

TRANSCRIPT

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

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

Melbourne — 26 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

Mr Wayne Muir, CEO,

Ms Anna Lyons, acting principal solicitor, civil law, and

Ms Kate Browne, lawyer, civil law, Victorian Aboriginal Legal Services.

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 Wayne Muir, Anna Lyons and Kate Browne. All evidence taken by the 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 things, 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?

Mr MUIR — 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.

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 invite you to proceed with a 15-minute opening statement to the committee, and then we will follow it up with questions.

Mr MUIR — Thank you, Mr Wells, for the invitation to appear before the committee. Before I start I should take the opportunity to acknowledge the traditional owners of the land on which we gather and pay my respects to the Wurundjeri people of the Kulin nation and of course to everyone here in this room today.

For those who do not know a lot about VALS, or the Victorian Aboriginal Legal Service, I would like to give a bit of snapshot history if that is okay. The Victorian Aboriginal Legal Service commenced operations informally in the late 60s to early 70s through a group of concerned Aboriginal and non-Aboriginal people with regard to the number of Aboriginal people coming into contact with the justice system. That piece of work and volunteerism happened out of the Aborigines Advancement League, which evolved later on to become a more formal construct to develop a specific Aboriginal legal service as a standalone from the Aborigines Advancement League. Later it became a formally incorporated body, so the Aboriginal legal service has now been in existence for over 40 years. I guess we come to this table with over four decades of experience and corporate knowledge in this space.

We provide services in civil, family and criminal law, child and youth law and we also provide a range of what we would call justice-associated programs in things like fines and warrants, community support and referral services to make sure that people are getting the assistance they need in terms of changing behaviours, getting support if they are victims and the like, so we act for both victims and perpetrators, and so we have a broad breadth of intelligence and experience in this space.

In regard to this particular inquiry, of course we have assisted people from time to time to pursue police complaints through the existing mechanisms, some of which we heard from Luke Cornelius just previously and some of those evolutions which we also heard from Luke. We would say that the current complaints system is probably as bad as it has ever been. We would say that the current system of Victoria Police investigating the majority of police complaints themselves, often by officers stationed — and we heard this in the previous testimony — alongside an officer under investigation is not working. The neighbouring police station scenario which we heard about in the previous presentation, and the staff rotation policy which Victoria Police utilise makes the impartiality of those investigations somewhat problematic, and I can point to some examples during my questioning if you like.

IBAC’s current oversight role has proven to be incapable of addressing perceptions of bias. In the investigation process we hear time and time again that community members believe that making a complaint about their treatment by police is futile or, worse still, counterproductive.

Our submission to the inquiry included 10 recommendations. These included recommendations as to how the complaints process could be made more accessible and effective for Aboriginal and Torres Strait Islander complaints. These measures are necessary to rebuild community confidence in the complaints process and to assist more broadly in the relationships between Victoria Police and Aboriginal and Torres Strait Islander communities.

We caution against any reform that is simply tinkering around the edges of a system that we believe is fundamentally flawed. What is needed is an independent victim-centred investigation body for complaints against police that operates within a human rights framework. We have endorsed the *Police Accountability Project: Independent Investigation of Complaints against the Police — Policy Briefing Paper* and its proposed model. In preparing our submission to the inquiry, VALS interviewed a client whose story appears in a de-identified video on our website. It is of the utmost importance that our clients and community members are kept front of mind when we discuss these reforms.

When VALS audited the police complaints files we found that in 71 files only 22 complaints were lodged. Many community members just gave up because they did not believe that the current system would in fact deliver justice. Of the files that we have run, not a single complaint has been substantiated in full. Not one outcome letter included the required detail about the nature of the complaint, the steps taken to investigate or any actions taken. Our experience is consistent with IBAC's 2016 audit finding that only 9 per cent of complaints in its sample were substantiated. When we talk to our clients we hear that the most common outcome they are seeking is an explanation as to why police misconduct occurred. The current system is not even providing those answers.

We are confident that civilians can be trained to do this work. Many civilians are trained to work in non-police investigative roles, and we believe that with the necessary training it is possible that this role could be fulfilled to a high standard as long as the appropriate authorising environment is created around those structures. Thank you.

The CHAIR — Just on that point, if we were going to have victim-centred investigations about police complaints and we do not use police or former police officers, will there be public credibility in a system where you do not have those ex-police officers or police officers from another jurisdiction coming in to investigate police misconduct?

Mr MUIR — Sometimes perceptions are important. We believe that properly trained civilians, with the correct authorising environment and addressed accordingly to the civilian population and to our friends in Victoria Police, can in fact deliver a process where we have external entities doing the police investigations. If I can go to the example I mentioned in my opening statement, despite what Mr Cornelius may have said in his testimony, just recently in an outer metropolitan police station, about which there was a complaint raised by us through police command, the officer appointed to investigate that complaint was from a neighbouring police station, as per your example, but he was also placed part-time at the station where the officer that we complained about was based. In his interview with our respective lawyer, which was part of the complaints process, this officer's commentary was, 'I've actually served for three months with that officer and I find him to be a good bloke'. Now, our firsthand experience relatively recently would suggest that the impartiality that police have indicated they are trying to achieve is far from where they suggest they want to be. That is why we think it is much better placed to have an independent, external process, because that would alleviate those things.

As far as Mr Cornelius is concerned about culture, workplace culture, regardless of what workplace you are in, takes time to change. Simply by changing an investigative method, I do not necessarily agree with Mr Cornelius's assessment that then they would simply close up shop, because that would be a choice of police command and leadership and, of course, the sort of culture that they might want to embed through their police force.

The CHAIR — You would have heard in the question that I did ask that there is now a conflict form that they have to fill in — declaring a conflict — and that if they needed to drive 4 hours from the other side of town to get to a country place, then that is what Victoria Police would do. So that would not satisfy the requirements of your organisation.

Mr MUIR — I just point to the most recent example that I outlined. In that very system that they have indicated they have failed, and if it has failed in that case, I have to wonder how many other cases that approach has failed in.

Mr RICHARDSON — Thank you, Mr Muir, for coming in today. I have a couple of questions that I wanted to take you through. I note your point that most people want to know the reason for misconduct occurring. I do not know if you were here for Assistant Commissioner Cornelius's presentation, but he did

acknowledge that that was a shortcoming, and a lot of submitters had put that forward. How would that approach be best handled according to VALS? What would be the best approach?

Ms LYONS — Just to clarify — so how people can get an explanation for why the conduct occurred? That is really at the heart of our submission around having a victim-centred complaints system where there is communication with the complainant, that the complainant is given a voice in the process, that the complainant is able to see evidence that is adverse to their complaints that is being considered and, most importantly, that the complainant is given a full explanation of the matters concerned in their original complaint. We referred to the audit that we did of files that VALS has run in this space. Of the 71 files that we have, 22 of which resulted in complaints, in none of those cases did the letter meet any minimum requirements for setting out the detail of the complaint that was raised. So in those cases there are not those answers around why the subject matter of the complaint took place. There is a very inadequate response provided.

Mr RICHARDSON — The assistant commissioner acknowledged some 2 million interactions that are had with Victoria Police and that 2700, according to their numbers, related to complaints. So you are saying that you would like to see reasons provided for those investigations and where they get to in their conclusion?

Ms LYONS — Absolutely. It is essential that there is full communication, not just using pro forma templates but using language that our clients can understand, so language that is familiar to them and digestible and meaningful. But we also would address the fact that, yes, many of those interactions take place without complaint, but our submission speaks at length about the significant underreporting within our client base, and we speak particularly in our submission to Aboriginal and Torres Strait Islander communities.

Mr RICHARDSON — Going to Mr Muir's comments about — correct me if I am wrong — that the interaction is at some of the worst levels now, is what you were saying before. Is that right, what you were saying in terms of police interaction and complaints. Could you clarify those —

Mr MUIR — On the basis that if we again have a look at the data and the number of complaints gone forward, the number of complaints that have been carried — zero. Some of the reporting that we have received — for example, through the Aboriginal Justice Forum, under the Aboriginal justice agreement, to go to the commentary and the question about information and quality of information, that information ostensibly is a data report that says 'X number of complaints, X assessed initially, X investigated, zero outcome'. That hardly gives you a sense of comfort in the system in terms of what were the steps taken. If you got to 'unsubstantiated finding', what was the rationale behind that, for example? We do not get those types of levels of detail currently. I have now worked with five chief commissioners and I have not seen an awful lot of advancement in that space under five different chief commissioners, so if they are telling me they are about to change the quality and substantive nature of their reports, then I guess I am not going to hold my breath.

Mr RICHARDSON — I take you to the comments made, and I do not know if you heard it during submission, Assistant Commissioner Cornelius said that 'Victoria Police should be owning and taking responsibility, not a body waving their finger at Victoria Police', or, 'at us', as he said. What do you make of those comments in the context of an independent body and oversight authority, and do you think that IBAC is best placed to handle those complaints as it stands?

Mr MUIR — We have answered to some extent the question with regard to that in our paper, but let me expand on that. Frankly, whether it is IBAC or another independent body, as long as the correct authorising environment is in place, that it is seen as independent from police and that it provides a quality and transparency around the information, then that would be an enormous step forward.

Ms BROWNE — I think also — sorry, just to add — the independent police bodies that have been set up have had quite good support from police and from civilians, so I do not think it has really been borne out in practice that police turn their back on a body so long as it builds those relationships with police.

Mr RAMSAY — Thank you for your time this afternoon. I am pleased to say if it was another place it would be a very short question, given I am facing a lawyer and a principal solicitor, but given you are not billing me this afternoon, it might be a bit longer than normal. I want to get back to your submission in respect to the importance of complaints being classified independently before they go to the Victorian police. We have heard a lot about the reluctance of people wanting to make complaints against police under the current structure of

IBAC referring to Victoria Police. What sort of structure or mechanism do you see to basically have a clearing house of complaints before they actually go to Victoria Police?

Ms BROWNE — Basically we see the classification of complaints as incredibly important at the beginning of the complaints process, and at the moment we have concerns about how complaints are classified. These were raised in the Koori Complaints Project report, which identified that since 2004 no assault complaint made by a Koori person was classified correctly. Instead they received a much lower management status when they were often important assaults and things that occurred that were quite serious complaints. IBAC has also raised concerns in its audit of Victoria Police that allegations were not adequately categorised. So it kind of depends on what a new model would look like, but basically we suggest that all complaints should be classified by an independent body, and then possibly much lower level customer service complaints could go back to Victoria Police, but apart from that we suggest that there should be an independent classification.

Mr RAMSAY — Isn't that the role of IBAC now? It classifies the complaints and either refers them back to Victoria Police or deals with them themselves?

Ms BROWNE — Yes, but only those complaints that go directly to IBAC. A lot of complaints do go to Victoria Police that might not go through IBAC to start off with. Also we know that IBAC sends around 90 per cent of complaints back to Victoria Police, so the model would look quite different if you adjusted those figures.

Ms LYONS — With the classification of the complaints we do think it is important that there is extensive consultation, including with services such as ours, into what that classification system looks like. As we have mentioned, having one centralised system rather than this sort of binary system at the moment would enable us to see more trends in the numbers of complaints that are coming through so that we can view particular spikes in regions or complainant groups and be able to better understand the lay of the land, so to speak, with the complaints that are being made across the board.

Mr RAMSAY — Is that specific just to the Indigenous community, or are you talking generally about any complaints?

Ms LYONS — Generally. I think, consistent with the evidence that has been provided by other legal centres, having that independent oversight of classification of all complaints is something that we advocate for more broadly.

Mr D. O'BRIEN — Your submission highlights that a lot of the alleged misconduct occurs at the time of arrest or in police custody itself. Has the introduction of Aboriginal community liaison officers and the police Aboriginal liaison officers helped in that regard at all?

Mr MUIR — As far as the Aboriginal community liaison officer position program is concerned there was a review done in that space by Victoria Police about eight years ago, and that review recommended in fact there be 52 Aboriginal community liaison officers across Victoria. I think we have got eight.

Mr D. O'BRIEN — Right. Are they predominantly metro based or are they —

Mr MUIR — No, there are a number of regionally based ones: Warrnambool, a recent one in Geelong, Ballarat, Mildura, Swan Hill —

Mr D. O'BRIEN — They are fairly thinly spread, anyway.

Mr MUIR — Anyway, there are about eight across the state currently. There have been varying degrees of success within those roles, within Victoria Police. Have they assisted in breaking down some of those barriers and building some relationships? Yes, they have, but they have not had a particular role across the board with regard to police complaints processes.

Mr D. O'BRIEN — Are you aware at all of the Maori warden system in New Zealand?

Mr MUIR — Sorry? I should explain I am slightly hard of hearing.

Mr D. O'BRIEN — That is all right, we all are. Have you come across at all the Maori warden system in New Zealand? It has been around for a long time, but effectively members of the Maori community literally

wander the streets and assist with anyone who is on the verge of getting into trouble, or they liaise between police and Maoris.

Mr MUIR — We have a couple of programs in the state of Victoria that are not necessarily that program but are similar insofar as you have something called the Aboriginal community justice panel program, which is a statewide program of volunteers that can be called out to check on somebody in custody and basically inform the police if there are any known health, mental health or welfare issues and inform family. They can and have assisted — one example I give is down in Lakes Entrance. There is a community event that happens down that way, and the police and the community justice panel have collaborated to try to ensure that basically everything goes off smoothly. Alongside that, but it is not widespread, the Department of Justice and Regulation funded just a couple of community organisations for a night call service in a couple of locations. It was a particular funded project which was to go out in to the streets to identify if there was anyone that needed to be picked up and taken home safely — to reduce the contact with police. That is not widespread, though, and it suffers a bit of funding hiccups from time to time.

The CHAIR — But it was very effective in Bairnsdale.

Mr MUIR — As the reports have come to me from those locations, they thought it was an extremely valuable service in those locations.

The CHAIR — Extremely.

Mr HIBBINS — Obviously a lot of the recommendations have been around an independent complaints body, but I just want to go to your recommendation 16 in terms of mandatory investigation for all police-associated deaths. I wonder if you could outline what you feel the deficiencies are with the current system in regard to investigating police-associated deaths and why this particular recommendation is of particular importance to VALS?

Mr MUIR — Part of it in the recommendation goes to the fact that we think there needs to be some better resourcing, both in terms of the Coroners Court and for support agencies to engage with investigations around deaths of persons in police custody, for example. There is a number of recommendations which came out of the Royal Commission into Aboriginal Deaths in Custody. One of the primary recommendations out of the Royal Commission into Aboriginal Deaths in Custody was to remove all hanging points. That still has not been achieved in this jurisdiction some 25-odd years after that particular royal commission, even though both governments and parties of both major persuasions have committed to do that over the years.

So there are those sorts of things in terms of investigating, if there is a death, was it in relation to misconduct, do the coroners have the necessary resources, do other agencies like us have the necessary resources to assist in those processes? They are some of the challenges with regard to that particular space.

The CHAIR — Do you have written responses to the questions?

Mr MUIR — I have noticed that there are a couple of typos in there, so I would like to fix those. I am a bit pedantic like that. I would like to fix those typos before I hand them over, if that is okay.

The CHAIR — If you can make arrangements with the secretariat, once that is done?

Mr MUIR — Absolutely. Happy to do so.

The CHAIR — We thank you for your time, and your responses when we receive them.

Witnesses withdrew.

Proceedings in camera follow.