

# 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

Assistant Commissioner Luke Cornelius, Victorian Equal Opportunity and Human Rights Commission review, partnerships and innovation,

Acting Inspector Jim Mulholland, professional standards command, and

Superintendent Tony de Ridder, professional standards command, Victoria Police.

**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 telephones should now be turned to silent. I welcome Assistant Commissioner Luke Cornelius, Acting Inspector Jim Mulholland — it was senior sergeant a couple of weeks ago — and Superintendent Tony de Ridder.

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 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?

**Asst Comm. CORNELIUS** — 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 person is 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 the assistant commissioner to proceed with a 15-minute opening statement to the committee, which will be followed up by questions from the committee.

**Asst Comm. CORNELIUS** — Thank you, Mr Wells, and thank you to your fellow members of the committee for allowing Victoria Police the opportunity to speak to you and answer your questions today. If I may, I will begin with some opening remarks.

When the London Metropolitan Police was established in 1929 its earliest police commissioners identified a set of principles known as the Peelian principles, which were intended to describe the relationship between the public and the newly established policing organisation. A number of those principles remain relevant to this day, and I thought I might begin by outlining those to you.

The first of these was that the police should at all times maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police, the police being the only members of the public who are paid to give full-time attention to duties which are incumbent upon every citizen in the interests of community welfare and existence. Other principles which we continue to subscribe to are that the ability of the police to perform their duties is dependent upon the public approval of police actions, and police must secure the willing cooperation of the public in voluntary observation of the law to be able to secure and maintain the respect of the public. So it should not be surprising that when you come to outline the objects of police discipline and also the objects of police oversight those principles have carried through to today, reflected both in decisions of the High Court and also in our legislative framework.

In a nutshell the Victoria Police position is that the objects of police oversight arrangements and police accountability are designed to do the three following things: one, to protect the public from wrongful acts by police; two, to maintain public confidence in policing; and three, to promote the development of the integrity of serving police officers. Those three principles lie at the heart of our discipline system and are also reflected in both the Victoria Police act and other relevant pieces of oversight legislation.

In identifying these three objects, however, the chief commissioner, in proposing those three principles as being the basis for police oversight, does not seek to eschew his primary responsibility for securing these ends through his management and control of the Victoria Police. The chief commissioner is accountable to government for the discharge of this function and in order to do so he must have the authority to set standards and expectations and be able to hold police officers to account for the discharge of their duty.

The Victoria Police discipline system and the work of the professional standards command are key elements of the framework by which the chief commissioner secures this accountability. Further, it must be appreciated that securing accountability does not begin and end with professional standards command. Victoria Police has the

clear expectation that accountability for good conduct and maintaining the confidence of the community we serve is the responsibility of every Victoria Police employee. An effective oversight framework must therefore strike a balance between the chief commissioner having the authority and accountability to secure the good conduct of police officers while at the same time ensuring the Victoria Police response to complaints about police is transparently accountable to the community we serve. This is a key theme and the key means to securing public confidence in the conduct of Victoria Police. It is in the service of these objectives that the current oversight arrangements have been established. Given the current arrangements have been in operation for five years, certainly it is time for us to take a look at whether or not these objectives are being served by existing arrangements.

I will come now to speak briefly about the existing arrangements. The Victoria Police position is that the current arrangements do strike the right balance between the chief commissioner taking responsibility for and securing the good conduct of Victoria Police members with the need for a transparent, independent and accountable police oversight capability as presently vested in IBAC.

Victoria Police does acknowledge, however, that many have voiced concerns about the existing arrangements and that some argue for wholesale reform. We also note the committee has asked Victoria Police to answer specific questions about the existing arrangements and also asked for our view about how existing arrangements might be improved. So I have come before you today ready to answer those specific questions, although the pragmatist in me tells me that it is unlikely we will get to each and every one of those 16 questions. With the level of detail that would be required, I think that time would defeat us. So I am more than happy to be guided by the committee of course in relation to those areas of focus you might draw my attention to. But I should acknowledge in doing so that we, Victoria Police, have identified a number of key themes.

The first is a theme around police cannot or should not investigate police and all complaints should be investigated by a separate, independent entity. Issues that arise within that are concerns around conflict of interest, lack of timeliness and concerns about collusion and cover up. The other theme that we have identified is that police accountability and oversight arrangements lacked transparency, and there is clearly a need for us to better explain to the community how those arrangements operate and how the community might access those arrangements to best effect. Further, that affected persons or complainants may not get a fair hearing, are not heard or do not have their concerns adequately addressed. Victoria Police acknowledges that there is certainly more we can do to help affected persons — people affected by police behaviour — to understand but also have the confidence that their concerns have been adequately considered and addressed. Further, access to the complaint system is problematic for Indigenous, CALD community members, people living with mental health or a disability, and more needs to be done to work effectively with third-party advocates and entities in order to ensure that people who do not speak English, have access to the internet or a telephone or other means to self-help may through effective advocacy via third parties more effectively engage with the complaints process.

I guess the final piece is we would certainly acknowledge there appear to be concerns in relation to the lack of visibility and clarity in the community around what a complaint or indeed what police misconduct actually is. Of course while there are some amendments presently in train, there remains significant confusion as to the distinction between police conduct, misconduct, serious misconduct by a police official and other similar statutory definitions that are spread across different pieces of legislation.

I might round my opening remarks out there, concluding by making the following point. For Victoria Police to continue to drive a professionalisation of its culture and an increased adherence of our people to the expectations of what it takes to be a policing professional who serves the interest of the community rather than their own self-interest it is critical that the chief commissioner continues to be allowed to set expectations and effectively hold his or her people to account for their conduct. So whatever oversight arrangement might be contemplated it must be remembered that ultimately it will fall to the chief commissioner to determine the consequences for police misconduct and also for the chief commissioner to determine how those consequences might be delivered. That of course is a piece where the chief commissioner remains very much the subject of a broader range of statutory provisions which are not directly the subject of this parliamentary inquiry. That goes to how does the chief commissioner pursue, build, maintain a relationship with members of the police force absent a master-servant relationship where the chief commissioner is ultimately able to hold his or her people to account for their conduct in the service of the community. That remains a significant question for us.

So to round it out, in terms of police accountability, the key piece for us is that Victoria Police wants there to be an effective and transparent accountability framework. A transparent and independent accountability framework is critical to the maintenance of public confidence in policing, because it is through transparency, accountability and external scrutiny that we are able ultimately to satisfy the community that we are here for them rather than being there for ourselves. Thank you.

**The CHAIR** — Thanks, Assistant Commissioner. My first question is in regards to the definition of complaints. So we have had public hearings and we have had written submissions in regard to what police define as a complaint. We have had the situation of local management resolutions, LMRs, that sometimes a complaint is more serious than that so it may involve assault and it goes back to police, police treat it as an LMR and in some cases say that the complaint is not significant and does not have to report it through to IBAC. That theme seems to be coming up over and over again. So the issue is: what is the definition of a complaint that would need to be reported to IBAC, and do police acknowledge that there is some confusion around that definition of ‘complaint’ where they say, ‘We don’t have to refer to it as an LMR to IBAC, we will deal with it internally’, causing some frustration for those people that have lodged the complaint?

**Asst Comm. CORNELIUS** — Victoria Police certainly understand that there is significant confusion in this space: one, because there is in fact no statutory definition for a complaint; and two, there is significant statutory variance in relation to how conduct, misconduct or serious misconduct is defined in various pieces of legislation. So that leaves it open to interpretation as to what conduct is captured or what conduct might amount to conduct which might be the subject matter of a complaint.

This confusion is not only of course held in the community; it is held within our own organisation. Indeed the Victorian Equal Opportunity and Human Rights Commission, when it published its report several years ago in relation to sex discrimination, harassment and predatory behaviour among Victoria Police employees, actually identified the need for clarity in relation to the definition of police conduct so that our organisation and more particularly its employees could have a clear understanding about what conduct might be characterised as being conduct which ought appropriately attract concern and review and accountability.

**The CHAIR** — So what is Victoria Police doing in regard to that issue about the definition of complaints and, more importantly, defining what is reported to IBAC and what is not reported to IBAC in regard to a complaint?

**Asst Comm. CORNELIUS** — I am advised that that remains the subject of ongoing discussion between ourselves and IBAC. So the question around what constitutes a complaint and also a consistent approach around how we might apply the varying definitions of conduct has been and remains the subject of ongoing discussion between ourselves and IBAC. In our view absent clarity and statute around that — there will come to you to be divergence in relation to how those aspects are defined. I am happy to defer to my colleague Superintendent de Ridder.

**Supt de RIDDER** — I am happy to address that. It has been a matter of ongoing discussion since IBAC first was established about how we comply with the legislation under 169 of the Police Act and 57 of the IBAC Act, which are the two relevant areas — 169 being the police misconduct and 157 being the conduct that relates to public servants. It is fair to say that we have not been able to comply within existing arrangements and we have had a workaround, which is an automated report that goes from the professional standards command to IBAC. This has been in recent times expanded to include local management resolution files and MIM files and other files that IBAC did not previously have visibility to. As late as last week we met with IBAC about increasing our ability to comply with those two sections, so we are now currently negotiating with them about the kind of report we give them and at which time and what times we give them the report.

The act is fairly clear that when we receive a complaint, so that is basically anything that comes in that the complainant considers a complaint, we are to advise IBAC and then again when we investigate that complaint. We do not want to swamp IBAC obviously, but at the same time we want to work with them so that they have got increased visibility about all of the matters that we currently receive as complaints. We think we have done that because we are now advising them more about the LMRs and the MIMs and a broader range of complaints, but there is still some work to go. That is a work in progress at the moment.

**The CHAIR** — Just to conclude on this point, do I take it that all MIMs and LMRs are now being reported through to IBAC?

**Supt de RIDDER** — Yes.

**The CHAIR** — And that was effective as of —

**Supt de RIDDER** — A couple of weeks ago only. It was a relatively recent thing that we introduced probably only a month ago. Jim, is that right?

**Acting Insp. MULHOLLAND** — Yes.

**Supt de RIDDER** — It is something that we have only just introduced. Now we are going a little bit further so that we actually give them much, much more content, the narrative that comes with each of the complaints, because we want to be in a better position where we can say that we are complying with those two sections of those two acts.

**Mr HIBBINS** — We have heard evidence about a differing in substantiation rates between, say, a complaint that has been made to police and then a civil claim, as in the complaint to police does not get substantiated but then the civil claim finds in favour of the complainant. Can you explain that difference? How do you respond to that difference in substantiation rates?

**Asst Comm. CORNELIUS** — I think the key piece is that ultimately these are matters that turn on the facts as they are discovered by the fact-finding process, and a discipline inquiry — a preliminary investigation followed potentially by an inquiry conducted by an inquiry officer — operates against a very different set of standards to those which apply in proceedings brought by a plaintiff against Victoria Police before a court. The court has the benefit of its jurisdiction and its powers to take evidence from witnesses, both police and non-police, and explore a range of matters which that court might regard as being relevant. That might be quite different from what was originally available to the discipline inquiry or the preliminary police investigation.

So while it is not ideal that both those processes might produce a different outcome, if a court is able to discover additional facts and additional evidence that was not previously available and on that basis is able to deliver justice to a plaintiff, ultimately that is a good thing. But I guess the key piece for us is to understand, ‘How might we through our investigation and inquiry process have discovered those things ourselves?’. The bottom line is — and I can think of a number of particular cases where an inquiry officer might have determined a matter based on the facts that were available to him or her at the time and then when subsequent legal proceedings were brought a range of additional facts were available which were not available at the time of the initial discipline or complaint-related investigation — when those matters come before the court the court is properly able to consider them.

**Supt de RIDDER** — If I could just add also that at times our members when a complaint is made against them, say for an offence such as assault — a typical, very common complaint — the test that the investigator must obviously establish is ‘beyond reasonable doubt’ whereas sometimes what we may end up finding is that while the charges may not be approved, that member may still run the gauntlet of a discipline process and end up being censured for overzealousness or whatever it might be, because the test for a discipline matter is a much lower test; it is the balance of probabilities that roughly we apply. We do not have data on that but many members, where a complainant is advised that, ‘We are not charging the person with the offence that you have complained about’, there still is discipline action taken and the person will be admonished or receive workplace guidance.

**Mr HIBBINS** — Is there a concern amongst Victoria Police that if the complaints investigation process is not rigorous, then the Victoria Police might find themselves at risk or liable to then a further civil claim? Is that an ongoing concern to Victoria Police?

**Supt de RIDDER** — From my experience I do not think it is a concern that weighs heavily on the minds of the operational members. None of our members want to receive a complaint.

**Mr HIBBINS** — Not so much individual members, but the organisation generally I would say.

**Asst Comm. CORNELIUS** — I think ideally the organisation wants to do everything it can through conducting its operations appropriately to avoid triggering any basis for legal action to be brought against us whether for negligence or any other infraction. But when it comes to conducting an inquiry into an alleged breach of discipline or an inquiry officer is inquiring into the truth or otherwise of a discipline charge, I myself,

as a discipline inquiry officer, have to say the prospect of civil exposure does not enter my mind. My focus is on inquiring into the truth or otherwise of the matter that is alleged against the member who is appearing before me. My primary focus is to determine whether, in terms of the public interest test, that conduct ought attract opprobrium, ought attract a determination by the organisation that the conduct was improper, inappropriate, indeed unlawful and so take appropriate action in light of that.

**Ms SYMES** — Thank you, gentlemen, for your evidence today. I was just wanting to touch on the recruitment for inquiry officers. We heard some evidence this morning from witnesses that were concerned about the vetting process, I guess, of particular officers that might be allowed into the program. I am just wondering how that works.

**Asst Comm. CORNELIUS** — I think just to be clear, discipline inquiry officers are appointed by the chief commissioner to inquire into the truth or otherwise of a discipline charge. Now a discipline charge is laid against a subject member following a preliminary investigation. Those preliminary investigations are undertaken by officers within professional standards command or by officers who have been delegated the responsibility to undertake that investigation by the assistant commissioner of professional standards command. I think your question relates to an issue in relation to a police officer who may have been recruited to or appointed to work in professional standards command. Is that right?

**Ms SYMES** — Yes.

**Asst Comm. CORNELIUS** — Okay. I might ask my colleague Superintendent de Ridder to answer your question because I think he is in a position to go to some specifics in relation to that matter.

**Supt de RIDDER** — I am not 100 per cent sure, sadly, that I fully understand your question, because —

**Ms SYMES** — What type of police officer do you look for to come into the professional standards division?

**Supt de RIDDER** — To act as a hearing officer?

**Ms SYMES** — Or within your division. Anyone within your division, I guess.

**Supt de RIDDER** — Okay, I understand. Sorry, I do apologise. What we are looking for generally, depending on the level that we are recruiting at, is people with experience. We have found in the past that it is difficult to appoint people into those kinds of roles where they are newly promoted; it is not always the case. But we are looking for someone who has got some experience at the particular level, because it is not the most pleasant work finding out about how poor our members' behaviour is. It can be quite negative, and in fact some of our people that have worked in the Taskforce Salus space for example, we have had to move out of that space because it is very distressing to deal with, say, predatory behaviour by our own members on each other.

But what we are looking for is people with experience. We want to have someone who passes probity and someone who has obviously got the communication skills or the relevant skills, bearing in mind we have got a number of divisions. My division is the conduct area, we have got an investigations division where we would be looking for people who have got good experience as investigators, we have got an intelligence area where we are looking for strong intelligence practitioners, we have got a risk and innovation area where we are looking for people with good researching skills and exceptional organisational awareness.

**Ms SYMES** — How large is the division?

**Supt de RIDDER** — The whole of PSC is about 150 people, and I have got 25 people in my area that look after the complaints area and eight officers out in the field.

**Asst Comm. CORNELIUS** — I guess the key piece, Ms Symes, is that members who are to be appointed or recruited into professional standards command are the subject of a probity check to identify whether they have been the subject of any substantiated matters that have been brought against them. I should also make the observation, of course, that that of itself may not disqualify a person from coming into professional standards command, particularly if that is an individual who, having been held to account for past poor conduct or performance, has engaged in a process of rehabilitation and has demonstrated that they have learned from their past infractions and in fact have gone further and shared their learnings with their colleagues. Then in those

cases in fact it might be appropriate that such an individual could be appointed to professional standards command.

**Ms SYMES** — Thank you. That clarifies that.

**Supt de RIDDER** — Could I also add: this goes to the heart of the work that IBAC did in relation to Operation Ross because the recommendations in regard to Operation Ross spoke significantly about the issue of probity and how we take into account a person's background. It is not always that easy, because people have often demonstrated certain behaviours that have been addressed and they have come forward and shown that they are good citizens within Victoria Police, are doing good work and are motivated and want to share their learnings, as Assistant Commissioner Cornelius has just mentioned.

The problem we have got with the work we have done with IBAC around Operation Ross is that while there are certain elements of the recommendations of Operation Ross that we have been able to implement immediately, it has opened a significant piece of work around that whole idea of how we take into account a person's substantiated history and the kinds of behaviours that might be relevant underneath that where things may not be substantiated and what impact that should have on promotion and transfer. It is an extremely complicated matter because it relates not just to professional standards and our record keeping; it relates to transfer and promotion. The whole organisation has to work together. There are several commands that need to work together in order to address this very, very complex issue. We are working through that at the moment, but it is still relatively early days because it is a very substantial project.

**Asst Comm. CORNELIUS** — I should also point out that we of course are not the only actors in this space. So irrespective of a selection decision that a selection panel might reach, it is open to people who were not successful in being selected to appeal their non-selection to the police review services board. There have been cases where members of the selection panel have been aware that an individual has been the subject of an extensive complaints history and on that basis have decided not to appoint that individual to that role, and then that decision has subsequently been overturned in the police review services board and that individual has been so appointed.

This goes back to one of the points I made in my opening remarks. If the chief commissioner is to be held to account and is to be accountable for the management and the good order of his policing organisation, he actually needs to have the authority to give effect to that accountability, and yet there are pathways within our legislative framework where that authority and accountability can be undermined.

**Mr RAMSAY** — Thank you, gentlemen, this afternoon for your time. I want to refer to the IBAC Act, section 15(3)(b), in relation to the functioning role IBAC has of ensuring police officers and protective officers have regard to the human rights set out in the Charter of Human Rights and Responsibilities Act 2006. The question I want to pose to you comes on the back of evidence we have heard this morning, where a number of stakeholder groups, including the law institute, indicated that they do not have confidence in the Victoria Police oversight within themselves with respect to police complaints and adhering to that charter. In fact they have referred to the charter on four or five separate occasions in different submissions, and the only way they can see any transparency and adherence to the charter is to have an independent body deal with police complaints, not being oversighted by the police themselves, and/or an extension of the IBAC powers. Given that quite strong criticism through the whole of this morning's testimony with respect to the charter and the adherence to it by police standards command, can you respond — how do you ensure that your officers have due regard for the human rights issues set out in that charter under the IBAC Act?

**Asst Comm. CORNELIUS** — That remains an ongoing piece of work for us. Indeed since the advent of the Charter of Human Rights and Responsibilities, where Victoria Police advocated for the introduction of the charter, we have sought, both through recruit formation and in every key development program, to deliver it to our people, both voluntary and compulsory. Human rights remain an underlying theme which flows through all of our curriculum. For example, for recruits starting at the academy, the first fortnight of their time with us is actually spent focusing on the relationship between police and the community and, in particular, looking at our charter obligations. So certainly the grounding is there and the expectation is there. Where we fall down in some cases is in the area of practice.

I would make the observation at this point that within the context of in excess of 2 million public contacts a year, we generate about 2700 complaints, which are recorded on the system. Notwithstanding the fact that 2700

or so complaints are generated — and that is 2700 too many complaints — the vast majority of our interactions with the public do not have adverse outcomes in terms of a concern held by a member of the public about how we have engaged with them.

The key point I would make about how best to promote and have adherence to, in terms of practice, our charter obligations — very much front and centre of how policing is practised in Victoria — is that that first and foremost will be achieved by that focus being owned by each and every police officer. That is not going to come as a result of some external oversight body swooping in every time there is an adverse outcome and wagging its finger at us. It is not going to come as a result of a number of individuals being made an example of. It is going to come as a result of Victoria Police owning and taking responsibility for the development of a focus on an adherence to — and in terms of our craft, a practice of — policing in keeping with the expectations that are outlined in the charter.

That is the key approach for us. Certainly feedback from the law institute, advice from counsel and prescription by IBAC or indeed the Ombudsman or any other oversight body can of course provide for us object lessons against which we can and we do teach, but as Mr Patten concluded in his report that he wrote which reviewed policing arrangements in Northern Ireland, “policing means protecting human rights”. That was the key conclusion in the Patten report, which led to the establishment of PONI and the Police Service of Northern Ireland. That is actually where Victoria Police sees its position in relation to a human rights-based approach to policing.

**Supt de RIDDER** — Could I also add a couple of points about how we have been working with IBAC practically over the past five years to improve our work around human rights? At the moment it is often referred to in correspondence between IBAC and Victoria Police from individual file reviews, which is a substantial part of the work that IBAC does, where they painstakingly analyse individual files and then comment on the different things that we may or may not have done wrong in relation to those files. It is also something that has been the subject of the audits and the reviews, and of course it was highlighted as one of the recommendations in Operation Ross.

What we now do is we require every investigator to consider human rights in each of the investigation reports, so human rights is a required reporting aspect. There are relevant documents on the templates that are used by investigators. It is an issue that is followed up at quality control, so where an investigation is conducted without due reference to human rights it is referred back. In addition to that, we have provided a lot of leadership around the addressing of this through our investigators and through the leadership discussions PSC has out in the field to ensure that there is a proper focus on it. It is obvious when we have got complaints that human rights are an issue, so our members really need to improve their understanding of it.

It is not always perfect. A lot of our members are busy doing the work and they do not necessarily understand that their work is integral and intrinsic in terms of human rights, but that is nevertheless a significant focus. I think a significant improvement has been made at PSC with the help of IBAC over the past five years.

**Mr RAMSAY** — Given the weight of evidence from the submissions we heard this morning, it was clear that there is a view out there in some of the legal aid services and those that are dealing with obviously some of the more problematic issues around complaints to police that in fact Victoria Police within themselves are not capable of dealing with those complaints in a manner that gives confidence to those people making the complaint or wanting to make a complaint, believing that their human rights have been impacted. I am taking it from yourselves that you believe you have processes in place to deal with the charter itself, as per the act, IBAC, and that you do not see a need for IBAC to expand its operations to deal with certain complaints that come before it before they are passed to you other than the more serious nature of complaint.

**Asst Comm. CORNELIUS** — Certainly with IBAC, in relation to the investigations and the complaints that they review, one of the lenses that they apply when they are reviewing our matters is to look at it from the human rights perspective — to satisfy themselves, one, that we have appropriately identified and addressed the human rights considerations and, two, that if individuals have breached the human rights of another human being, then that officer has been held to account for that breach. That is certainly what IBAC looks at within the context of their review process.

**Mr RICHARDSON** — Thank you, gentlemen, for coming in today. Assistant Commissioner Cornelius, I wanted to go to your point about ‘a body not waving its finger at us’ and that the change will come from

Victoria Police. Given we have had the OPI and given we have had IBAC do two significant reviews into Victoria Police and made recommendations, what would be the outcomes or how would they have been investigated but for that independent body overseeing Victoria Police?

**Asst Comm. CORNELIUS** — I am not questioning the need for an independent body or the need for effective oversight. In actual fact the more advice that Victoria Police can get in relation to how it can improve its performance, its service delivery and the delivery of policing services in keeping with community expectations, including in keeping with the human rights charter obligations — I am all for that.

I took that question to be a question that goes to what is effective in terms of changing culture, and the point I make about the finger-wagging piece is that every time a frontline police officer sees a lawyer sweeping into our organisation to give us a lecture on human rights, they see it as exactly that. It actually is much more effective in terms of driving change for police to own that need to change and for police to lead the discussion and to lead and identify that need for change.

So I am certainly not having a go at oversight bodies, but the point I am making is that a lot more thought needs to be given to: how do we approach culture change and how do we do that in a way where police actually identify and recognise the need for change and, from there, commit to it? That is not going to be serviced by having a bunch of carpetbagger lawyers swooping in on our organisation and giving us 101 on ICHR or what the United Nations reckons human rights looks like. What actually works in this space is where senior sergeants, sergeants and senior constables actually take responsibility for engaging their colleagues in understanding where there was a service delivery failure, how we have failed members of our community in the delivery of that service and what we need to do better going forward.

**Mr RICHARDSON** — In that context I think a number of the submitters this morning acknowledged the more than 18 000 Victoria Police sworn officers who do an outstanding job, and a lot of those submitters put that on the record. But if it was not for that oversight body, how would that cultural change happen within Victoria Police? Has it not been the case that IBAC, with those two recent landmark inquiries, has been the driving force, and should we not as a community look for greater oversight or greater involvement from the independent body?

**Asst Comm. CORNELIUS** — I think those two cases actually illustrate that the system is working. It should also be acknowledged that Victoria Police does not just wait for an external oversight body to come in and give us the time of day. For example, the current reform program which I am leading, which is one of the biggest change programs in Victoria Police's history, which is the piece around us taking a stand for a respectful, safe and inclusive workplace where everyone in our organisation, particularly women, is treated with respect — that is a process which had its genesis not in VEOHRC deciding that it would come in and undertake a review of us. That actually came as a result of our chief commissioner of the day, Ken Lay, reaching out to VEOHRC and saying, 'Listen, I don't think we're getting this right. No matter how hard we've tried to get this right we're still seeing this stuff happen, and we need someone independent to come in and help us understand what's going on and help us identify how we can fix it'.

That is a very clear example of where Victoria Police is more than happy to receive advice, more than happy to receive criticism, more than happy to consider very robust recommendations. But also I think you need to recognise that Victoria Police has a track record of reaching out to oversight bodies and reaching out to specialist entities and seeking that specialist advice so that where we ourselves identify that there is a problem we are actually able to get something that goes beyond just treating symptoms and goes to actually identifying how we can fix in a substantive way the underlying cultural mores, the underlying attitudes which actually drive the problem.

**Mr RICHARDSON** — Just finally, a two-part question: we heard from submitters this morning two key points that come from the same sort of line of thinking. Given the number of complaints that Victoria Police receive, why can't reasons be provided for the outcomes of investigations beyond, I guess, the finding that something is not substantiated or the other levels? And beyond that as well, I was wondering, Assistant Commissioner, whether you could take us to how often the conciliatory power under VicPol's act is used in terms of engagement with people who have made a complaint and how that is resolved as well.

**Asst Comm. CORNELIUS** — I think the first point I would make is that we certainly recognise — and the submissions that have been made before this inquiry have certainly brought this home to us — that there is a

very clear need for us to be a lot more transparent and a lot more fulsome in how we explain our outcomes and our decisions to affected people or people who have made a complaint to us. I have to say we have an over-reliance on form letters, which are very anodyne in their content. We really have to move beyond that and engage at a human level with the individual who has been harmed or has been concerned by our behaviour. We owe it to them. It is a very basic principle of customer service — if not, going to a much deeper issue around accountability. So certainly we hear and recognise the need to act on those concerns that are being shared with this committee.

The other observation that I would make, which goes to the second part of your question, is that we certainly see the need for stronger engagement not only with people who come to us with concerns but also with the oversight bodies and others who act to support them. A key piece for us in that is that we actually see ourselves not only engaging more effectively with IBAC and other oversight bodies but also engaging more effectively with third-party entities — for example, Youthlaw or the Law Institute of Victoria or VALS, the Victorian Aboriginal Legal Service, or community legal centres. I think historically when we have engaged with those entities it has tended to be a bit of a zero-sum game, and I think we have got more work to do in terms of building an effective relationship with each of those entities because they actually very much give us a window into some of the areas where most critically we do actually need to take a look at ourselves and understand just how effectively we are supporting often members of our community who need our help the most.

**Mr D. O'BRIEN** — You have answered most of my questions via Mr Richardson's questions, but I did have one on your earlier presentation, Assistant Commissioner. Are there any actual statutory impediments to there being a new established organisation that literally would stop the chief commissioner doing his job? I know you sort of touched on that, but are there existing statutes within the police act or others that he has to comply with, and if we had a standalone organisation that handled all police complaints, would it make it difficult?

**Asst Comm. CORNELIUS** — I think if you had a standalone organisation that dealt with all complaints, you would have to appreciate how much of an impact that would have on what presently happens within Victoria Police. You have already heard evidence from Superintendent de Ridder that there are about 150 officers within professional standards command, and they have the lead role in relation to dealing with complaints and conducting investigations into those complaints. But I think it should also be appreciated that in actual fact the majority of complaints and investigations of complaints actually occur in the wider police organisation. So in workplaces right across Victoria Police local managers are required to conduct investigations into complaints that have been received about police conduct, and the primary means by which that occurs is both through the management intervention model and the local management resolution process. There are a number of minor investigation matters which also go out to local commands and departments.

One of the things that I have observed, not only in my four and a half years running the ethical standards department but then in the following five years as a regional assistant commissioner running southern metropolitan region, is that from the point where investigation of complaints and allegations about poor conduct by police was taken out of ESD and actually made the responsibility much more generally of line managers, we have seen a very significant shift in culture, because back in the bad old days ESD were the people who wore the black hat and it was ESD whose job it was to investigate bad behaviour. Therefore I as a station commander did not have to worry about it because all I would have to do was refer the complaint into ESD and it would grind on forever and a day and maybe three or four years later you might get an outcome.

Now as a senior sergeant I am actually accountable for dealing with those customer service issues, those complaint issues, which go to the heart of whether or not my people are meeting the expectations of the community that I and my station serve. We now see a much greater degree of ownership by managers right across our organisation around taking ownership of and setting standards and expectations in relation to police conduct. That would not have happened if all of that stuff had been allowed to stay in ESD.

Just consider for a moment what would happen now if you took all of those conduct and complaint matters out of Victoria Police and landed them in a separate independent complaint investigation entity. I would have to say to you: you would take us back to last century, because once again the shutters will go up and line managers right across our organisation will be able to eschew their management responsibility for the conduct of their people. They will say, 'That's not our job anymore. It's this organisation's job over here'.

The other piece that I would point out to you is that when I first started in ESD, before management intervention was introduced, and it was introduced on my watch, the internal reporting rate — that is, police officers reporting the misconduct of other police officers — sat at about 8 per cent. That is hardly reflective of a professional reporting culture or a profession which takes the misconduct of colleagues seriously. Our internal reporting rate has now got to between 20 and 22 per cent.

**Mr D. O'BRIEN** — Sorry, 22 per cent of what?

**Asst Comm. CORNELIUS** — This is police reporting the misconduct of other police. That has gone from 8 per cent 10 years ago to 20 to 22 per cent now.

**Mr D. O'BRIEN** — As a percentage of all the complaints?

**Asst Comm. CORNELIUS** — Yes. And that is absolutely reflective of the development of a professional reporting culture and a culture which has a much broader ownership of the accountability around police conduct.

I guess I might engage in speculation here, but I think it would be a fairly safe bet that if we move, for example, to the Northern Ireland police model, where you had a dedicated entity that looked at all police complaints, you would see a significant reduction — a massive reduction — in internal reporting and a significant erosion of a professional reporting culture and a wider ownership of a professional approach to policing within Victoria Police. I know a lot of stats have been bandied around in relation to the success of the Northern Ireland police model. I would ask you to look at just one stat, and that is what proportion of the complaints dealt with by the Northern Ireland police ombudsman are complaints which come to them from other police officers. I think you will find it is a very small number.

**The CHAIR** — We probably have time for one more question. One of the criticisms of the way police deal with police complaints internally relates to regional Victoria — that is, you may have a police officer who has been involved in misconduct at Omeo and then consequently he is investigated by a police officer from Lakes Entrance or Bairnsdale. People would look at that and go, 'Well, we know each other. We know of each other. We know people in that area'. Is Victoria Police looking at a different, more transparent model than what is currently there?

**Asst Comm. CORNELIUS** — Mr Wells, that is a very significant challenge for us. At the locations you cite the problem is exacerbated by the fact that most members in those locations have served there for many, many years. Of course they have grown up together, if you like, as colleagues. Not only is there a very real perception of bias and self-interest and conflict in those sorts of matters, but also I would have to say to you I have certainly seen real evidence that that in fact is the case — there is conflict and bias. So as an organisation we have recognised the need to much more effectively surface those conflicts and address those perceptions but also more particularly to ensure that if an investigation is allocated for investigation outside of PSC, the individual who receives that investigation responsibility is truly independent of the members who are the subject of the complaint.

I might just defer to Superintendent de Ridder to step that out for you.

**Supt de RIDDER** — This issue has been an ongoing issue, and it has been raised repeatedly, certainly over the past four and a half years that I have been working at PSC, by IBAC as an ongoing problem. In the country of course you have got the tyranny of distance, and the temptation has always been to give it to someone who the local manager feels is independent. But independence and a lack of conflict of interest has to be real rather than just a perception.

We have done a lot of work in relation to this. We now have a form that we have adopted from the New South Wales model where we use the conflict of interest form. It must be filled in. Our ethical and professional standards officers out in the field actively monitor this. Before an allocation occurs we have to have that form filled out, and it is something that we use to hold people to account. We still make the odd mistake in relation to this because we have got so many files being investigated out in the field, but I feel that we have significantly improved in this regard and it is an issue that I think IBAC have noted in their conversations with me and in our correspondence. It has certainly dropped off the radar.

Do we need to improve further? Absolutely. I think what we need to do is actually extend it to taking into account what our complainants feel is conflicted in the first instance. We are now positioned, with our introduction of the interpost system, to have a fully automated system to introduce some of those system changes at that point so that we are able to be more sensitive to what complainants actually identify as their concerns about conflict and also their concerns about our proposition if we feel that we are in a position to manage that. Our standing position at the moment is that a member must not be conflicted when they conduct an investigation, and if that requires a 4-hour drive in order to conduct that investigation, so be it. We escalate that right up to the assistant commissioner level if we find that local managers in their allocation of these files are deciding to allocate it to someone that we personally know is conflicted. We do not always get it right, but I think our error rate in regard to this is significantly better than it has been in the past.

**Asst Comm. CORNELIUS** — Superintendent de Ridder makes a critical point. I think this probably lies at the heart of why we have not done as well in this as we would hope to in the future — that is, a critical part of the process needs to be that we engage with the affected person or complainant to understand from them personally and very directly where they see potential conflict lying so that we can surface that at the start of the investigation, so that rather than us just making assumptions we actually are fully informed around how a complainant or affected person sees conflict and then from that perspective have that information inform the decision we make about allocation.

**The CHAIR** — Time has brought this part of the hearing to a close. Assistant Commissioner, you mentioned you had some written responses to answers.

**Asst Comm. CORNELIUS** — We will provide you with the written responses. I do not have them available today, but in relation to each of those 16 questions we are in a position to provide you with the written answers. I will get advice from the people who have been supporting me, and we will advise your secretariat of when you can expect to have those answers. We also have some flowcharts and data, which I think have been made available to you, which were the subject matter of those questions.

**The CHAIR** — Thank you for your time.

**Asst Comm. CORNELIUS** — Thank you.

**Witnesses withdrew.**