guerin has been here from PSC — is that the member who receives it has what I will call an opt-out option. That might be the easiest way of putting it. They can declare the conflict and that conflict is reported up to the relevant, what they call, EPSO, which is the ethical professional standards officer of the region. If they concur with the claim of conflict, then it is allocated to someone else. I do agree it has been an issue, but I am not sure it is an issue that has manifested itself in a soft approach to regional investigations. But it is something that probably needs to be looked at.

The CHAIR — Will the police association form an opinion on that particular issue?

Sr Sgt GORISSEN — We have probably got one, and that is that at times they are a little too close. Is it based around a significant conflict, such that the right job will not be done? It is probably more that it is very

difficult to work in the same region as somebody that you are investigating — not suggesting of course that that will, as I say, manifest in just rolling the arm over. But it has the potential to become untenable if your sergeant, who is 30 kilometres up the road and who you see on a regular basis, has got carriage of a criminal or a discipline file.

Sgt GATT — I think largely that concern by members speaks to their integrity in and of itself — the fact that they are willing to investigate those matters properly gives rise to a level of discomfort that they would rather not have to deal with. I think that is commendable that our members actually raise that as a legitimate improvement to the system. That is one that we are on the record time and time again with Victoria Police citing as a potential positive improvement to the system that can make it better for our members.

Ms THOMSON — Can I ask a question about that data? It is 2014–15 that you are referring to. I just wonder if you have any later figures than that.

Sr Sgt GORISSEN — No, I do not.

Mr HIBBINS — Just going to some of that data from IBAC's special report concerning police oversight, obviously we have had many submitters tell us that there are various deficiencies within the current oversight and complaints system, and you are submitting to us that that is not the case. Just going to that statistic you cited under point 10 — of the 114 police investigations reviewed by IBAC in the financial year of 2014–15, less than 17 per cent were found to be deficient. Reading that around 17 per cent or just under, to me that sounds high. To me that suggests that there is an issue. Can you explain that?

Sr Sgt GORISSEN — I wish I had the report with me, but I believe that the deficiencies were such that they were more a matter of form rather than substance. This is another part of the system that I think the force ought to look at, and that is that the categorisation of complaints — they may have assessed them at the wrong level, whether it be too high or too low, or the disposition was not appropriate. I am not too sure whether anybody asserted that the job was done shoddily. As I say, it appeared to me to be more a matter of form over substance. I am not sure there was anything in any of the statistics we read which reflected that the deficiencies were fatally flawed, if you will. So I think it is a matter of fact and degree about what constitutes a deficiency.

Mr D. O'BRIEN — Can I just go back to the issue of regional but generally with respect to police investigating police. Have you got a view on where the threshold lies? If a member of the public complains that an officer was rude or swore at them or whatever, then common sense would probably suggest that being handled by the sergeant or senior sergeant. If someone alleges that the local copper is on the take, then obviously there is a higher — the idea of where the association sees the —

Sgt GATT — I think this goes to something that was talked about in your previous submission. Where there is any degree of criminality, I suppose, then I think it is entirely consistent with what our members are saying: they will do the job properly, they will investigate the issue, and that degree of separation will just assist in that endeavour. It is not impeding it presently, in our opinion, but it would simply strengthen the current process.

But when you talk about matters of what we would probably term to be performance management-type issues, so the way someone is spoken to, issues about timeliness, these sorts of matters, these go to workplace management issues that are best dealt with by immediate supervisors. That is not dissimilar to experiences in nursing and teaching and other areas that are subject to legitimate community oversight, but they are best dealt with by people who are managing those people every day in their workplace. They may be systemic, they may show attention to detail issues with an individual, and the best people to actually deal with those are the people who are in their workplace managing and supervising them on a daily basis. So it is a fair comment, we think, to have that distinction.

Mr D. O'BRIEN — Can I just follow up on your concerns about public hearings? Could you perhaps just elaborate a little bit further on that?

Sr Sgt GORISSEN — Notwithstanding the High Court's decision in relation to some recent litigation, we are still significantly opposed to public hearings.

Mr D. O'BRIEN — On the basis that it is a show trial sort of thing?

Sr Sgt GORISSEN — Correct. Notwithstanding that there are some caveats and some protections, the reputational damage that our people suffer at the hands of public hearings is difficult to measure. But I will say this: the most recent one done in Ballarat — and I have to be careful here because the matters are still on foot — but we had members who had their children bullied in the playground, we had members who had had all these sinister Facebook posts on their pages. I see that the reputational damage and harm done to these people far outweighs the need to run a public hearing, and I do not understand the utility of a public hearing. There are sufficient powers bestowed upon IBAC to conduct these privately, and they are susceptible to show trials and trials by media. As I said, notwithstanding the High Court's recent litigation, we are vehemently opposed to the continued use of public hearings.

The CHAIR — One of the issues that you put to us in arguments for public hearings is, for example, when the department of education was being investigated it put the fear of God into every single public servant in the department of education, so there is that, obviously, threshold situation — there is, unquestionably, criminality involved in it, so it becomes public, sends a message to the rest of the public service. Do you have a view that there should be, without exception, no public hearings?

Sr Sgt GORISSEN — Yes. If you are talking about whether running public hearings puts a shot across the bows of members of the force who may have a predisposition to conduct themselves with anything less than integrity, we already have a significant discipline regime. We have a significant investigative body that runs a ruler over our members' performance. I think you can distinguish it from perhaps the learnings out of the education department public hearings. There is sufficient rigour. I do not know that you necessarily need public hearings to remind members that if they do engage in misconduct, they will find themselves without a job, they will find themselves under investigation and possibly preferring a charge against them. I do not know that that represents the flagship of it all, of a public hearing. I just fail to see it unfortunately.

Mr RAMSAY — I just have a quick one that you might be able to help me on. In relation to someone internally, a sworn police officer or an unsworn one or a community member who has a complaint against serious police misconduct or corruption, what are the circumstances whereby if it goes through professional standards command that actually they would then see that it fits better under IBAC act in respect to investigation? What sort of circumstances would you actually refer that on to IBAC? Because we hear more IBAC referring back to PSC in this case for general complaints.

Sr Sgt GORISSEN — It is probably a question best answered by the force, but under the act, provided the report is made under a certain provision of the act, it is already deemed to be a protected disclosure and it goes to IBAC. IBAC is the clearinghouse of all protected disclosures. How many are referred back? The statistics — you have probably got them. If you are asking me what the tipping point is for IBAC to retain protected disclosure matters or refer back, I do not know what that is. I am not sure. Have I answered your question or have I missed the point?

Mr RAMSAY — I think it is very small percentages, from memory. I am just trying to remember. My memory is gone. I was interested in the willingness of professional standards to actually refer significant serious misconduct or corruption to IBAC.

Sr Sgt GORISSEN — It actually works the other way around, if memory serves.

Mr RAMSAY — Yes, I know it does. But sometimes it might be an automatic shift to IBAC when it is deemed serious misconduct or serious corruption.

Sr Sgt GORISSEN — Yes. The default position is the act. The act is very circular in that it goes to IBAC. Automatically the presumption operates that it is a protected disclosure. IBAC are the clearinghouse, they remit it back. I am not sure what checks, balances or otherwise are in place for PSC, notwithstanding the referral back to them, to give it back to IBAC. I cannot answer that question unfortunately.

Mr RAMSAY — Yes. I guess the point in relation to serious misconduct was that the previous witness said that the sort of terminology around serious misconduct is quite narrow and IBAC might have an interpretation of serious misconduct in relation to a police complaint, whereas professional standards command might have a different interpretation of the terminology. I notice there are some changes in the wording in the act to reflect better serious misconduct that IBAC actually investigates rather than professional standards command.

Sr Sgt GORISSEN — As much as the devil might be in the detail of any definition, I think there are some inconsistencies and some disparities in the way certain things are defined under the acts as well. In the Protected Disclosure Act, the Victoria Police Act, the intersection with IBAC all need to be cleaned up to make those things a little clearer. I do not know what the tipping point is and I do not know at what point PSC would consider it has to go back to IBAC.

Mr D. O'BRIEN — Your submission opposes the creation of a statutory power for IBAC to oversight VicPol investigations into fatal accidents. Could you elaborate a little bit on that?

Sr Sgt GORISSEN — That part of the submission spoke to another submission we did some time back, over 12 months ago, to the Department of Premier and Cabinet because it actually flagged some changes to the act to the extent that IBAC would be attending scenes — crime scenes, critical incident scenes — where somebody has been killed to oversee the collection of exhibits, to then purport to take statements from members involved. We will say we were vehemently opposed to any of those proposed reforms going through.

Mr D. O'BRIEN — Why is that? Could you expand on that?

Sr Sgt GORISSEN — On a very basic level, the last thing you want as a crime scene examiner is somebody shadowing you through a crime scene. I am not at all confident that if you give someone at IBAC that role that they would have sufficient skill set to be alive to issues such as contamination. The other significant concern — and again that part of our submission speaks to that submission we did some time back, about which we have heard nothing since — was the capacity then to coercively examine one of the members at the scene. For us that skews the entire investigative process, and again it proceeds on what we say is the erroneous footing that the homicide squad, who would be involved in that, are not doing their job correctly, and that is not our experience.

Mr D. O'BRIEN — What about a power for IBAC simply to review though, so not live investigations but more of an oversight, which I think they have been doing a bit through their own motion?

Sr Sgt GORISSEN — I would prefer a capacity to review rather than a capacity to investigate shortly after the incident. I think that is fraught with danger and again I think it displaces the entire investigative process, and that is a significant concern.

Sgt GATT — There is also a significant question over the physical resources in terms of the entire scale of investigative processes that might be required to investigate a critical incident like that. If you cover just the forensic element alone, it is so wide and broad in terms of what would be required to achieve that, let alone the complication of having to do it at any location across Victoria wherever that were to have occurred. The time limits of having that response or that oversight at the scene without evidence, for example, being diminished as time goes on. All those challenges in our opinion do not lead to a particularly good model for Victoria anyway. I am not sure that we would not say there is not oversight of these matters at the moment, keeping in mind you also have coronial oversight, for example, in fatal shootings presently, which is a very rigorous hurdle for our members to be subjected to presently. So there are degrees of oversight and they do not all rest with IBAC at the present time.

Mr D. O'BRIEN — I appreciate this is not really a question for you, but would I be correct in understanding that in any police death — a death involving a police officer, with a member of the public — PSC is called in straightaway?

Sgt GATT — Sorry, is called in?

Mr D. O'BRIEN — PSC, to investigate?

Sgt GATT — Yes, absolutely.

Sr Sgt GORISSEN — It is a mandatory report.

The CHAIR — Any other questions? Thank you to the police association. We are extremely grateful for your time and your submission.

Sgt GATT — Thank you.

Committee adjourned.