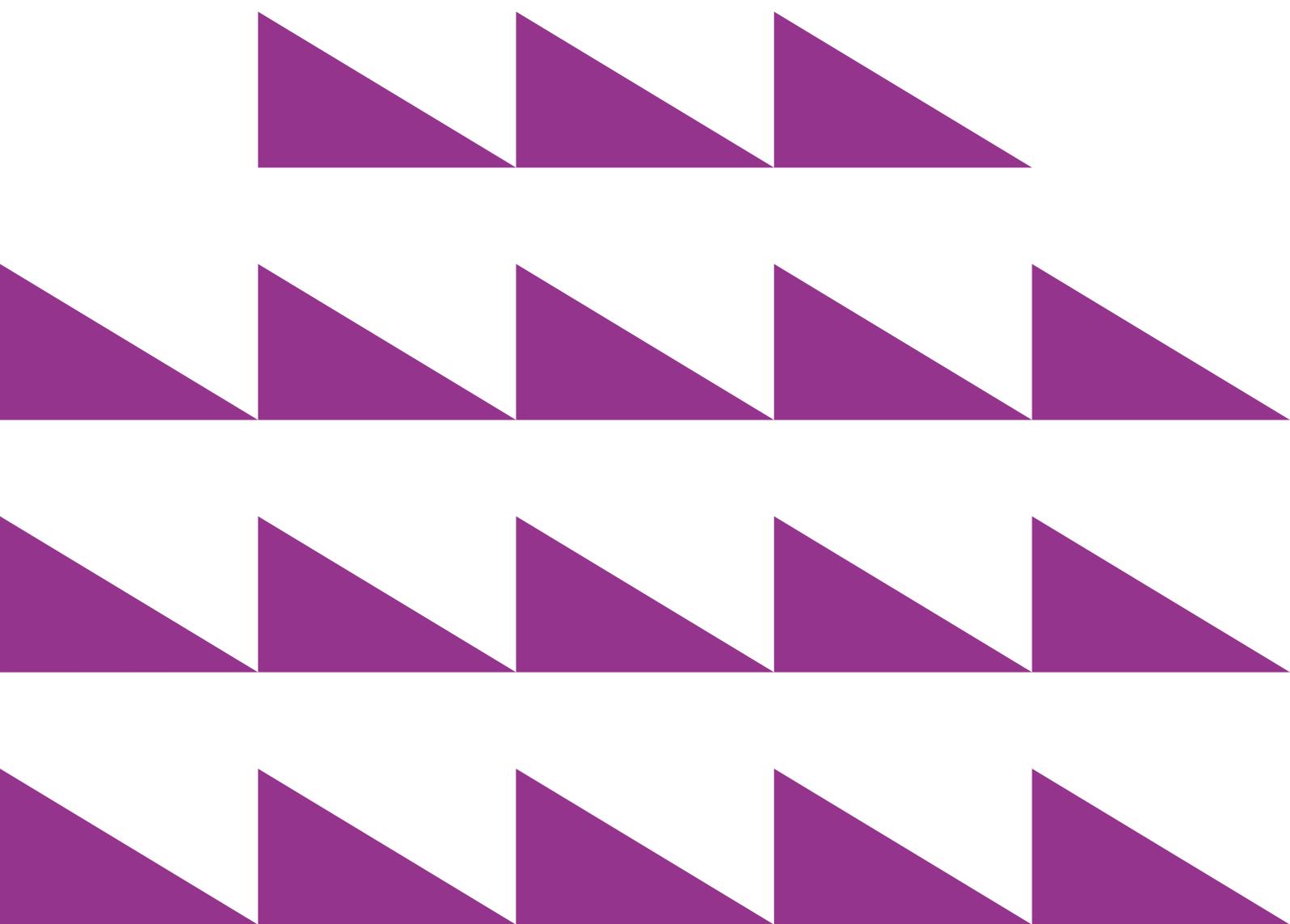


Operation Ross

An investigation into police conduct in the Ballarat Police Service Area

November 2016

A decorative graphic consisting of four rows of purple triangles. The first row has three triangles, the second and third rows have five triangles each, and the fourth row has four triangles. The triangles are arranged in a staggered pattern, with each triangle pointing downwards.

Authorised and published by the
Independent Broad-based Anti-corruption Commission,
Level 1, 459 Collins Street, Melbourne.

November 2016

If you need this information in an accessible format,
please call 1300 735 135 or email
communications@ibac.vic.gov.au. This document can also
be found in formats on our website www.ibac.vic.gov.au

***Order to be published by the Victorian Government Printer.
[PP No 232 Session 2014 – 2016]***

ISBN 978-0-9954265-6-6 (print)
ISBN 978-0-9954265-7-3 (online)

© State of Victoria 2016
(Independent Broad-based Anti-corruption Commission)



You are free to re-use this work under a Creative Commons Attribution 4.0 licence, provided you credit the State of Victoria (Independent Broad-based Anti-corruption Commission) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

Table of contents

Letter of transmittal	1
List of abbreviations	2
1 Introduction	4
2 Case study: Person A	12
3 Case study: Person B	24
4 Case study: Persons C and D	28
5 Policy issues arising out of the case studies	32
6 Identification and management of systemic issues at Ballarat	38
7 Professional Standards Command and complaints	48
8 Potential law reform – public drunkenness	54
9 Conclusions and recommendations	56
Appendix A: Natural justice requirements and responses	61
Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues	98
Appendix C: Scope and purpose of public examinations in Operation Ross	136
Appendix D: Previous IBAC special reports	137

Letter of transmittal

To

The Honourable President of the Legislative Council

and

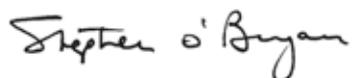
The Honourable Speaker of the Legislative Assembly

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* I present IBAC's report on its Operation Ross investigation concerning the Ballarat Police Service Area.

I presided at the compulsory public examinations that were held in aid of this investigation.

IBAC's findings and recommendations are contained in this report.

Yours sincerely



Stephen O'Bryan QC

Commissioner

List of abbreviations

CAT	Critical assessment team
CCP	Chief Commissioner of Police
CCTV	Closed-circuit television
ESC	Ethical Standards Command (Victoria Police)
IBAC	Independent Broad-based Anti-corruption Commission
OC spray	Oleoresin capsicum spray
OPI	Office of Police Integrity
PSA	Police Service Area (Victoria Police)
PSC	Professional Standards Command (Victoria Police)
ROCSID	Register of Complaints, Serious Incidents and Discipline (Victoria Police)
UoF	Use of Force
VPM	Victoria Police Manual

1 Introduction

1 Introduction

In March 2015 the Independent Broad-based Anti-corruption Commission (IBAC) received closed-circuit television (CCTV) footage from Victoria Police showing the alleged mistreatment of a woman in custody in the cells of the Ballarat Police Station. IBAC subsequently commenced an own motion investigation named Operation Ross.

The investigation expanded to examine:

- incidents involving alleged excessive use of force against three other women at the Ballarat Police Station
- Victoria Police data which indicated the complaint profile of Ballarat Police Station was a cause for concern (including the over-representation of sergeants in complaints)
- the response of senior police managers at the divisional level, as well as Professional Standards Command (PSC), to that concern.

Front line policing can be extraordinarily challenging. Operational police officers regularly deal with potentially volatile people and situations, frequently exacerbated by drugs, alcohol, and/or mental illness. Notwithstanding such challenges, Operation Ross exposed the casual disregard and at times mistreatment of a vulnerable woman in police custody. The other cases examined by IBAC also showed excessive force used against three women in the public foyer of the Ballarat Police Station. All incidents were captured on CCTV; interestingly the presence of CCTV cameras did not appear to deter some officers from questionable conduct.

The investigation also highlighted shortcomings in a number of Victoria Police policies and practices including in relation to probity around promotions, interventions when an officer has multiple complaints, and compliance with strip search policy.

As a result of Operation Ross, IBAC recommended Victoria Police consider whether or not charges should be brought for common assault (or other equivalent charges) in relation to the first case study concerning person A. A number of other recommendations have been made which relate to improving Victoria Police policies and practices which were identified as deficient.

1.1 IBAC and Victoria Police

The Victorian community rightly expects that its police officers will perform their duties and exercise their significant powers (including the power to detain, search and arrest, and use force) fairly, impartially and in accordance with the law.

IBAC has a critical role in independently overseeing Victoria Police to ensure officers are accountable and conduct themselves in a way consistent with the community's expectations.

IBAC's police oversight activities include:

- receiving complaints and notifications about corrupt conduct and police personnel conduct (including complaints received initially by Victoria Police and mandatorily reported to IBAC)
- assessing those complaints and notifications to determine which will be referred to Victoria Police for action, which will be dismissed and which will be investigated by IBAC
- reviewing investigations of selected matters investigated by Victoria Police to ensure they were handled appropriately and fairly (and recommending that Victoria Police take action to rectify any issues identified)
- conducting investigations into serious or systemic police misconduct or corruption in response to complaints or on its 'own motion'
- conducting private and public examinations to assist the investigation and exposure of serious or systemic police misconduct or corruption
- ensuring police officers have regard to the Charter of Human Rights
- undertaking research and other strategic initiatives to inform Victoria Police and the community on particular systemic issues and risks, to help prevent police misconduct and corruption.

1.2 Commencement of Operation Ross

1.2.1 Background

In March 2015, IBAC commenced Operation Ross under section 64(1)(c) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act). Operation Ross principally investigated the alleged conduct of Victoria Police officers stationed at Ballarat Police Station towards certain vulnerable women with whom they had physical contact in the course of their duties. Each of the incidents examined occurred within the precincts of the Ballarat Police Station.

The investigation was prompted by Victoria Police's notification to IBAC of issues concerning the arrest and detention of a woman, who is referred to for the purposes of this report as person A, in the Ballarat watch house. The notification occurred after PSC reviewed CCTV footage of the woman in the watch house in early 2015.

IBAC became aware of other incidents of alleged unnecessary and/or excessive use of force at Ballarat Police Station in recent years. These incidents also involved vulnerable women (referred to as persons B, C and D) and were captured, at least in part, on CCTV footage.

On 1 April 2015, as part of Operation Ross, IBAC announced it would hold public examinations as the Commissioner Stephen O'Bryan QC concluded the various criteria in section 117(1) of the IBAC Act were satisfied.¹ The examinations were to focus on:

- allegations that officers at Ballarat Police Station used excessive force towards four vulnerable people
- whether any human rights had been violated by such conduct
- the sufficiency and appropriateness of internal reporting by Victoria Police officers involved in, or associated with, such alleged conduct
- the way Victoria Police handles complaints and responds to trends relating to alleged excessive use of force by its officers.

¹ The criteria involves exceptional circumstances existing, it being in the public interest to do so, and there being no likely unreasonable damage to reputations or safety risks to individuals.

An important factor in the Commissioner's decision to hold public examinations was that the Ballarat police service area (PSA) had previously been identified by both Victoria Police and IBAC as having a relatively high incidence of complaints against its police officers. Duty failure was the most common complaint, followed by excessive use of force.

If there was a culture of excessive use of force within the Ballarat PSA, particularly against vulnerable people amounting to human rights violations, it was considered to be a matter of public importance that such a culture be thoroughly investigated, exposed and steps taken by IBAC and Victoria Police to bring about its eradication. Further, if such a culture did exist, it was considered in the public interest to determine why Victoria Police had not already taken action to address it and what could be learnt to prevent such a culture developing or being tolerated elsewhere.

1.2.2 Court challenges

The public examinations were scheduled to commence in mid-April 2015, to run for approximately one week, and to examine up to 15 Victoria Police officers. At that time, two witnesses (police officers from Ballarat Police Station who dealt with person A) sought an injunction in the Supreme Court of Victoria to prevent the examinations proceeding. This resulted in public examinations being adjourned until the determination of the Supreme Court applications. While the trial judge dismissed the applications in August 2015, subsequent appeals to both the Court of Appeal and the High Court – each dismissed unanimously – delayed IBAC's public examinations until May 2016.

1.2.3 Public examinations

Public examinations of 13 witnesses took place at the Ballarat Law Courts between 23 and 27 May 2016. They were presided over by Commissioner Stephen O'Bryan QC, assisted by Jack Rush QC and Gary Hevey of the Victorian Bar.

The witnesses included: police officers who had direct dealings with persons A, B, C and D; as well as senior officers at the Ballarat PSA; PSC; and Victoria Police Academy, including police training and police complaints data related to Ballarat PSA.

Nearly all witnesses were legally represented.

1 Introduction

1.3 Background

1.3.1 Ballarat Police Service Area

The Ballarat PSA is structurally located within Division 3, one of the six divisions within the Western Region of Victoria Police. The PSA is responsible for the City of Ballarat, includes the police response zones of Ballarat and Buninyong, and maintains the largest rural police cell complex in Victoria (having capacity for 22 detainees). The PSA consists of approximately 160 officers covering an area of some 740 square kilometres with a population of more than 90,000 people.

-
- Ballarat Police Station is the largest station within the Ballarat PSA
 - Superintendent Andrew Allen is the commander responsible for Division 3 and is based at Ballarat Police Station
 - Inspector Bruce Thomas is the local area commander for the Ballarat PSA. He reports to Superintendent Allen.
-

1.3.2 Professional Standards Command

Within Victoria Police, PSC is the central unit responsible for receiving and assessing complaints, and determining where those complaints should be referred for appropriate action. PSC retains the most serious matters for investigation, with the majority of complaints it receives (approximately 90 per cent) referred to regions or other areas of the organisation for investigation.

PSC has a general responsibility to promote a culture of high ethical standards amongst Victoria Police officers. It does this in various ways including through the provision of information and intelligence to support managers in dealing with officers or work areas considered to be at risk. Information may be provided when requested by a senior officer working in a region, department or command, or may be initiated by PSC.

1.3.3 Use of force by Victoria Police officers

In Victoria, police are empowered to use force – and in exceptional cases, lethal force – if they consider it necessary to prevent a serious offence, to lawfully arrest a person suspected of committing an offence, to prevent a suicide or to apprehend a person who appears to have a mental illness to prevent harm to them or another person. The use of force must be proportionate. This means that officers must use no more force than is necessary and reasonable to the level of threat.

All officers are trained biannually in how to use equipment and techniques to respond appropriately to incidents. This is known as operational tactics and safety training. Officers are taught to apply the ‘tactical options model’ to help them choose the most appropriate tactic with a focus on communication and de-escalation techniques to resolve an incident, as well as a range of proportionate tactical options in the event that force is necessary.

Victoria Police policy requires any incident of use of force either by, or against an officer, to be recorded on a form and submitted to the Use of Force Registry within 24 hours. ‘Force’ is defined as including any situation where officers, in response to an actual or perceived threat in the course of their duty, use any compliance or restraint hold, blow, punch, kick or other defensive tactic against another person.

1.3.4 Charter of Human Rights

Victoria Police officers are required to comply with the *Charter of Human Rights and Responsibilities Act 2006* (Charter of Human Rights), including when exercising their powers to use force. The rights most relevant to the conduct examined in Operation Ross are:

- a person must not be treated or punished in a cruel, inhuman or degrading way (section 10)
- a person has the right to humane treatment when deprived of liberty (section 22).

As part of IBAC's oversight role, it is required to ensure Victoria Police officers have regard to the Charter of Human Rights.² This report highlights instances where it appears that a person's Charter rights have not been upheld.

1.3.5 Statement of Issues paper

On 24 June 2016, a Statement of Issues paper was released by counsel assisting reflecting their views, and thereby fairly putting parties on notice as to areas where they were at risk of adverse findings against them, with an opportunity to be heard through answering submissions. This paper highlighted issues raised in the public examinations including:

- the November 2012 Victoria Police CompStat report³ and the response of senior managers within Division 3
- Victoria Police complaint data on assaults
- the promotion of Sergeant Christopher Taylor
- PSC and its response to officers with multiple complaints.

Most witnesses responded to the issues paper through their legal representatives. At the conclusion of the hearings, the Chief Commissioner of Police applied for and was granted leave to be legally represented in relation to the hearings (to enable him to respond to the issues paper). Due regard was given by IBAC to these submissions in preparing a draft report, relevant parts of which were provided to affected parties for natural justice as prescribed by section 162(3) of the IBAC Act.

1.3.6 Interim recommendation

After the public examinations were concluded and due to the significant delay in IBAC's investigation to that point caused by the court proceedings, together with likely further delay on account of the investigation continuing before this report could be tabled, IBAC made an interim recommendation under section 159 of the IBAC Act to the Chief Commissioner. This recommendation was that consideration be given by Victoria Police to the possible laying of charges for common assault (or other equivalent charges under the *Crimes Act 1958*) in relation to the first case study outlined below concerning person A.

This recommendation followed Victoria Police having notified IBAC in the first place of concerns it had about possible assault by police officers of person A based on CCTV footage, being the stated basis for them being suspended from duty for a period of time.

² Section 15(3)(b)(iii) of the IBAC Act.

³ CompStat is a process where performance data is collected and examined for a specific division or work area. More information on CompStat is provided later in this report.

1 Introduction

1.3.7 Recommendations

Following the public hearings, IBAC made an interim recommendation pursuant to section 159(1) of the IBAC Act to the Chief Commissioner that Victoria Police consider whether charges should be brought for common assault (or other equivalent charges) in relation to the first case study in relation to person A.

IBAC also makes the following recommendations pursuant to section 159(1) of the IBAC Act:

Recommendation 1

Victoria Police review and strengthen its approach to managing officers who have multiple complaints or concerning complaint patterns including by:

- a. ensuring that a subject officer's full complaint history (excluding complaints that cannot be revealed for operational reasons) is attached to a complaint investigation file prior to allocation to an investigator
- b. requiring complaint investigators to consider whether a possible pattern of conduct has been identified and if so, to recommend appropriate intervention action
- c. initiating a formal mechanism whereby local commanders (inspector and superintendent) are notified when an officer under their command reaches various thresholds in terms of the number of complaints the officer has accrued
- d. providing local commanders (inspector and superintendent) relevant information in a timely manner to assist in tailoring a risk management plan for relevant officers referred to in (c) above (which could include the officer's full complaint history and benchmarking report currently available in ROCSID)

- e. monitoring the implementation and effectiveness of risk management plans which could involve local managers reporting back to PSC for strategic advice, guidance and organisation-wide analysis of trends
- f. developing a framework for determining appropriate interventions at various points in an officer's complaint history, to be integrated with the Victoria Police performance development system.

Recommendation 2

Victoria Police to review and strengthen probity processes undertaken in relation to promotions including:

- a. ensuring all promotion boards are provided with a full complaint and compliment history, and any risk assessments previously prepared by PSC, for all shortlisted candidates for promotions
- b. the superintendent of the relevant division or work area endorse any candidate recommended by a promotion board for promotion where such promotion concerns the rank of sergeant or above.

Recommendation 3

Victoria Police to review and enhance training provided to officers on the Charter of Human Rights to improve officers' understanding of and compliance with the Charter of Human Rights.

Recommendation 4

Victoria Police to take steps to ensure officers' understanding of and compliance with the policy and guidelines on searches, including highlighting the need to consider and uphold the human rights of the person being searched.

1.4 Natural justice responses

Appendix A contains a summary of natural justice requirements under the IBAC Act and responses received from persons adversely named in this report, after they were sent relevant draft report extracts pursuant to section 162(3) of the IBAC Act.

1.5 Standard of proof

IBAC's findings in this report are based on the civil standard of proof, namely on the balance of probabilities under the principles contained in *Briginshaw v Briginshaw* (1938) 60 CLR 336. None of the findings are intended to imply that any person is considered to have committed a criminal offence, being something IBAC is proscribed from publicly reporting on by section 162(6)(a) of the IBAC Act.

2 Case study: Person A

2 Case study: Person A

2.1 Arrest

On 14 January 2015 at around 11pm, two officers from Ballarat Police Station attended a call from the owner of a house in suburban Ballarat in relation to an unknown, intoxicated woman (person A⁴) who, after she was heard screaming outside the house, had been let inside. Unknown to police at the time, person A was a sworn officer of Victoria Police on extended leave. She was described in the contemporaneous police running sheets as incoherent, aggressive and abusive.

An ambulance was called and person A was assessed inside it. Back on the footpath (after the assessment), and due to her behaviour at the time, police offered her the choice of going to hospital, or being arrested for being drunk in a public place and taken to the police station. It is questionable from her general condition whether she was in a fit state to make a reasoned choice in this regard.

Two additional officers arrived at the scene: Leading Senior Constable Nicole Munro and Senior Constable Steven Repac. As person A refused to go to hospital, she was arrested. It was stated by the police involved that it took all four officers to hold her down on the nature strip to effect an arrest and apply handcuffs in order to transport her safely in the back of a divisional van to Ballarat Police Station.

In a written statement, the female occupant of the house was complimentary of the way in which police handled what was clearly a difficult situation.

Person A was transported back to the station by Leading Senior Constable Munro and Senior Constable Repac, with an expectation by all police who were involved that she would be treated in the usual way for drunk people taken into police custody, ie she would spend approximately four hours in custody and would be issued an infringement notice.

2.2 Reception and confinement

CCTV footage shows person A arriving at the Ballarat Police Station 'sallyport' (which is an enclosed vehicle unloading bay), being processed at the custody desk, and being placed in cell 1. The footage shows her exiting the police vehicle upon request, providing answers to questions for inclusion on her custody record, and cooperating while being photographed. Overall, and taking into account her intoxicated state, person A was reasonably cooperative throughout this process, a point agreed upon by all officers involved.

There is also CCTV footage of Leading Senior Constable Munro conducting a safety or 'strip' search of person A in cell 1, which is standard Victoria Police practice. This involved removal of person A's t-shirt and bra, and search of her lower body and clothing. Senior Constable Repac appropriately waited near the open cell door, just out of view. Again, person A was compliant during this process.

2.3 Person A can only drink from toilet

Typical of police cells, cell 1 is an austere place, having painted concrete floors and bed shaped blocks, a drinking water fountain and toilet. As is standard for alcohol and/or drug affected prisoners, no mattress or blanket was provided to person A when she was first placed in the cell, for safety reasons.

Unfortunately the water fountain in cell 1 was inoperative at the time, something police on duty that night did not seem to be aware of.

Person A is seen on CCTV footage in her cell appearing frustrated that she could not fill a paper cup with drinking water from the fountain. Despite waving the cup at the camera in her cell and then gesturing towards the fountain, she could not attract the attention of the officer responsible for remotely monitoring prisoners in their cells. Person A is then seen filling her cup from the toilet and drinking from it. She is also seen calling through the small communication flap in the cell door.

⁴ Person A has since revealed her identity to the media, however it is considered appropriate for consistency to de-identify all persons who are the subject of case studies in this report.

2.4 Trouble in cell 1

Later, at around 1.10am on 15 January 2015, a police officer – referred to in this report as First Constable A⁵ – told custody Sergeant Renee Hulls that person A wanted to speak with the officer-in-charge. Neither officer said they recalled what that was about. Person A has stated she wanted a blanket. They opened the cell door to speak to person A after first attempting to talk through the communication flap, and were met with person A attempting to force her way out of the cell. There was a scuffle and person A was pushed back inside the cell, but only after she had grabbed and torn away Sergeant Hulls' neck lanyard to which were attached the sergeant's security swipe pass for various police station doors, as well as a pen.

Sergeant Hulls decided to take action to retrieve these items. She armed herself with a police issue can of oleoresin capsicum foam (OC spray), stating in evidence that this was for safety reasons due to person A's aggressive demeanour. Sergeant Hulls then opened the cell door and requested the return of her pass, only for person A to indicate she had flushed it down the toilet. The situation got out of hand when person A forced her way out of the cell and scuffled with Sergeant Hulls and First Constable A, who were trying to subdue person A in order to retrieve the snatched items, before returning person A to the cell.

The two officers were unable to subdue person A. During the scuffle, all three women were on the floor in the corridor outside cell 1. Sergeant Hulls said in evidence that at one stage she could feel her swipe pass down the trousers of person A. During these chaotic events the OC spray can was either dropped or knocked out of Sergeant Hulls' hand, who then kicked it away. She explained this was because person A had been trying to grab it from her. Sergeant Hulls said in evidence that throughout this skirmish, she had been requesting person A to calm down and return her lanyard.

2.5 OC spray deployed

With person A difficult to control and the two police officers having no immediate backup support, Sergeant Hulls managed to retrieve the OC can and spray some of its contents onto person A's face and hair. Police guidelines require OC spray to be deployed only in violent or threatening situations, and not simply to encourage compliance with an officer's direction. Its deployment in this situation was appropriate in accordance with these guidelines, as person A had become a physical threat to the officers, including having injured Sergeant Hulls' upper arm in one scuffle.

Back on her feet but affected by the spray, person A then ran into the confined custody administration corridor area, while both officers continued their attempts to restrain her. There was more scuffling on the floor, with First Constable A applying additional OC spray to person A's face before running into the control room to radio for backup. At this point Sergeant Hulls was suffering secondary effects from the spray (she said in evidence she had difficulty seeing) and could not contain person A on her own. Person A then stood up and ran into a nearby storeroom where she tried to hide.

⁵ First Constable A was a female officer who has since left Victoria Police. She has not been identified due to public interest considerations.

2 Case study: Person A

2.6 Return to cell 1

At this time Sergeant Christopher Taylor, who was off duty at the time, emerged from another part of the station to check what was going on. He suggested to Sergeant Hulls that she wash her face with running water to help relieve the temporarily debilitating effects of the OC spray, followed by taking a cool shower and changing her clothes. He effectively took charge of the station, due to Sergeant Hulls' incapacitation.

Also appearing on the scene were Constable Simon McCarty, as well as the two officers who initially dealt with person A before her arrest. This group, including Sergeant Taylor, located person A in the storeroom. As person A refused to cooperate and dropped to the floor, Sergeant Taylor instructed Constable McCarty to drag her back to cell 1. This occurred with person A on her knees. No criticism is made of this, save that someone present might have tried specifically to assist person A entering cell 1, rather than have her dragged over a small raised steel strip along the entrance floor, given the likely discomfort that would have caused.

Back in cell 1, person A is seen lying face down on the floor for nearly one and a half minutes after being handcuffed by Constable McCarty. Constable McCarty appears from the CCTV footage to have exercised an appropriate amount of force to ensure person A did not get up (namely, by placing his left foot on one of her legs with most of his weight on his right side for just over one minute). A significant amount of OC foam is seen pooling on the cell floor around person A's head; it is therefore likely she was experiencing significant discomfort through the burning sensation the foam causes to the eyes, nose and mouth areas. The pain caused by OC spray is sometimes described in police training as horrendous, although it is known to affect some people less than others. From this point on, the fight appears to have gone out of person A.

2.7 Search for the lanyard and the return of Leading Senior Constable Munro and Senior Constable Repac

A minute elapsed while Constable McCarty put on protective disposable gloves and First Constable A removed person A's trousers, socks and underwear while looking for the lanyard taken from Sergeant Hulls. As person A was lying face down on her stomach with her hands cuffed behind her and she was affected by OC spray, positional asphyxia was a real risk. It is noted that police are trained that death in such a position can occur very suddenly and that an attempt should be made as quickly as possible to get the prisoner upright onto their knees or standing. The Victoria Police Manual (VPM) states that when using OC spray or handcuffs, officers should prevent the risk of positional asphyxia by ensuring people are not left lying face down with their hands restrained behind their back.

As person A was now handcuffed and clearly subdued by the OC spray, it would have been more humane and appropriate from a human rights perspective had she been immediately taken to the showers, or at least to a sink, to have cool running water applied to her face and hair to relieve the severe burning sensation she must have been experiencing. The search for the missing items could have waited. Instead, she was left in considerable likely discomfort on the floor of her cell for two and a half minutes before suffering the indignity of having her lower clothing removed in front of Constable McCarty, and her lower body left exposed in front of male officers (described below).

Leading Senior Constable Munro and Senior Constable Repac, the original arresting officers of person A, returned to the police station in response to Constable's A radio call for help. Moments after their return, First Constable A is seen on CCTV footage removing person A's underwear, with Constable McCarty hovering over her upper body area. With person A fully subdued and no longer a threat, Leading Senior Constable Munro, closely followed by Senior Constable Repac, entered the cell whereupon Leading Senior Constable Munro swiftly delivered a forceful kick with her right foot into the lower rib or stomach area of person A. Leading Senior Constable Munro was wearing her normal patrol outfit including heavy boots.

In her evidence, Leading Senior Constable Munro explained her action as an attempt to get person A's attention and 'to calm her down'. Further, that she 'didn't want to put myself at risk by going close to her because I didn't have gloves'. She said the act was not malicious and that she was an ethical person. While Leading Senior Constable Munro had earlier said in evidence that she could only remember touching person A with her foot, there can be no disputing the CCTV footage.

Leading Senior Constable Munro's evidence was that before she entered the cell on that occasion, she had attended to the welfare of Sergeant Hulls and First Constable A, and had herself been affected by the OC spray lingering in the air. This means she had ample time to be briefed by those two officers, and to understand that person A was now fully restrained, subdued and no longer a threat.

In light of Leading Senior Constable Munro's knowledge of the considerable disturbance person A had recently caused at the station, and how readily Leading Senior Constable Munro, as an experienced officer, would have observed person A's handcuffed and subdued state upon entering the cell, her evidence explaining her kick is not plausible. Indeed it verges on the preposterous for a trained police officer to justify a forceful kick into a prone person's rib area as an action intended to gain a person's attention in order to calm them down. Therefore it cannot be ruled out that the kick was an intentional malicious payback to punish the prisoner for 'playing up'. This conclusion is consistent with the expert evidence of Superintendent Peter Seiz, manager of the Operational Safety Division at People Development Command, Victoria Police Academy, who observed that Leading Senior Constable Munro's actions were inconsistent with police training. He stated he would have taken a serving officer or a recruit to task, had such conduct occurred during mandatory biannual operational tactics and safety training.

2.8 Senior Constable Repac joins in

With Constable McCarty leaning over person A's upper body and appearing to question her about something, and Leading Senior Constable Munro present with First Constable A hovering around the cell door entrance near person A's feet, Senior Constable Repac entered the cell. He turned to face the cell door away from person A's head, placed his left foot on the lower part of the back of her right leg and then forcefully stomped on the same area of her other leg. Based on the CCTV footage, there was no apparent justification for Senior Constable Repac's conduct, as person A was subdued and not kicking out. Like Leading Senior Constable Munro, Senior Constable Repac was also wearing standard issue heavy boots, and such a forceful act by him would have hurt and likely contributed to the bruising sustained by person A during the time of her contact with police (which can be seen on CCTV footage a number of hours later, and was also the subject of photographs tendered at IBAC's public hearings).

Constable McCarty and First Constable A then exited the cell, with Leading Senior Constable Munro leaning over person A and speaking to her in a fairly animated way, and with Senior Constable Repac continuing to stand with his full weight on the back of person A's lower legs for more than half a minute. Senior Constable Repac then reversed his position by placing the full weight of his left boot onto the back of person A's lower left leg and forcefully stomping on the same part of her right leg with his other boot.

Just before leaving the cell, Senior Constable Repac kicked with his left boot the shin area of person A's left leg. The kick was so hard that her leg was forced over the back of her right leg to the point where it touched her right buttock. The kick, which Leading Senior Constable Munro said somewhat glibly in evidence 'doesn't look good', was forceful, no doubt painful, and appears, based on the CCTV footage, entirely gratuitous and without justification.

2 Case study: Person A

2.9 Senior Constable Repac's explanation

An issue arose as to why Senior Constable Repac entered cell 1 when person A was naked from the waist down and there were female officers available. It will be recalled that he had a few hours earlier respected her dignity by waiting outside the cell when she was subjected to a strip search by Leading Senior Constable Munro. He explained in evidence that 'I was asked – I can't remember who by – to secure her [ie by handcuffing] for the purposes of giving her aftercare because she had been foamed'. Bearing in mind person A had already been secured by others, this evidence lacks credibility.

Senior Constable Repac went on to say he then 'stood on her legs for the purpose of securing her lower body while Senior Constable Munro effected the handcuffs' and that 'we sat her up as soon as the handcuffs were applied'. As to why he did not observe immediately upon entering cell 1 that person A was already handcuffed, Senior Constable Repac claimed to be more concerned about controlling the lower part of her body, to have assumed the handcuffs were being also applied by Leading Senior Constable Munro, and not to have looked at her upper body. He also said he reassured person A that she would be taken to the showers for aftercare. He denied being angry or shouting at her.

Apart from the inherent improbability of Senior Constable Repac not paying attention to his partner's alleged attempts to handcuff a previously aggressive and hard to control person, the CCTV footage wholly contradicts Senior Constable Repac's evidence that upon entry into cell 1, he did not look at person A's upper body; he clearly did. In so doing, it would have been obvious to anyone, in particular a trained police officer, that she was already handcuffed. In fact the footage shows Senior Constable Repac spent more time observing what was going on around person A's upper body than her lower body.

Senior Constable Repac resisted suggestions by counsel assisting that he stomped on person A's legs a number of times, which the footage plainly shows on several occasions, and otherwise explained standing on them by saying that 'I had to pin her legs down to be able to stop her from being able to move and potentially kick out at Senior Constable Munro... we restrained her because she was at the time a threat to the safety and wellbeing of the members... I was just doing what was instructed of me'.

2.10 Serious discrepancies in Senior Constable Repac's statement

In his evidence, Senior Constable Repac made a number of references to the situation being 'dynamic'. He said he didn't have time to 'formulate a game plan. I just knew that I had to pin her legs down to be able to stop her from being able to move and potentially kick out at Senior Constable Munro'. In fact, the CCTV footage of person A prior to Leading Senior Constable Munro and Senior Constable Repac entering her cell contradicts Senior Constable Repac's evidence in that not only was person A fully restrained and subdued at the time, she did not move her legs in what might be considered a threatening manner. This footage is at odds with Senior Constable Repac's written statement of these events when he said he 'assisted another member placing handcuffs on (person A) in the door area of cell 1...(and that) she continually resisted while handcuffs were being applied, so I pinned her legs down to prevent her from kicking out at members as she was continually struggling against members'.

Asked by counsel assisting to describe the nature of person A's continued resistance, Senior Constable Repac replied that 'when I was standing on her legs I could feel her trying to move her legs away from me', which would not be unreasonable given the discomfort she must have felt under his estimated weight of 95 kilograms. This cannot legitimately be characterised as resistance in these circumstances. When giving evidence about inaccuracies in his statement of the kind highlighted above, Senior Constable Repac ultimately accepted it was contradicted in material ways by the CCTV footage. However, he maintained his statement reflected what he believed at the time was occurring. This evidence is difficult to accept based on the footage.

As for the apparently forceful kick he delivered just before exiting her cell during the alleged handcuffing, Senior Constable Repac denied he deliberately kicked her. He suggested instead that his was 'a kneejerk reaction' because he 'perceived there was a threat there that I was going to get kicked'. Based on the CCTV footage, this evidence is difficult to accept.

As he did in relation to the kick by Leading Senior Constable Munro, Superintendent Seiz also expressed concerns in his evidence about the forceful conduct of Senior Constable Repac towards person A. Contrary to policy and consistent with other evidence that Ballarat PSA was suspected by police command of having a culture of under-reporting use of force, Senior Constable Repac did not complete a use of force form, which may indicate there was no justification for the use of force on that occasion.

2.11 Conclusion on Senior Constable Repac's forceful conduct

As with the earlier kick by Leading Senior Constable Munro and forceful stomping by Senior Constable Repac, the final kick by Senior Constable Repac, as described earlier, was part of an ongoing breach of person A's human rights as set out in the Charter of Human Rights, specifically treating a person in a cruel, inhuman and degrading way (section 10) and failing to treat a person who is deprived of their liberty with humanity and with respect for the inherent dignity of the human person (section 22).

Regarding the stomping and final kick by Senior Constable Repac, it cannot be ruled out that the actions were intended to punish person A, either for causing a disturbance at the station, or for something she said to him and Leading Senior Constable Munro when they were in her cell. Why Senior Constable Repac was even in the cell, particularly when person A was not fully clothed, has not been satisfactorily explained by Senior Constable Repac or Leading Senior Constable Munro, notwithstanding their unlikely story of entering her cell under instructions to handcuff her.

2 Case study: Person A

2.12 Further events

Senior Constable Repac then followed Leading Senior Constable Munro out of the cell, leaving person A on her stomach unattended for 10 seconds. As mentioned, this is contrary to police training for a person who is affected by OC foam due to asphyxiation risk. Leading Senior Constable Munro and Senior Constable Repac then re-entered the cell, with the latter immediately planting his left boot on the lower part of person A's left leg. He then leaned over close to her head in a manner that suggests he was remonstrating with her. Leading Senior Constable Munro then paid attention to the middle of person A's body, possibly looking for Sergeant Hulls' missing lanyard or possibly to re-position her underwear, with Senior Constable Repac again forcefully stomping and standing on the lower part of person A's left leg with his left boot. This can only have exacerbated the risk of causing person A to panic, which heightens the risk of asphyxiation.

After a further 40 seconds elapsed, Leading Senior Constable Munro then helped sit person A upright against the cell wall, her legs slightly apart, within full view of Senior Constable Repac. Dressed in only a t-shirt and underwear, she was made to sit on the cell floor for close to a minute, with Senior Constable Repac appearing at the door a couple of times pointing with his finger in what appears to be a 'ticking off' gesture.

With Leading Senior Constable Munro and Senior Constable Repac in the corridor just outside the door of cell 1, another officer assisted by Senior Constable Repac then grabbed person A's shoulder area and dragged her out of the cell into the corridor including over the raised metal ridge which is likely to have caused unnecessary further discomfort. When just outside the cell door she was helped up and while handcuffed, walked to the shower by that officer and Senior Constable Repac, and then left in the shower for approximately 20 minutes. Person A has stated that the shower was hot, which if correct, is contrary to police training as warmth exacerbates the painful burning sensation caused by OC spray. Although various officers came and went from the shower area, no witness present at the time and who was called to give evidence said they could recall who was responsible for turning on the shower and ensuring it was kept at an appropriate temperature. It is of concern that no officer appears to have been responsible in that regard, considering person A was handcuffed, suffering from OC spray and probably still affected by alcohol.

While person A was in the shower, CCTV footage of the nearby corridor shows paramedics attending to Sergeant Hulls with a stethoscope and eye wash. They did not however attend to person A.

Person A, with her wet upper clothing on, was then wrapped in a towel and transported to hospital by police, where a brief medical observation was conducted while she remained in the vehicle, apparently for security reasons, before being returned to Ballarat Police Station in the early hours of 15 January 2015 and placed in cell 9. She was left there with her wet upper clothing still on and her underpants. CCTV footage shows person A attempting to sleep on the cell floor in that condition.

2.13 Sergeant Taylor's evidence

Sergeant Taylor initially said in evidence that he gave directions to the female officers to search person A. Upon closer questioning by the Commissioner, he qualified this by saying that he issued an overall instruction to the group of officers present to firstly search person A for the missing lanyard, which he assumed a female officer would do, and then to provide her with aftercare by use of the prisoners' shower. Although there was an eye wash facility at the back of the station 'sallyport', he said its use was for compliant people, which she had not been. He did not supervise these instructions. Not that he necessarily had to, however with the benefit of hindsight with regard to the general lack of care shown towards person A, it probably would have been better had he done so. Sergeant Taylor said he rang an ambulance and requested paramedics to assess the condition of both Sergeant Hulls and person A, but the paramedics preferred for person A to be assessed at a hospital.

At the request of the patrol supervisor, Sergeant Taylor also downloaded onto a disk the relevant CCTV footage and took photographs of the scene, including photographs of bruising to Sergeant Hulls' right upper arm. He said he was not aware at the time of any injuries suffered by person A. He also said in evidence that upon her return from hospital, person A told him for the first time that she was a Victoria Police officer, which he verified with another senior officer by telephone and was told that she was on long term leave. Sergeant Taylor said that he conveyed this information to Sergeant Hulls on her return from hospital at around 2.45am, and to Inspector Peter Greaney (duty inspector for the region) when he attended the station at around 4.30am on 15 January 2015. He also contacted a crisis assessment team (CAT) who said they would not attend immediately but would do so later that morning after making further inquiries.

When asked by counsel assisting about person A being left in her cell in damp upper clothing and no lower clothing apart from her underwear, Sergeant Taylor agreed she should have been provided with dry clothing if available. His evidence was to the effect that clothing provided by the Salvation Army was possibly available at the station for use by people in custody. However, he said he was unaware if any was available at the time and in any event, he was no longer in charge at the relevant time as Sergeant Hulls had returned to duty. If clothes were available at the time, as appears likely, this would be another illustration of a collective failing on the part of officers present to properly attend to the welfare and basic human rights of person A. In particular, no specific officer was designated or otherwise took responsibility for attending to the welfare of person A, with everyone present apparently either assuming someone else would do so, or simply not caring.

Had Sergeant Taylor at an earlier time, when he took charge following Sergeant Hulls' incapacitation, nominated a specific officer to be responsible for person A's welfare, and required them to report back to him (or Sergeant Hulls upon her return from duty) from time to time, it is likely a significant degree of person A's apparent high level of discomfort after being handcuffed and subject to OC spray could have been avoided. This observation is part of the context behind evidence given by the local area commander for the Ballarat PSA, Inspector Bruce Thomas who agreed with counsel assisting that an uncaring attitude appears to have been displayed by police generally towards person A between the time she was returned from the hospital in the early hours of 15 January, until he visited her cell later that morning.

2 Case study: Person A

2.14 Inspector Thomas' cell visit

At around 7am on 15 January Inspector Thomas, after being briefed by others and learning that person A was a Victoria Police officer on leave for medical reasons, conducted a welfare check on her. He said in evidence he also wanted to explain that she was to be assessed by a CAT team. He recalled she was wearing her underwear, which is confirmed by CCTV, and that she complained of being cold. When asked by counsel assisting his view of her having been left in that state for hours in her wet clothing, he said it was 'concerning'. He said he directed she be given dry clothing, a blanket and a cup of tea. A mattress was also provided to her. He recalled person A pointed out to him bruising on her legs and to her body, and that she complained of pain. This is not surprising given the earlier treatment she had received at the hands of Leading Senior Constable Munro and Senior Constable Repac.

Inspector Thomas conceded that up until he attended the station that morning and intervened, there had been a lack of proper consideration for person A's dignity. To that can be added a significant lack of proper consideration for her wellbeing from the time shortly after she was subdued by OC spray and handcuffed. This was notwithstanding the on-and-off presence throughout the early hours of that morning of about eight officers, including three sergeants and Inspector Greaney, who attended the station at around 4.30am after learning by telephone that person A was a police officer. Inspector Greaney said in evidence he relied on discussions with other sergeants at the station, including Sergeant Hulls, to satisfy himself that person A's welfare was being attended to.

Nevertheless, and with the benefit of hindsight, it appears that until the arrival of Inspector Thomas, no officer properly assumed responsibility for person A's welfare after she was subdued in her cell following her earlier escape from it. No doubt police were distracted by the serious disturbance she had caused, however policing involves regular contact with people who behave erratically and unpredictably for a variety of reasons. In a disciplined environment, trained and experienced police, particularly at sergeant level, should readily apply basics such as quickly assessing a situation and assuming control of it, including directing a specific officer to take responsibility for the proper supervision and welfare of a vulnerable and physically injured or suffering prisoner. They should also require regular updates on their condition.

Inspector Thomas agreed that until his arrival, no one adequately assumed command of the situation pertaining to person A.

2.15 Person A discharged and later charged

Person A was released from Ballarat Police Station having spent about 16 hours in custody after her arrest for being drunk in a public place.

As a result of the incident in the Ballarat Police Station cells, person A was held in custody to be interviewed. As a separate minor matter was under investigation by the Ballarat Criminal Investigation Unit, person A was held until the detective responsible for that file was on duty. The interview of person A commenced at 2:51pm and concluded at 3:00pm. Person A was released from custody sometime after 4:00pm.

Section 464A of the Crimes Act states that a person can be held in custody for a reasonable time. Subsection 4 outlines the factors which may be considered in determining a 'reasonable time'. One such factor is the complexity of the investigation. It is difficult to reconcile the period of person A's detention with the requirements of section 464A.

In addition to being issued with a crime infringement notice for being drunk in a public place, in late 2015 person A was also charged with assault of Sergeant Hulls, as well as with various other offences. These charges were subsequently withdrawn.

2 Case study: Person A

2.16 Other complaints about Ballarat officers

IBAC is aware of two other incidents relating to treatment in the Ballarat Police Station cells which suggest the treatment of person A is not isolated.

2.16.1 Injury in custody in 2013

In 2013, an intoxicated man held in the cells at Ballarat Police Station fell and hit his head on the concrete floor. Although custody officers observed the fall, the man did not receive assistance for nine minutes, at which time an ambulance was called and he was transported to hospital where he was placed in an induced coma. This case was classified as an 'injury in police custody' and therefore considered a 'serious incident' warranting oversight by PSC. IBAC reviewed the investigation in 2014 and reported on its review in a 2015 special report.⁶

IBAC's review raised concerns regarding the inadequate treatment and attention given to the prisoner. It called into question the general demeanour of the officers on duty and in charge, and their apparent lack of concern for the man's basic human rights. The review also identified deficiencies with the scope and conduct of the police investigation. In particular, IBAC was concerned the investigation involved a conflict of interest as it was undertaken by local officers without PSC oversight, even though this is required for a serious incident. IBAC was also concerned that the custody officers failed to undertake a medical and welfare assessment or a detainee risk assessment before lodging the prisoner in the cells.

Victoria Police responded to the issues raised by IBAC including acknowledging the concern regarding conflict of interest. However, Victoria Police did not agree the Charter of Human Rights had been breached. IBAC intends to discuss this further with Victoria Police.

2.16.2 Treatment in custody in 2009

In 2009, Ballarat officers arrested a young man in Ballarat for public drunkenness. The man alleged he was assaulted by police during his arrest. According to police statements, the man resisted and assaulted one of the officers (and was charged with resist arrest and assault police). He was sprayed with OC spray.

The man was taken to Ballarat Police Station and placed in a shower to alleviate the effects of the OC spray, before being placed in the cells. During the course of his arrest and being placed in custody, the man allegedly sustained a broken wrist and a swollen right eye.

In 2010, a magistrate found the man's arrest was unlawful and the charges against him were dismissed. The man then instigated civil proceedings against police, in part claiming he was refused medical treatment while in custody. These proceedings prompted a Victoria Police investigation of the incident. That investigation found the allegation that medical treatment had been denied was unable to be determined, and the allegation that the man had been refused water was unfounded. The investigation into the alleged assault did not proceed as the man refused to provide a statement.

However, during the civil proceedings, a police radio communication was obtained which recorded an officer at the Ballarat watch house talking to an officer involved in the arrest, describing watching the man (presumably via CCTV) drinking water from the toilet and using toilet water to alleviate the effects of the OC spray.

IBAC understands the civil proceedings were settled out of court for an undisclosed sum.

⁶ IBAC Special report concerning police oversight, August 2015

3 Case study: Person B

3 Case study: Person B

3.1 Background

Person B was the mother of a young man who was intercepted by a Ballarat police officer while driving in December 2010. The young man was spoken to for alleged offences including unlicensed driving. Following this, person B attended at the reception counter of Ballarat Police Station to make a formal complaint alleging that local police (allegedly including then Leading Senior Constable Taylor) harassed her son by picking on him and threatening to send him to gaol.

In summary, person B's complaint was not formally recorded and after she refused to leave the station following a number of requests to do so, she was dragged by her arms towards the exit by Leading Senior Constable Taylor⁷ and another officer, before being dragged into the police station proper and placed in an interview room. At some point she was charged with assault police, resist police and refusing a direction to move on. These events are described in more detail in the following sections.

3.2 Person B at the counter

CCTV footage shows person B arriving at the reception counter and initially being attended to by an officer on the other side. Leading Senior Constable Taylor emerges and is seen listening to her for a couple of minutes. Person B is seen pushing her son's drivers licence across the counter towards Leading Senior Constable Taylor, with him pushing it back in her direction.

Not inconsistent with the footage, Sergeant Taylor said in evidence that person B's voice was raised and she was aggressive, abusive and irrational. He also said he listened to her complaint, and tried to explain to her that her son's licence was suspended at the time he was intercepted by police (he recalled for 'hoon' driving).

Person B demanded to see a more senior officer but was told no one was available and that she would need to return the next day. After several minutes, Leading Senior Constable Taylor instructed her to leave the police station, and can be seen on the footage gesturing with his arm towards the front door. He agreed in evidence he did not formally record person B's complaint, which he considered had no basis. He also queried in his evidence how he could have taken person B's complaint at that time because of her agitated state of mind. Nevertheless it would appear he knew enough about the tenor of her complaint to make some effort to formally record it at the time.

⁷ Leading Senior Constable Taylor was promoted to sergeant in 2013. For the purposes of describing the incidents involving persons B, C and D his rank is described as Leading Senior Constable. When reference is made to evidence he gave at the public examinations, his current rank – sergeant – is used.

3.3 Forcible removal of person B

After person B refused to leave, Leading Senior Constable Taylor and a female officer then went to the public side of the counter where he is again seen gesturing to her to leave, and person B is seen standing her ground and continuing to remonstrate.

Based on CCTV footage tendered into evidence, Leading Senior Constable Taylor then took person B firmly by the right arm, and the other officer took the left one, in order to lead her towards the front door. At this point person B dropped to the floor in an attempt to make her removal more difficult. Still struggling and with her body largely horizontal, the two officers then hauled person B by the arms into the station proper.

These events took place within five minutes of person B entering the foyer of Ballarat Police Station to make her complaint.

Person B was charged with assault police for kicking out, however again based on available CCTV footage, this appears to have been a reaction to her being grabbed in circumstances which she might reasonably have felt were unwarranted.

3.4 An avoidable situation

In his evidence, Sergeant Taylor agreed with counsel assisting that in hindsight the situation involving person B could have been avoided. This seems likely had he recorded her complaint to the extent possible at the time in accordance with his training and obligations. Had she remained argumentative, he could have withdrawn from the reception area and left person B in the public area to calm down. This would have been appropriate bearing in mind person B at no time appeared to pose any physical threat to police or to any members of the public who may have entered the station.

Consistent with this view, in his evidence Sergeant Taylor indicated that, at least in more recent training, he had learned to remove himself from these sorts of situations and to allow the parties in a confrontation to cool off. He effectively conceded in his evidence that he failed to remain calm during the incident and certainly failed to try to let things settle down by withdrawing from the situation.

3 Case study: Person B

3.5 Consequences for Leading Senior Constable Taylor and person B

Person B made a complaint about her treatment by Leading Senior Constable Taylor. Her complaint was investigated by the then Victoria Police Ethical Standards Command, and he was criminally interviewed in relation to the allegations around excessive use of force. Consideration was given to laying criminal charges but after the matter was reviewed by the Office of Public Prosecutions, it was decided not to proceed. Ultimately Leading Senior Constable Taylor was given workplace guidance in relation to his failure to record person B's complaint. He said he also had his rank upgrading removed and was placed on an initial 12 months risk management plan (which seems to have been reduced to 6 months by one of his superiors).

The assault charges against person B were later withdrawn.

Person B pursued civil proceedings against Leading Senior Constable Taylor seeking damages for assault. IBAC understands the matter was settled on a confidential basis.

IBAC also understands Leading Senior Constable Taylor was promoted to sergeant while his complaint file and the civil proceedings were outstanding. These circumstances are outlined later in this report.

4 Case study: Persons C and D

4 Case study: Persons C and D

4.1 Background

The incident with person B involving Leading Senior Constable Taylor was not an isolated one. In 2009, a woman (person C) was forcibly removed from the reception of Ballarat Police Station when, after making what appears to have been an agitated inquiry about her son who had been recently arrested by Ballarat police, she refused several requests by Leading Senior Constable Taylor to leave. These events are detailed below.

4.2 Person C at the counter

CCTV footage shows person C arriving at the front counter of Ballarat Police Station accompanied by two female supporters. She may well have been argumentative with a police officer who initially attended her at the counter. It seems that her son was arrested earlier that day which probably explains why, in Sergeant Taylor's words, she was aggressive and 'a little bit fired up'. Such a situation is something frontline police such as Leading Senior Constable Taylor face and are trained to deal with regularly. In particular, they are trained in situations where there is no risk of harm – which appears to have been the case on this occasion – to try to defuse the situation and if necessary and safe to do so, to withdraw to give the agitated person an opportunity to calm down. This is common sense.

4.3 Leading Senior Constable Taylor takes over

After a short period of time Leading Senior Constable Taylor is seen entering the public area of the station where person C and her two supporters were, together with backup of mostly male officers. Then Leading Senior Constable Taylor is seen gesturing towards the front door and appearing to demand that person C and her supporters leave.

Footage shows them starting to walk towards the automatic doors and those doors starting to slide open. At this point Leading Senior Constable Taylor can be seen behind person C with her head in what is commonly known as a 'choke hold'.

Sergeant Taylor conceded in his evidence such holds are contrary to police training, due the physical risks to the person being held. Despite this, he used one while forcefully marching person C through the front foyer air lock and onto the street, following her refusal to obey his direction to leave the station. One supporter of person C is seen briefly trying to hinder Leading Senior Constable Taylor in this procedure, however being a strongly built man, he easily brushed her aside.

Sergeant Taylor's evidence was that due to the lapse of time and his inability to obtain records of the 2009 incident, he had no memory of the details surrounding it.⁸ However he posited he must have applied the choke hold after a scuffle with person C, although this is not apparent from the available footage.

Leading Senior Constable Taylor's colleagues could all see what was occurring, and his use of a forbidden choke hold demonstrated very poor leadership to his subordinates. Of concern regarding station culture, a male sergeant was one of the officers accompanying Leading Senior Constable Taylor, but he does not appear on the CCTV footage troubled by Leading Senior Constable Taylor's actions.

⁸ IBAC investigators subsequently obtained and provided Sergeant Taylor with a recorded interview with him by police investigating person C's complaint about the incident.

4.4 Person D apprehended

One of person C's supporters was person D. Soon after Leading Senior Constable Taylor is seen on CCTV footage exiting the police station with person C firmly in his grasp, he is seen returning with person D in another choke hold, again with his colleagues including the sergeant referred to above, who was nearby displaying a 'business as usual' demeanor.

When giving evidence, Sergeant Taylor said he did not recall why person D needed to be apprehended and returned to the station with such urgency, nor why a choke hold was used. It appears she was under suspicion of having committed an offence on an earlier occasion.

IBAC understands person D was released from custody a couple of hours later.

4.5 Sergeant Taylor's evidence

Sergeant Taylor conceded in evidence that the choke holds he used on persons C and D were entirely inappropriate and set a bad example to others. He said that in a situation calling for restraint short of handcuffing a person, a 'compliance' or 'escort hold', where the hands are held behind the back, would have been appropriate.

By way of comment on this evidence, whether even a compliance or escort hold was warranted for dealing with persons C and D, it is highly doubtful based on the available CCTV footage.

4 Case study: Persons C and D

4.6 General observations

Whether or not the incidents relating to persons B, C and D indicate a pattern of behaviour by Sergeant Taylor towards non-compliant people and, in particular women, is not something on which findings can reliably be made by IBAC based on the available evidence. The incidents nevertheless occurred against a background of Sergeant Taylor having a relatively high number of complaints when compared with other serving officers. This is detailed below.

As stated above, after the incident involving person B, then Leading Senior Constable Taylor had his upgrading removed and was placed on a risk management plan by divisional commander Superintendent Allen. In this regard it was noted in a letter from Ballarat PSA Operations Support to Superintendent Allen in late 2013 'that four of Sergeant Taylor's recent complaints involved aggression involving women'. When questioned by counsel assisting about the management plan, Sergeant Taylor said he had merely been spoken to informally by a senior sergeant in relation to complaints against him. More particularly, he said he was told 'that I have a number of complaints and it was nothing specific and that obviously [in] my role as a supervisor that I needed to, rather than being more involved in it, I needed to take more of a management role and to look at how I deal with things; nothing to do with what you're saying there' (ie being subject to some form of risk management plan, which counsel assisting was questioning him about).

Sergeant Taylor went on to say it was never brought to his attention by his superiors that he had a higher than average number of complaints. The average number of complaints for all male officers was 2.84, while Sergeant Taylor had 15 complaints at the time the management plan was in place, putting him 5.28 times above average. This placed him within the top 0.98 per cent of active male officers in terms of complaint history. Further, the average number of complaints for all senior constables and leading senior constables was 2.53, so his complaint history placed him in the top 0.58 per cent for those ranks.

In accepting the complaint figures against him were high, Sergeant Taylor claimed he worked a lot of afternoon and night shifts when he said things tended to be busier. However, he rightly conceded this might not in itself explain why his complaint averages were so high.

5 Policy issues arising out of the case studies

5 Policy issues arising out of the case studies

5.1 Probity around promotions

5.1.1 Deficiencies with Victoria Police practice

The circumstances in which then Leading Senior Constable Taylor was promoted to the rank of sergeant when he had a significant complaint history, and when the complaint and civil proceedings associated with the person B matter were outstanding, highlight deficiencies in management of the division, and the police promotional system more broadly, particularly concerning probity checks conducted on candidates.

The promotion of then Leading Senior Constable Taylor	
August 2011	Leading Senior Constable Taylor involved in an incident that led to his 14th complaint (Allegation: duty failure – Outcome: resolved)
September 2011	Ballarat LAC requested a risk assessment on Mr Taylor
October 2011	Leading Senior Constable Taylor involved in an incident that led to his 15th complaint (Allegation: assault – Outcome: no complaint)
September 2012	Leading Senior Constable Taylor involved in an incident that leads to his 16th complaint (Allegation: failure to take action – Outcome: resolved)
June 2013	Leading Senior Constable Taylor promoted to sergeant
October 2013	Sergeant Taylor involved in an incident that leads to his 17th complaint (Allegations: aggressive behaviour – Outcome: resolved)

5.1.2 Evidence of Superintendent Allen and Inspector Thomas

Inspector Thomas gave evidence that historically there was a policy which required an inspector (ie two ranks above) to sit on promotion boards for prospective sergeants. Inspector Thomas said this policy had been superseded, and now a senior sergeant (one rank above) sat on promotion boards. Inspector Thomas also stated that he did not sit on the board for Leading Senior Constable Taylor, and that Superintendent Allen would have given Leading Senior Constable Taylor, the board's preferred candidate, the final imprimatur for promotion. Inspector Thomas further stated he was not consulted by Superintendent Allen until after the promotion had occurred, and the promotion board would have undertaken a probity check on the recommended applicant.

Superintendent Allen said in evidence his understanding was the selection panel was provided with the full complaint history and 'all probities [probity checks] are undertaken before selection is made'. Superintendent Allen said once a selection is made, if a senior sergeant sits on the selection panel, then the imprimatur for promotion would be given by the local inspector as delegate. If an inspector sits on the panel, then, the imprimatur is provided by the superintendent.

Superintendent Allen said he did not recall assenting to the promotion of then Leading Senior Constable Taylor. Concerning the evidence of Inspector Thomas that Superintendent Allen approved Leading Senior Constable Taylor's promotion, Superintendent Allen said he could not recall if he signed off on the promotion. He also said he had reservations about Leading Senior Constable Taylor's promotion. When asked how it was that then Leading Senior Constable Taylor was promoted given his complaint history, he responded 'it's not always entirely in local management's hands. There is a process that goes to the Transfer and Promotion Unit'. Superintendent Allen said it was possible that a leading senior constable could be promoted to sergeant within the division for which he was responsible, and that he may not be aware of it.

There was therefore a tension in the evidence between Superintendent Allen and Inspector Thomas on this issue. Inspector Thomas said Superintendent Allen signed off on Leading Senior Constable

Taylor's promotion and that he was not consulted. Superintendent Allen said he had no recollection of signing off on the promotion, that he had concerns about it and the more recent procedure is that it would be signed-off at inspector level. It is concerning that, at least in this case, there may have been a general lack of oversight by senior divisional officers of the promotion of an officer to sergeant.

After the public examinations, IBAC located the selection report recommending the promotion of Leading Senior Constable Taylor. The report highlighted limitations with Leading Senior Constable Taylor's response at the interview to an 'integrity scenario' and advised that Leading Senior Constable Taylor had disclosed a current probity issue (being the person B matter). The report shows Superintendent Allen endorsed the promotion in April 2013. Superintendent Allen's lack of recollection is accepted as genuine taking into account the demands of his job and the number of senior promotions he would be required to consider.

5.1.3 Evidence of Superintendent De Ridder

Superintendent Tony De Ridder is the officer in charge of the Conduct and Professional Standards Division at PSC. He was questioned by counsel assisting about promotion procedures. Superintendent De Ridder said the selection panel has access to the Register of Complaints, Serious Incidents and Discipline (ROCSID) which is maintained by PSC and that the panel can obtain shortlisted candidates' full complaint and compliment histories (although in later evidence he said he was not 100 per cent sure about the provision of the full history).

After the public hearings, IBAC obtained further information concerning promotion boards' access to full complaint histories of candidates. This information presents a different picture to that provided by Superintendent De Ridder (who is taken to have been honestly mistaken). There are different levels of access to ROCSID depending on a 'need to know' basis. At the time of Leading Senior Constable Taylor's promotion, a probity report, as referred to by Superintendent Allen and Inspector Thomas, would likely only provide details of substantiated complaints for the previous two years, and only then where there had been a sanction of admonishment or higher.

It appears the promotion board may not have had access to ROCSID per se or a full complaint history, but rather a filtered probity report only.

5 Policy issues arising out of the case studies

5.1.4 Chief Commissioner's response to issues paper

In response to the issues paper released by counsel assisting, the Chief Commissioner of Police advised that although he was not opposed in principle to selection panels being provided with a full risk assessment for all candidates shortlisted for promotion to sergeant or above, it is not currently feasible due to resource limitations.

However, the Chief Commissioner stated that the introduction of an electronic system, Interpose, across the organisation to manage police complaints will facilitate the preparation of broad ranging risk assessments and probity reports. Interpose is currently being trialled in PSC.

In relation to whether the superintendent (as divisional commander) should endorse all promotions to the rank of sergeant and above, the Chief Commissioner stated that it was not practical as it would require the superintendent to review all preferred candidates' risk assessments, probity reports, promotion board considerations and recommendations, personnel files and professional development histories. As an alternative, the Chief Commissioner proposed that local PSA commanders (inspector) be required to notify the divisional commander that a provisional decision has been made to promote an officer to sergeant where the officer has been considered at risk of multiple complaints. Further, that where an adverse risk assessment is provided to the selection panel, promotion will be subject to the divisional commander's approval.

5.1.5 Conclusion

It has not been possible to establish what information was available to the promotion board concerning then Leading Senior Constable Taylor's complaint history at the time of his promotion. Certainly information concerning his risk assessment and complaints history was available within the division. The risk assessment provided to the region EPSO Inspector Warren Greene in 2011 raised concerns as to the propensity of then Leading Senior Constable Taylor to attract complaints. Superintendent Allen gave evidence that he had reservations about Leading Senior Constable Taylor's risk profile and his likely performance as sergeant, but appears to have been happy to rely on limited probity checks conducted by an external unit which gave the green light for the promotion.

IBAC considers this situation would be remedied if a complete ROCSID complaints history concerning candidates was provided to promotion boards via the Transfer and Promotion Unit, as well as any risk assessments or reports previously conducted on candidates. These reports provide sufficient information to identify whether further risk analysis is required on particular candidates or whether a candidate is not suitable for promotion at that point in time.

5.2 Search procedures regarding person A

Pursuant to common law, an arrested person may be lawfully searched if there are reasonable grounds to believe that person possesses object/s which may cause harm to persons or property, and/or may be used in an escape. In the case of person A, the officers believed that she was in possession of Sergeant Hulls' lanyard (which had a security pass that could assist an escape) and potentially a pen (attached to the lanyard) which they considered could be used to cause harm. It is therefore accepted that the officers were entitled to perform a search of person A.

The VPM sets out procedures which must be complied with when conducting a search, including how the process should be recorded. A search should be recorded on: a patrol duty return form or in an official police diary; the attendance custody module when the search is conducted at a police premises; and a use of force form. The attendance custody module for person A does not record any of the searches conducted on her. While the searches occurred after the attendance module was entered, the record was not updated. CCTV footage shows First Constable A conducting a full search of person A (removing her trousers and underwear) with Constable McCarty present, and then Constable McCarty conducting a pat down of her upper body. A use of force form was submitted in relation to person A's arrest but is silent in relation to the incidents after she was transported to Ballarat Police Station. The search is mentioned in broad terms in some officers' official diaries, however Constable McCarty's initial notes do not mention the search.

The VPM states that where practical, a search should be conducted by an officer of the same gender as the person being searched. Constable A (a female) did remove person A's lower clothing and conducted the search, however Constable McCarty (a male) was present in the cell during the search. While policy states two officers are to be present, the question is whether another female officer should have been in attendance rather than Constable McCarty. According to officers' statements, by the time Constable McCarty was present, Sergeant Hulls had washed her face to deal with her secondary exposure to OC spray, suggesting she probably was able to be present during the search.

Although it is accepted that the search was lawful, the dignity of person A appears to have been disregarded as the search was not conducted with only female officers present. Further, contrary to policy, the search was conducted in full view of the CCTV cameras. The VPM states:

Where a full search is conducted, the location of the search must be safe and private. The possibility of the search being captured on CCTV does not preclude members... from conducting the search in a police cell or other safe area. The dignity of the person being searched must always be considered. The full search, where practicable, should be conducted where the CCTV recording minimises the exposure of the detainee. A predetermined location should be considered by the station manager.

The VPM also states that where a full search is to be conducted in view of CCTV cameras, the station or custody supervisor must determine whether live monitoring of the CCTV is appropriate. There is no indication this happened in relation to person A.

Victoria Police's policy on searches is designed to balance the need to conduct a lawful search with the protection of the dignity of persons in custody. These rules were not followed by the officers involved in the search of person A.

6 Identification and management of systemic issues at Ballarat

6 Identification and management of systemic issues at Ballarat

6.1 Background

Operation Ross examined three incidents involving the treatment of women by uniformed officers at Ballarat Police Station. The investigation also reviewed:

1. complaint and other data relevant to Ballarat Police Station, specifically data generated by Victoria Police and provided to senior managers of the region and the PSA since 2012, highlighting concerns with complaint trends and the conduct of some officers
2. the response of senior managers to that data.

The key material examined was:

- material produced by Victoria Police for the November 2012 CompStat meeting, where concerns were raised that the Ballarat PSA was attracting an excessive number of complaints, particularly assault related complaints
- a report generated by the Chief Commissioner of Police as a follow up to CompStat, which indicated that most complaints relevant to the Ballarat PSA over the previous 12 months were made against more experienced officers
- a complaint summary report, produced by Ethical Standards Command which highlighted that 54 per cent of allegations were made against leading senior constables and sergeants, and 69 per cent of allegations were made against officers with six or more years of service.

More information on these reports and other data concerning assault complaints, use of force incidents and WorkCover claims for injuries sustained during arrest and restraint is provided on the next page.

The reports and data produced by Victoria Police related to Ballarat PSA. Ballarat Police Station is the largest station within that PSA.

6.2 November 2012 CompStat and Ethical Standards complaint summary

Modelled on an initiative implemented by the New York Police Department in the 1990s, CompStat is a performance monitoring and accountability mechanism used by Victoria Police since 2003. The Victoria Police CompStat process involves the biannual compilation of data relating to matters such as crime rates, road safety, staffing, injuries, complaints and emerging issues. That information is considered at a forum in which senior managers from the division or work unit are required to address a panel (usually chaired by the Chief Commissioner or a Deputy Commissioner) and respond to issues raised in the report. CompStat data on complaints is drawn from ROCSID which is managed by PSC.

On 1 November 2012, the senior managers of Division 3 Western Region (including the divisional commander, Superintendent Allen, and Ballarat local area commander, Inspector Thomas) attended a CompStat forum attended by then Chief Commissioner Ken Lay APM to address issues raised in the latest CompStat report. That report is prefaced with a statement indicating that it was 'compiled from valid and reliable corporate data sets...[and] applies those business and counting rules that Victoria Police is obliged to use in its performance reporting to both Government and ABS'.

The CompStat report showed for the period October 2011 to September 2012, Ballarat PSA had the third highest proportion of employees complained against⁹ compared against all 54 PSAs in Victoria. The action item agreed from this CompStat was for Ballarat PSA to engage with the risk area of the then Ethical Standards Command to identify the drivers of complaints within the PSA and to develop a strategy to address those drivers. A report was to be provided within two months.

⁹ Including low level management intervention model matters.

Shortly after the CompStat meeting, the Chief Commissioner wrote a memorandum stating 'observations were made by the [Division 3] management team that their assault complaints were being driven by inexperienced members of the watch house'.¹⁰ The Chief Commissioner noted that his further review of data demonstrated the majority of complaints in Division 3 'are clearly made against far more experienced members'. The Chief Commissioner's memo was conveyed to Superintendent Allen by the Western Region Assistant Commissioner, with a request that he 'please review these matters in terms of background, circumstances and provide advice on whatever action, if any, is to be taken to address risks identified'.¹¹

On 21 November 2012, Superintendent Allen sent a memo to Inspector Thomas stating that 'the majority of complaints are clearly made against more experienced members' (while also noting that Ballarat's complaint numbers may have been inflated by up to 10 entries relating to an internal conflict between two senior officers).

Inspector Thomas then requested a more detailed assessment of the complaints statistics concerning Ballarat PSA, 'to identify and develop a strategy to deal with the drivers of complaints within the Ballarat PSA'.¹² Accordingly a 'complaint summary' for Ballarat PSA was produced by Ethical Standards in December 2012. The summary included a comparison between Ballarat and Frankston PSAs (Frankston PSA being nominated by Inspector Thomas as a comparable area). The comparison showed that between June 2010 and October 2012, the ratio of Ballarat officers who were the subject of allegations was 0.94 compared to 0.50 for Frankston officers.

On 21 December 2012 Inspector Thomas submitted an interim report to Superintendent Allen on action taken in response to CompStat. In that report he made observations in relation to the 12 months of complaint data (41 allegations) extracted by the Chief Commissioner as well as the complaint summary prepared by Ethical Standards.

In his report, Inspector Thomas noted that the Ethical Standards complaint summary found, inter alia:

- assault allegations had decreased significantly between 2010/11 and 2011/12
- duty failure, especially failure to take action, was a major driver of the complaint numbers, and
- Ballarat PSA had 57 per cent more complaints than Frankston PSA for the same period.

Inspector Thomas also commented on 'at risk personnel', referring to one risk assessment which resulted in intervention strategies that 'appear to be having the desired effect' and two personnel who were nominated for a risk assessment noting that Ethical Standards provided strategies for engagement which were used with the two 'at risk' officers.

Inspector Thomas' report states a number of 'preliminary strategies' had been identified including sergeants taking greater responsibility during supervisory shifts, and sergeants attending the discipline investigation course and being required to investigate low level complaint files.

¹⁰ Chief Commissioner of Police, Memorandum re: CompStat and complaints at Ballarat, 15 November 2012.

¹¹ Western Region Commander, Memorandum re: CompStat and Complaints at Ballarat, 20 November 2012.

¹² Inspector Thomas, Interim Report on CompStat Action Item, 21 December 2012.

6 Identification and management of systemic issues at Ballarat

6.3 Senior management response

During the examinations, Superintendent Allen and Inspector Thomas were asked about the Ballarat PSA complaint data and their responses to it. While acknowledging in his evidence that the CompStat data was ‘a good indication of performance’, Inspector Thomas said the statistics provided by Ethical Standards in the complaint summary were ‘flawed’, in particular the complaint numbers were inflated because 40 of the 157 allegations attributed to the Ballarat PSA related to a number of units not under his command.¹³

Similarly, Superintendent Allen said the complaint summary ‘in some way provides misleading results’, noting it included multiple matters of an internal nature involving several senior officers. However both Superintendent Allen and Inspector Thomas, at least in general terms, accepted and acted upon the complaint summary provided by Ethical Standards in December 2012.

In his evidence, Inspector Thomas said that when considering the report, he disregarded the data he considered flawed but that the report still provided enough information to form an opinion. There is no indication either Inspector Thomas or Superintendent Allen advised Ethical Standards Command that they considered the data flawed.

Contrary to concerns that the figures in the complaint summary may have been inflated, data extracted from ROCSID indicates that the number of officers attached to Ballarat Uniform who attracted complaints remained fairly static between the 2010/11 and 2014/15 financial years, before experiencing a decline in 2015/16 as shown in Figure 1.

Superintendent Allen noted in evidence that he had conducted research which showed that between 30 June 2015 and 21 May 2016, only 19 officers in the Ballarat PSA were complained against, suggesting an improvement.¹⁵ Superintendent Allen did not agree the improvement was due to the announcement of IBAC’s investigation into Ballarat police, rather he maintained that it occurred because of ‘hard work and commitment by the management team including myself’.

Inspector Thomas agreed in evidence that the Ethical Standards complaint summary suggests more senior officers were over-represented in Ballarat PSA’s complaints which was a serious matter because of the potential for the conduct of senior officers to adversely influence junior officers. Inspector Thomas also agreed this trend is supported by the comparison between Ballarat PSA and Frankston PSA contained in the complaint summary (extracted in Figure 2). These figures indicate that Ballarat sergeants accumulated twice the number of allegations of their counterparts at Frankston.

Figure 1: Number of Ballarat uniform officers complained against¹⁴

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Ballarat Uniform	27	31	30	28	36	15

¹³ These units were Highway Patrol, D-24 and the Criminal Investigations Unit. In relation to assaults and members with multiple complaints, note: 34 of the 36 assault allegations (94 per cent) involved members attached to Ballarat Uniform and 11 of the 15 members with multiple complaints (73 per cent) were attached to Ballarat Uniform.

¹⁴ This data has been sourced from the Ethical Standards complaint summary (December 2012) and the Ethical Health Performance Indicator Summary Report for Western Region Division 3.

¹⁵ Note that Figure 1 refers to Ballarat Police Station, while Superintendent Allen cited figures for the Ballarat PSA.

Figure 2: Ballarat/Frankston comparison of allegations by rank (Jul 2010 to Oct 2012)

Rank	PSA Ballarat			PSA Frankston		
	Total number of allegations	Number of members stationed	Ratio of members receiving allegations	Total number of allegations	Number of members stationed	Ratio of members receiving allegations
Const	27	42	0.64	43	86	0.50
Const1st	13	17	0.76	3	19	0.15
S.Cons	30	45	0.66	21	38	0.55
LS.Cons	49	32	1.53	6	10	0.60
Sgt	36	24	1.50	16	22	0.72
S.Sgt	1	5	0.20	0	1	0
Insp	1	1	1.00	0	1	0
	157	166	0.94	89	177	0.50

Taken from Figure 19, Complaint Summary Ballarat PSA report (page 18, 182A)

Sergeants are required to oversight and mentor more junior officers, particularly when responding to incidents including family violence and arrest situations. The example they set through their own conduct is critical. Despite this, Inspector Thomas was not able to inform IBAC in his examination whether complaints against sergeants had increased or decreased since 2012, or whether the strategy to reduce the number of complaints against sergeants (referred to in his December 2012 Interim Report) had been successful. Inspector Thomas considered his response appropriate because in May 2013, the action he had taken was reported back to CompStat, and he was subsequently advised that the response was satisfactory and the action item was closed.

Superintendent Allen said as a consequence of the data provided in the Ethical Standards complaint summary regarding sergeants, risk mitigation plans for a number of individual officers were discussed and implemented. The implementation of the plans was reported to him via the local Professional Standards Committee, as well as direct reports of inspectors and personnel systems.

However, beyond risk mitigation strategies for Sergeant Taylor and strategies for two officers identified by Ethical Standards, it is not apparent there was any other formal or strategic response to the data made available to them. Superintendent Allen was unable to identify any risk mitigation strategies beyond those set out above for specific officers.

6 Identification and management of systemic issues at Ballarat

6.4 Assaults complaints, injuries and recorded uses of force

In evidence, Superintendent Allen and Inspector Thomas were asked to comment on data which showed Ballarat Uniform had around three times the number of WorkCover injury claims arising from 'arrest and restrain' (15 claims) compared to the average for all similar workplaces in the state (five claims) in the two years to February 2015.¹⁶

In addition, an intelligence briefing prepared by the Victoria Police Use of Force Registry in April 2015 found that Ballarat uniformed officers predominantly used 'hands on' types of force which 'are almost certainly contributing to offender and member injuries'.

In response, Inspector Thomas conceded that 'obviously arrest and restraint is an issue' at Ballarat and agreed the figures could lead to the conclusion 'Ballarat personnel are more likely to be in some form of physical confrontation than their counterparts in other stations'. Inspector Thomas stated that while he hoped physical contact by police was a matter of last resort, he had not taken specific action to reinforce this.

However, Inspector Thomas maintained Ballarat could not be compared with Bendigo for the purpose of assault complaints, in part because Ballarat has the largest rural cell complex in the state. Victoria Police has advised that Ballarat has capacity for 22 detainees and Bendigo has capacity for 18 detainees.¹⁷

Inspector Thomas also cited a number of demographic factors that made Ballarat 'unique' and 'one of the hardest police service areas to police in Victoria' in particular due to methamphetamine-related incidents, increasing mental health issues, and a low socioeconomic index.

Superintendent Allen refuted the proposition in the Victoria Police intelligence brief that Ballarat officers were more inclined to use 'hands on' force, stating that this was 'a fairly simplistic explanation' and went on to discuss demographic factors including 'an explosion in the ice epidemic in Ballarat... causing police to be confronted on a daily basis with violent and aggressive individuals', mental health rates which 'exponentially increased in the last two to five years', and an increase in 'serious and aggressive family violence situations'.

Ambulance attendance figures and crime statistics do not support the assertion that Ballarat is facing a methamphetamine epidemic of unique proportions.¹⁸ While it is evident Ballarat has experienced an increase in methamphetamine-related incidents, its experience does not appear to be substantially different to that of other regional centres including Bendigo.¹⁹

¹⁶ 'Similar workplaces' comprised up to 11 comparable stations identified by Victoria Police Human Resources Department for the purpose of comparing WorkCover claims. All the workplaces were 24 hour country uniform stations with police cells. Victoria Police, *Health Safety and Wellbeing in Your Workplace*, WorkCover Data to the end of February 2015.

¹⁷ A 2010 report published by the former Officer of Police Integrity indicated that, based on 2009 data, the average daily occupancy in the cells at Ballarat was lower than a number of other stations with Category A cell complexes including Bendigo and Frankston. Office of Police Integrity, *Update on conditions in Victoria Police cells*, June 2010, p 11

¹⁸ See Lloyd B., Matthews S., Gao C. X., Heilbronn C., Beck, D. (2015). *Trends in alcohol and drug related ambulance attendances in Victoria: 2013/14*. Fitzroy, Victoria: Turning Point and Sutherland P., Millsteed M. (2015). *Recorded drug use and possession crime in metropolitan, regional and rural Victoria, 2006–2015*. Melbourne, Victoria: Crime Statistics Agency.

¹⁹ Ambulance attendance figures in Lloyd *et al.* indicate that there was a 27.7 per cent increase in the number of crystal methamphetamine-related ambulance attendances in regional Victoria from the 2012/13 to the 2013/14 financial year. The highest population rates of crystal methamphetamine-related ambulance attendances were recorded in Greater Shepparton (39.8 per 100,000, up 17.4 on the previous year) and Campaspe (37.9 per 100,000, up 16.3). In comparison Ballarat had 20.3 crystal methamphetamine-related ambulance attendances per 100,000 population in 2013/14 (up 4.8 on the previous year), which is both a lower rate and smaller increase than that of Greater Bendigo (28.5 per 100,000, up 5.3).

Figure 3: Number of recorded use of force incidents for Western Region by division (2010 – 2014)

Division	2010	2011	2012	2013	2014	Total	% increase since 2010
1	188	170	184	197	258	997	37%
2	132	115	120	143	153	663	15%
3	114	151	148	199	217	829	90%
4	121	120	107	136	132	616	9%
5	289	283	365	494	516	1947	78%
6	149	115	142	106	184	696	23%

Similarly, while a number of measures indicate the number of people in Ballarat reported as experiencing mental health issues is increasing, it is not clear the increases are disproportionately higher than other regional areas.²⁰ While IBAC acknowledges research conducted by Victoria Police in April 2015 which concluded ‘it is highly likely that persons with mental health issues are a main driver of Ballarat members using force’, that report also indicates that the *increase* in mental health transfers at Ballarat was comparable to four similar work locations,²¹ suggesting that while mental health rates may have increased in Ballarat, it is by no means unique.

The same Victoria Police report indicates that Ballarat experienced a 178 per cent increase in reported family violence incidents between 2010 and 2014, which is comparable to Geelong (178 per cent) and less than Bendigo, Shepparton and Wodonga (216 per cent, 219 per cent and 220 per cent respectively). The report also notes that ‘an average 200 per cent increase in reporting was experienced, which is in line

with organisational expectations’, suggesting that Ballarat’s 178 per cent increase is lower than the state average.²²

Lastly, in terms of socioeconomic status, the Ballarat local government area is considered to have a slightly higher level of disadvantage than the state average, with an Index of Relative Socio-economic Disadvantage score in the fourth decile along with Bass Coast, Greater Bendigo, Hepburn, Mount Alexander, Wangaratta, Wellington and Wodonga.²³

During his examination, Superintendent Allen was presented with data from the Victoria Police Use of Force Registry which indicated that use of force entries increased 59 per cent across Victoria in the five years to 2014. Figure 3 compares use of force incidents across Western Region, showing that Ballarat’s (Division 3) recorded use of force incidents increased 90 per cent (from 114 to 217 per year).

²⁰ See the City of Ballarat, *Community Profile*, April 2013 at p.15 which notes that Ballarat had 17.1 registered mental health clients per 1,000 population (compared to the state average of 11.6), and an average annual rate of self-inflicted injuries and death due to suicide of 13.8 per 100,000 population (compared to the state average of 11.0).

²¹ Victoria Police, *Ballarat Police Station Use of Force 2010–2014 report*, 14 April 2015, p.7, states that Ballarat experienced a 181 per cent increase in mental disorder transfers between 2010 and 2014, compared to 229 per cent in Bendigo, 192 per cent in Geelong, 153 per cent in Shepparton and 155 per cent in Wodonga during the same period.

²² Victoria Police, *Ballarat Police Station Use of Force 2010–2014 report*, 15 April 2015, pp. 2 and 8.

²³ ABS, 2033.0.55.001 - Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA), Australia, 2011, Local Government Area Indexes Data Cube, (accessed 14 June 2016) <http://www.abs.gov.au/AUSSTATS/abs@nsf/DetailsPage/2033.0.55.0012011?OpenDocument>, notes that Ballarat LGA had a score of 981 and ranked 29th from the bottom in Victoria (out of 79).

6 Identification and management of systemic issues at Ballarat

In response to this data, Superintendent Allen asserted that while 90 per cent 'may seem an increase... Division 5 (Bendigo) is 78 per cent... [which is] not far behind'. He also said both Ballarat and Bendigo were used as pilot areas for use of tasers in 2012/13 which 'in my view...contributed significantly to the use of force over that period of time'. However only 1.4 per cent of Ballarat's use of force incidents involved tasers.

It was put to Superintendent Allen that despite Ballarat having less than half the number of recorded use of force incidents (829) compared with Bendigo (1947) for the period 2010 to 2014, Ballarat Uniform had five times as many officers with assault complaints and three times the number of WorkCover claims for arrest and restrain – suggesting that Ballarat officers were more likely to use physical force.

Superintendent Allen cited the April 2015 Victoria Police intelligence brief and pointed to a key finding which notes 'it is unlikely that use of force incidents at Ballarat Police Station exceeded those at other similar locations'. However he dismissed the report's finding that it is almost certain use of force is being significantly under-reported at Ballarat Police Station, on the basis that it was 'not within context'.

Crucially, that intelligence brief also concluded that 'Ballarat members predominantly use 'hands on' force types which are almost certainly contributing to offender and member injuries', noting that 'over the five years considered, 37 offenders involved in use of force incidents with Ballarat members sustained injuries'.

These conclusions are consistent with data previously referred to which show that while Ballarat uniformed officers may not engage in or report as many use of force incidents as other comparable areas, and when they do, it results in a disproportionate number of complaints and injury.

It is also noted that Superintendent Allen relied on this report which compared Ballarat with other police stations including Bendigo, Geelong, Shepparton and Wodonga, all of which experienced substantial increases in family violence incidents, mental health transfers, and drug and alcohol use over the five years under review.

Superintendent Allen said the April 2015 report was prepared for operational safety reasons. However, there is no evidence to suggest that senior managers of Ballarat PSA have taken action to address the findings in the report concerning use of 'hands on' force, or findings that use of force is being significantly under-reported at Ballarat Police Station. The importance of properly addressing these issues is underscored by the finding that 'hands on' force is likely contributing both to police officer and offender injuries, and will continue to increase while the current force types continue to be favoured over less confrontational methods.

6.5 Chief Commissioner's response to issues paper

The Chief Commissioner's response to the issues paper released by counsel assisting outlined concerns with the Victoria Police data presented during IBAC's public examinations. In summary these concerns include:

- the November 2012 CompStat report was not intended to identify systemic issues relating to police complaints at Ballarat Police Station
- Victoria Police does not accept the data shows more experienced officers were the main drivers of complaints within Ballarat PSA
- although the raw data is accurate, the conclusions drawn by IBAC were tainted as other relevant data was not examined.

The Chief Commissioner's response is provided in full in Appendix B.

6.6 Conclusions

All data has limitations. However it is undeniable that Victoria Police data indicated there was reason to be concerned about the number and type of complaints against Ballarat uniformed officers, particularly sergeants. Concerns were raised at the time by no less than the Chief Commissioner and were considered sufficiently serious to warrant Inspector Thomas highlighting strategies to address complaint numbers in the Ballarat PSA in his response to the November 2012 CompStat meeting.

No evidence was found that senior managers responsible for Ballarat put in place demonstrably effective strategies or risk mitigation plans to address systemic issues identified in the November 2012 CompStat and the complaint summary prepared by Ethical Standards Command in December 2012. Nor was evidence found of any real investigation by senior managers into why experienced officers at Ballarat PSA, in particular sergeants, were reported to be the main drivers of complaints, as identified in the November 2012 CompStat and the complaint summary.

Further, no evidence was found that senior managers instigated any proper monitoring of complaints statistics and performance of sergeants following the November 2012 CompStat and the December 2012 complaint summary to ascertain if any strategy or risk mitigation plan put in place was effective in reducing complaints against these categories of officers.

6 Identification and management of systemic issues at Ballarat

Moreover, having received in April 2015 the intelligence brief on use of force at Ballarat Police Station which identified that (1) 'Ballarat members predominantly used 'hands on' force types which are almost certainly contributing to offender and member injuries', and (2) 'it is almost certain that use of force is being under-reported at Ballarat Police Station', it does not appear on the evidence that steps were taken to inform and educate Ballarat officers that 'hands on' force should be an action of last resort. There is also no evidence of proper directions and procedures being put in place at Ballarat PSA to achieve compliance with operating procedures concerning the reporting of use of force.

The attitude and tone set by senior managers is critical in steering a positive organisational culture and promoting integrity. The importance of integrity and ethics is reinforced if senior managers model an organisation's values and highlight through their actions the importance of responding professionally to identified issues, including the need to comply with policies and procedures. The adoption of a defensive attitude by senior managers to concerns raised risks sending a message to subordinate officers that poor conduct will be tolerated.

Leadership is a balancing act between supporting subordinates and intervening to address concerns when they arise. Whether or not senior managers at Ballarat did enough to address the risks and make it clear inappropriate use of force would not be tolerated, is a matter IBAC intends to further examine with Victoria Police.

7 Professional Standards Command and complaints

7 Professional Standards Command and complaints

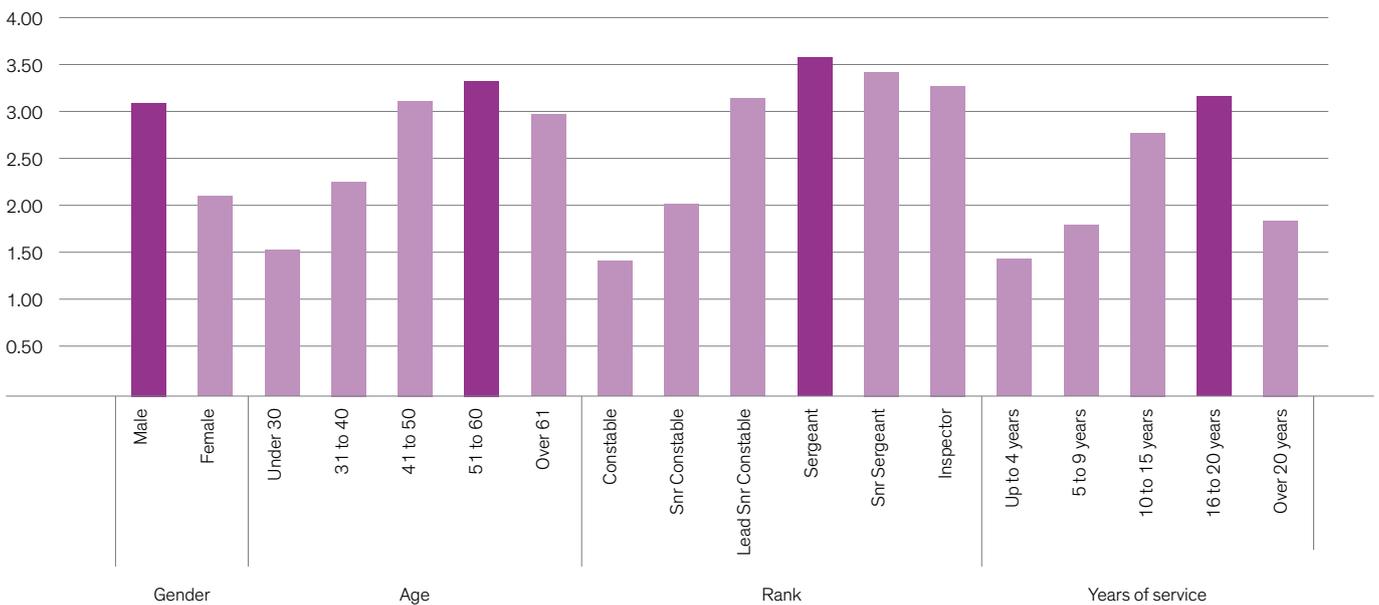
7.1 Background

Operation Ross highlighted broader issues regarding Victoria Police’s approach to identifying and managing officers who have higher than average complaint numbers and/or officers whose complaints suggest patterns of conduct.

In May 2016, at the time of IBAC’s public hearings for Operation Ross, the average number of complaints for an officer attached to Victoria Police was 2.93.²⁴ As shown in Figure 4, in terms of gender, age, rank and years of service, average complaint figures were *highest* for officers who were male (3.05), between the ages of 51 and 60 years (3.28), at the rank of sergeant (3.52) and those who had served for 16 to 20 years (3.12).

In January 2015, at the time of the incident involving person A, Sergeant Taylor had accrued more than five times the average number of complaints of other officers across a range of benchmarking criteria. Sergeant Taylor also had more than one complaint involving aggressive conduct towards female members of the public, yet as noted by Sergeant Taylor in evidence, after person B made her complaint, he had an acting upgrade revoked and was placed on a risk management plan (which he said was nothing more than being spoken to informally by a senior sergeant). It does not appear that any other action was taken.

Figure 4: Average complaints by different benchmarking criteria



²⁴ Information drawn from Victoria Police benchmarking reports, extracted in March 2016.

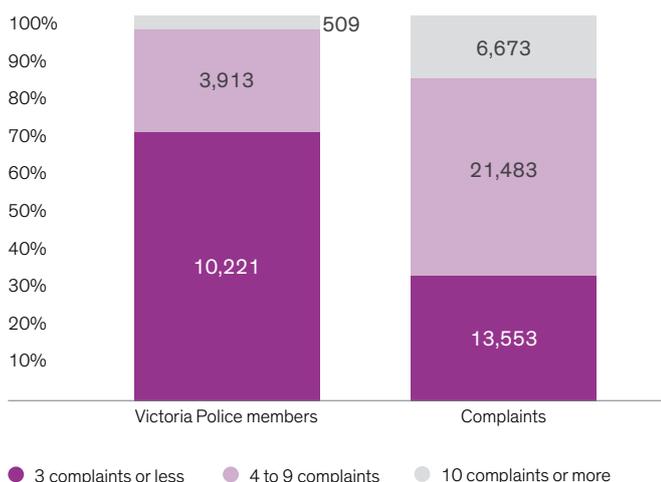
7.2 Analysing complaint histories and patterns in complaint data

Victoria Police data for 2014/15 indicates 70 per cent of officers had accumulated no more than the average of three complaints over the course of their career – accounting for 32.5 per cent of all complaints, as shown in Figure 5.

At the other end of the scale, 3.5 per cent of officers had accumulated ten or more complaints over the course of their career – accounting for 16 per cent of all complaints.

Victoria Police publicly states on its website that complaints are ‘a key mechanism for ensuring police integrity’. This should mean that making a complaint ensures specific allegations of poor customer service, misconduct or corruption are examined and addressed. It should also mean complaint data is analysed to identify potentially problematic officers so Victoria Police can apply appropriate management and early intervention strategies. There is no evidence this is occurring in a systematic way.

Figure 5: Complaint distribution across Victoria Police workforce



Officers who repeatedly attract complaints potentially expose Victoria Police to greater risk of misconduct and corruption, damage the organisation’s reputation and adversely affect the morale of their colleagues.

Currently in Victoria Police, an officer’s complaint history is considered when a complaint is triaged at PSC which may affect its classification and where it will be allocated for investigation. However, the complaint history is generally not provided to the person at the local level investigating the complaint. This means that unless there is informal local knowledge, it will not be known to the investigator whether the officer he or she is investigating has previous complaints of a similar nature.

This was identified as an issue in IBAC’s 2016 audit of Victoria Police regional complaints handling processes, which recommended that a subject officer’s complaint history be attached to all complaint investigation files by PSC.²⁵ Without this information, a complaint investigator cannot be expected to identify possible patterns of concerning conduct or recommend appropriate interventions to address the issues identified.

NSW Police Force complaint handling guidelines state a subject officer’s complaint history:

may reveal patterns of behaviour, circumstances surrounding current or previous complaints, complaints of similar conduct (sustained or not sustained), investigative methods used during previous complaints and assist in determining the most appropriate manner in which to manage a current complaint or subject officers.²⁶

NSW Police requires complaints to be considered during the triage process (which occurs at the local area command level in NSW, rather than centrally at Professional Standards Command) and as part of an investigation into unreasonable or improper conduct. Further, if a triage officer identifies that an officer who is the subject of a complaint has a pattern of domestic violence, the triage officer is required to consider recommending interim risk management action.

²⁵ IBAC, *Audit of Victoria Police complaints handling systems at regional Level*, September 2016, pp 27-30.

²⁶ NSW Police Force, *Complaint Handling Guidelines*, February 2016, p 15.

7 Professional Standards Command and complaints

7.3 Evidence of Superintendent De Ridder

Superintendent Tony De Ridder gave evidence on systems in place at PSC to notify managers when officers under their command are identified as being potentially at risk.

In his evidence, Superintendent De Ridder said he was unaware of the NSW Police complaint handling guidelines, however, he thought the guidelines were broadly consistent with Victoria Police practice, in that complaint histories are examined at the triage stage. As stated previously, it is not standard Victoria Police practice to provide the subject officer's complaint history to the investigator. When asked whether it would be better practice to set such matters out in written guidelines Superintendent De Ridder said that PSC was currently working on clarifying its procedures.

Superintendent De Ridder also stated that PSC generates monthly reports concerning the number of officers who have reached more than three complaints. This report takes the form of a monthly statement to each region's local Professional Standards Committee. Superintendent De Ridder said it could not be described 'as a mechanism', saying 'it's less formal'. When it was raised with Superintendent De Ridder during his examination that Superintendent Allen and Inspector Thomas had stated it would assist them as managers to have a formal process of notification when an officer obtains a certain number of complaints, he said, from the PSC point of view, this 'wouldn't be a problem. It would be useful'.

IBAC is of the view that there would be merit in periodically reviewing an officer's overall performance development, complaint history and any other information relevant to their ongoing employment and career progression with Victoria Police. Periodic reviews conducted when an officer reaches particular complaint thresholds could help to identify and manage emerging issues in a timely manner.

At present, the primary review tool in relation to officers with multiple complaints appears to be the risk assessment process (which includes the development of risk analyses). There is scope to better utilise this process, including ensuring greater consistency in identifying when it is appropriate for risk assessments to be conducted, requiring local managers to determine action to address issues identified in assessments, linkages to performance management, and a process for PSC monitoring and oversight.

7.4 Strategic analysis and monitoring by PSC

The 2012 CompStat was raised by counsel assisting with Superintendent De Ridder, including the complaint summary of December 2012 which was prepared by PSC. When asked what follow up by PSC or monitoring of recommended mitigation strategies took place, Superintendent De Ridder responded 'this is an area where at PSC we could certainly improve because unfortunately there isn't a lot of follow up around the materials provided and those – our skills at analysis and helping local areas draw the right inferences and then come up with the right strategies while they are good in an informal sense, there is certainly room for improvement'.

The manner in which PSC could improve was addressed by Superintendent De Ridder in the following terms: 'the way I see it is by improving the capacity of local area managers and our PSC staff to monitor what is occurring in the complaints area by creating improvements in that area that frees up time for more proactive work to be done. So that it is about general and specific intelligence assessments being done around integrity and the opportunity for the staff both from PSC and my staff in the field through the Ethics and PSC officers to be more proactive out in the field and be able to sit down with the managers and spend more time with them'.

7.5 Chief Commissioner's response to issues paper

In response to the issues paper released by counsel assisting, the Chief Commissioner of Police advised that Victoria Police would consider providing monthly reports identifying officers who have accumulated more than three complaints to local area managers (rather than limiting the reports to the local Professional Standards Committees). However, the Chief Commissioner's response indicated that not all complaints could be included in these reports (although assault complaints would be included).

The Chief Commissioner also stated that subject to the successful introduction of Interpose to manage complaints, it is expected the divisional commander will be provided, through the local Ethical and Professional Standards Officer (EPSO), with the complaint history of an officer, for their consideration in conjunction with local knowledge.

IBAC understands that ROCSID has previously been used to generate automated emails to PSC analysts when officers reached specific complaint thresholds – namely, when an officer accrued more than five complaints, or two or more complaints in a 12 month period. These notifications would then be reviewed to determine if specific action was required (such as advice to the officer's manager). ROCSID is also able to generate a report that shows an officer's full complaint history as well as a report that benchmarks that officer against his or her peers. This functionality could be immediately utilised by Victoria Police to provide timely advice to local managers responsible for officers who have a complaint history of significant concern, recognising that local managers are best placed to develop risk management plans tailored to their staff.

PSC could also adopt a more strategic role in monitoring the effectiveness of those interventions by reviewing the outcome of those plans, analysing trends across the organisation and providing advice back to local managers.

7 Professional Standards Command and complaints

Recommendation 1

Victoria Police to review and strengthen its approach to managing officers who have multiple complaints or concerning complaint patterns including by:

- a. ensuring that a subject officer's full complaint history (excluding complaints that cannot be revealed for operational reasons) is attached to a complaint investigation file prior to allocation to an investigator
- b. requiring complaint investigators to consider whether a possible pattern of conduct has been identified and if so, to recommend appropriate intervention action
- c. initiating a formal mechanism whereby local commanders (inspector and superintendent) are notified when an officer under their command reaches various thresholds in terms of the number of complaints the officer has accrued
- d. providing local commanders (inspector and superintendent) relevant information in a timely manner to assist in tailoring a risk management plan for relevant officers referred to in (c) above (which could include the officer's full complaint history and benchmarking report currently available in ROCSID)
- e. monitoring the implementation and effectiveness of risk management plans which could involve local managers reporting back to PSC for strategic advice, guidance and organisation-wide analysis of trends
- f. developing a framework for determining appropriate interventions at various points in an officer's complaint history, to be integrated with the Victoria Police performance development system.

8 Potential law reform – public drunkenness

8 Potential law reform – public drunkenness

A strategic issue arising out of Operation Ross, specifically the person A matter, concerns the legal status of public drunkenness in Victoria.

In this state, being drunk in a public place is a criminal offence.²⁷ Only Victoria and Queensland have statutory offences for this behaviour. In all other states and territories of Australia, criminality only attaches to public drunkenness if it is coupled with some other kind of disorderly conduct. Otherwise, it is generally treated as a public health and welfare concern.

In 1991, the Royal Commission into Aboriginal Deaths in Custody recommended the decriminalisation of public drunkenness in its national report.²⁸ In 2001 and 2006, the Victorian Parliamentary Drugs and Crime Prevention Committee also recommended decriminalisation of public drunkenness in Victoria,²⁹ subject to the provision of appropriate services, such as sobering-up facilities. These inquiries and other studies over the years have highlighted the detrimental consequences that assigning criminal penalties to public drunkenness can have, including increasing the likelihood that harm will come to vulnerable persons while they are detained in police custody.

IBAC recognises this is a complex issue. While an offence of being drunk in a public place has been long removed from the statute books in New South Wales for example, it has been argued that criminalisation of public drunkenness has continued in that state, including through the policing of recent laws enacted in response to community concerns about public order and safety.³⁰ There are also undeniable challenges around the provision of appropriate alternative facilities to police custody, and the potential impact on already stretched health and social services.

While beyond the scope of Operation Ross, the decriminalisation of public drunkenness warrants further consideration by the Victorian Government and Parliament.

²⁷ Under section 13, *Summary Offences Act 1966* (VIC).

²⁸ Australian Government, Royal Commission into Aboriginal Deaths in Custody *National Report* (1991).

²⁹ Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Public Drunkenness* (2001), and *Inquiry into Strategies to Reduce Harmful Alcohol Consumption* (2006).

³⁰ Luke McNamara and Julia Quilter, 'Public Intoxication in NSW: The Contours of Criminalisation', *Sydney Law Review*, Volume 37, No. 1, March 2015.

9 Conclusions and recommendations

9 Conclusions and recommendations

Operation Ross commenced with an investigation of the treatment of a vulnerable woman (person A) at Ballarat Police Station in early 2015. The investigation found that while in police custody, person A was kicked and stood on while in a subdued and compliant state. It also appears that person A was denied appropriate care and at times, her human rights were disregarded.

The treatment of person A was not an isolated case. Operation Ross examined two earlier incidents (occurring in 2009 and 2010) which involved excessive use of force against female members of the public in the foyer of Ballarat Police Station. IBAC was also aware of two other matters involving the treatment of men held in the cells at Ballarat Police Station, which raised concerns about the duty of care afforded to people in custody.

Taken together, these incidents were evidence of systemic issues at Ballarat Police Station including excessive use of force and questionable treatment of vulnerable people. Operation Ross examined data generated by Victoria Police regarding the complaint profile of Ballarat PSA, primarily as a result of a November 2012 meeting chaired by the then Chief Commissioner Ken Lay APM. Victoria Police's data highlighted concerns with the proportion of complaints against sergeants within Ballarat PSA, the number of assault complaints, the number of WorkCover injury claims arising from 'arrest and restrain', and use of force data which showed that Ballarat officers predominantly use 'hands on' force.

Senior managers within Division 3 and the Ballarat PSA took steps to address some of these concerns, but the extent and quality of the action taken is considered questionable to say the least. There was a lack of evidence those managers took concerted action to address the concerns highlighted. During the public examinations, more effort was expended in criticising the data and attempting to justify the failure to act.

It is unfortunate the issues raised in Victoria Police's own data and reports in relation to Ballarat appear, on the evidence, not to have been recognised and addressed in a timely and targeted manner. The mistreatment of person A clearly highlighted the same types of issues and risks, and the need for management action to promptly and effectively address them.

Operation Ross has also identified a number of areas of potential improvement in broader policy and practice including in relation to probity processes around promotion, search procedures, the treatment of public drunkenness, and the way in which officers with multiple complaints are identified and managed. Victoria Police has indicated a willingness to continue to review its practices and subject to resourcing, to continue working towards implementing changes consistent with the recommendations in this report. This is welcome.

Complaints, such as that involving person A, can be an indicator of systemic issues at play within a workplace. Coupled with data and reports that are available from PSC and other parts of Victoria Police, there is no excuse not to address systemic issues as early and as fully as possible to prevent an adverse culture becoming entrenched. While IBAC has concerns this did not occur fully enough in response to the issues identified at Ballarat, it is expected in future, greater commitment will be shown to responding quickly and effectively to concerns around multiple complaints involving particular officers or work areas.

Following the public hearings, IBAC made an interim recommendation pursuant to section 159(1) of the IBAC Act to the Chief Commissioner that Victoria Police consider whether charges should be brought for common assault (or other equivalent charges) in relation to the first case study in relation to person A.

IBAC also makes the following recommendations pursuant to section 159(1) of the IBAC Act:

Recommendation 1

Victoria Police to review and strengthen its approach to managing officers who have multiple complaints or concerning complaint patterns including by:

- a. ensuring that a subject officer's full complaint history (excluding complaints that cannot be revealed for operational reasons) is attached to a complaint investigation file prior to allocation to an investigator
- b. requiring complaint investigators to consider whether a possible pattern of conduct has been identified and if so, to recommend appropriate intervention action
- c. initiating a formal mechanism whereby local commanders (inspector and superintendent) are notified when an officer under their command reaches various thresholds in terms of the number of complaints the officer has accrued
- d. providing local commanders (inspector and superintendent) relevant information in a timely manner to assist in tailoring a risk management plan for relevant officers referred to in (c) above (which could include the officer's full complaint history and benchmarking report currently available in ROCSID)
- e. monitoring the implementation and effectiveness of risk management plans which could involve local managers reporting back to PSC for strategic advice, guidance and organisation-wide analysis of trends

- f. developing a framework for determining appropriate interventions at various points in an officer's complaint history, to be integrated with the Victoria Police performance development system.

Recommendation 2

Victoria Police review and strengthen probity processes undertaken in relation to promotions including:

- a. ensuring all promotion boards are provided with a full complaint and compliment history and any risk assessments previously prepared by PSC for all shortlisted candidates for promotions
- b. the superintendent of the relevant division or work area endorse any candidate recommended by a promotion board for promotion where such promotion concerns the rank of sergeant or above.

Recommendation 3

Victoria Police to review and enhance training provided to officers on the Charter of Human Rights to improve officers' understanding of and compliance with the Charter of Human Rights.

Recommendation 4

Victoria Police take steps to ensure officers' understanding of and compliance with the policy and guidelines on searches, including highlighting the need to consider and uphold the human rights of the person being searched.

9 Conclusions and recommendations

IBAC has now finalised Operation Ross. As part of IBAC's independent police oversight functions, key learnings from this investigation will continue to be the focus of action with Victoria Police. As indicated earlier, IBAC's oversight takes the form of investigations, reviews of Victoria Police complaint investigations, and the conduct of strategic projects focused on assisting Victoria Police strengthen its complaints handling systems and practices, and preventing police misconduct and corruption.

10 Appendices

Appendix A: Natural justice requirements and responses

Some parts of this special report were considered to be covered by section 162(4) of the *Independent Broad-based Anti-corruption Commission Act 2011* which requires that non-adverse comment or opinion about any person be shown to them in advance. Therefore, such persons were extended the opportunity to inspect relevant parts.

To the extent that persons are identified in the report and are not the subject of adverse comment or opinion, IBAC is satisfied in accordance with section 162(7) that:

- it is desirable to do so in the public interest
- it will not cause unreasonable damage to any such person's reputation, safety or wellbeing
- each such person is not the subject, nor for that matter, intended to be the subject, of any adverse comment or opinion.

To the extent that public bodies and persons are identified in the report and are subject of adverse findings¹, comment or opinion², they have been given a reasonable opportunity to respond to same by being shown in draft material parts relating to them. The responses received were given due consideration in the final drafting of this report.

In accordance with sections 162(2) and (3) respectively of the IBAC Act, responses that did not result in material relevant changes between the draft report and this report – to the extent they are of the kind provided for in the IBAC Act – are set out below.

As part of their responses, some represented parties made certain preliminary submissions. Most who did so also provided responses to factual matters. Whilst section 162(3) of the IBAC Act is considered not to require the setting out of preliminary submissions in this report (as distinct from specific responses to adverse factual material), they are nevertheless addressed in brief immediately below.

The submissions were to the following effect:

- prejudice to Victoria Police's investigation in relation to officer conduct toward person A (including prejudice to any putative future criminal proceedings arising from that investigation) as proscribed by section 162(5) of the IBAC Act, as well as implied findings of guilt of criminal offending or disciplinary breaches as proscribed by section 162(6)(a) should parts of the report containing relevant findings be tabled
- alleged lack of 'puttage' of certain matters to examinees, as well as access to counsel assistings' brief and other documents and material said to be relevant to the investigation
- alleged failure to comply with section 162(3) on account of the draft report extracts not specifically addressing submissions in answer to counsel assistings' submissions
- asserted entitlement to see the whole draft report rather than just adverse material relating to individuals named in it.

These matters were the subject of correspondence whereby a further opportunity was extended to represented parties for access to certain classes of documents and to file supplementary responses under section 162(3). A number of the submissions were considered to wrongly conflate IBAC's inquisitorial function with adversarial processes. Such submissions were also considered to lack an appreciation that the right of affected persons to respond to adverse material of allegations was properly met through matters put and documents tendered at examinations, submissions permitted in response to written submissions by counsel assisting, as well as responses to draft report extracts supplied under sections 162(2) and (3) of the IBAC Act. Confirmatory advice on IBAC's position in rejection of the submissions made on behalf of Ms Munro and Mr Repac regarding sections 162(5) and (6)(a) was obtained from Victoria's Solicitor-General.

Set out on the following pages are specific responses by individual represented parties to factual findings in the report which affect them. These responses are italicised.

¹ In relation to public bodies.

² In relation to persons.

Christopher Taylor

A number of factual statements contained in the draft report extracts were taken issue with on behalf of Sergeant Taylor. These were considered in the final drafting, and various material changes were made. To the extent that such changes did not lead to the excision of possibly adverse material about Sergeant Taylor, his responses are set out below.

Case study: Person A (section 2 of the report)

Sergeant Taylor referenced in his response regarding IBAC's findings on this case study certain parts of the written submissions made on his behalf in seeking to answer to counsel assistings' Statement of Issues (his written submissions).

It is noted that this was notwithstanding much of those submissions addressed matters raised in the Statement of Issues that did not feature in the draft report extracts he was provided with under section 162(3) of the IBAC Act, and which do not feature in this report. Nevertheless section 162(3) requires that these be set out.

General comments

Sergeant Taylor was off duty at the time of this incident. He had completed his shift at 11.00pm on Wednesday, 14 January 2015 and handed over to Sergeant Hulls. He remained at work after this time to attend to paperwork and his portfolio duties, which involved the export and download of CCTV footage upon request from other officers.

At approximately 1.45am Sergeant Taylor heard coughing and a female voice saying, 'I can't see'. He attended the reception area and spoke briefly with Sergeant Hulls. He could smell OC spray and became affected by it.

Sergeant Taylor suffers from asthma and was adversely affected by the OC spray. He did not have his preventer spray with him at the police station, which made the effects of the OC spray worse.³

Due to Sergeant Hull's being incapacitated by the OC spray, Sergeant Taylor assumed responsibility for the management of the station for a short period of time until Sergeant Hulls returned from hospital. His contemporaneous notes⁴ and statement (Exhibit 22) record the duties he performed during this time, a summary of which is as follows:

<i>1.25am</i>	<i>Heard coughing and a female voice saying, 'I can't see'.</i>
	<i>Attended the reception area and spoke briefly with Sergeant Hulls. Located Constable Moss and ensured her welfare and safety.</i>
	<i>Person A located in the compactus room then conveyed to cell with Senior Constable McCarty.</i>
	<i>Telephoned ambulance for Sergeant Hulls and person A. Checked on the welfare of Sergeant Hulls.</i>
<i>1.40am</i>	<i>Ambulance attended.</i>
<i>1.45am</i>	<i>Took photographs.</i>
<i>2.05am</i>	<i>Telephoned Senior Sergeant Russell Tharle.</i>
<i>2.15am</i>	<i>Telephoned Senior Sergeant Quinn. Requested that Professional Standards Command be notified.</i>
<i>2.25am</i>	<i>Checked CCTV footage.</i>
<i>2.45am</i>	<i>Spoke to Detective Sergeant Glen Grandy, Professional Standards Command.</i>
<i>2.54am</i>	<i>Exported CCTV footage.</i>
<i>3.15am</i>	<i>Took photographs of Sergeant Hulls.</i>

³ See transcript of evidence at pp 33-34

⁴ A copy of Sergeant Taylor's contemporaneous notes (as previously provided to investigators) can be provided to IBAC on request.

Appendix A: Natural justice requirements and responses

Removal of person A from the compactus room and back to cell 1

The Statement of Issues notes that no adverse comment of findings are warranted with respect to the manner of person A's return to cell 1. It states, however, that comment may be made in relation to Sergeant Taylor, being the senior officer then present, allowing the dragging of person A to continue as it did over the distance depicted. It is submitted that no such comment is warranted on the evidence.

Sergeant Taylor was not provided with an opportunity to explain this conduct during the public examination. To the contrary, Sergeant Taylor was questioned on the basis that Counsel Assisting was 'not being critical' of his actions.⁵

It is submitted that there were no practicable options apart from dragging person A to the cell in circumstances where:

- a. person A refused to stand up despite repeated requests*
- b. it was unsafe for members to lift or carry person A*
- c. person A was covered in OC spray which posed a risk of secondary exposure to members.⁶*

The placing of person A into a hot shower partially clothed and with her hands cuffed behind her back

It is submitted that no adverse comment or finding is warranted against Sergeant Taylor for not ensuring that the handcuffs were removed from person A and not ensuring that the water temperature of the shower was appropriate for the removal of the OC spray.

Sergeant Taylor was the senior officer in charge of the police station at the time that aftercare was administered to person A by Senior Constables McCarty, Munro and Repac. He instructed members to provide aftercare to person A by taking her to the female shower in the exercise yard.⁷

In all of the circumstances, it was not reasonable for Sergeant Taylor to have personally checked the temperature of the water and/or supervised the showering of person A. As Sergeant Taylor stated in evidence, the Senior Constables involved in administering aftercare to person A had each received the same training as him.⁸ Furthermore, there is no evidence upon which the Commissioner could find that person A was not able to adequately flush her face and eyes while the handcuffs remained in place.

While person A was in the shower, Sergeant Taylor was attending to other important duties, including checking on the welfare of Sergeant Hulls and telephoning triple 0 to request the attendance of an ambulance to provide further aftercare and medical treatment to A and Sergeant Hulls. After person A had showered, she was conveyed to the attending ambulance for assessment and treatment.

⁵ Transcript of evidence of Sergeant Taylor at pp 10-11

⁶ Ibid at p 34

⁷ Ibid at p 16

⁸ Ibid at p 17

The placing of person A in cell 9 without a change of clothing

It is submitted that no adverse comment or finding is warranted against Sergeant Taylor for not ensuring that person A was provided with clothing following her return from the hospital.

Sergeant Taylor recalls that Sergeant Hulls returned to the station a very short time after person A.⁹ During this time, Sergeant Taylor was attending to other duties, as summarised in paragraph 16 above. At 2.45pm he was on the telephone to Detective Sergeant Grandy in the sergeants' muster room. There were no cameras in that room from which he could have seen what was happening in the cell area. From 2.54pm he was exporting CCTV footage from the section sergeant room. From that room he could have had access to cameras showing what was happening in the cell area.

Sergeant Taylor was no longer in charge of the police station once Sergeant Hulls and Sergeant Barber returned.

Section 2.13 of the report

Sergeant Taylor disputes that he ought to have nominated a specific officer to be responsible for person A's welfare. He says that no such comment is warranted on the evidence, and that the watchhouse keeper on duty was already responsible for the welfare of persons in custody.

Case study: Person B (section 3 of the report)

Sergeant Taylor referenced in his response regarding IBAC's findings on this case study certain parts of his written submissions, a copy of which appears immediately below:

It is submitted that there is an insufficient evidentiary basis upon which the Commissioner could make an adverse comment or finding against Sergeant Taylor in relation to his treatment of person B. Nor is there sufficient evidence upon which the Commissioner could make a finding that Sergeant Taylor's actions were not in accordance with the training provided to police.

As indicated above, Sergeant Taylor has already been the subject of two investigations with respect to this incident – first by the Office of Police Integrity (with the file being reviewed by the Office of Public Prosecutions) with respect to potential criminal charges, and secondly by the Professional Standards Command Disciplinary Advisory Unit. On both occasions Sergeant Taylor co-operated with the investigation and provided his account of the incident.

The outcome of those investigations were as follows:

- a. Sergeant Taylor was not charged with any criminal offence (presumably due to their being insufficient evidence of any criminal wrongdoing)*
- b. the Professional Standards Command Disciplinary Advisory Unit found that the allegation that Sergeant Taylor used excessive force in relation to the arrest of person B was not substantiated.*

Sergeant Taylor has consistently maintained that:

- a. he had repeatedly requested that person B leave the station and return the following day if she wished to speak to someone higher in rank (which had been her request)*
- b. person B kicked him prior to person B being restrained by Sergeant Taylor and Senior Constable Simone Greenwood.*

⁹ Ibid at p 21 and Exhibit 22 at p 5

Appendix A: Natural justice requirements and responses

Statements made by other police officers present on the night confirm that person B was thrashing her arms and kicking her legs at Sergeant Taylor prior being restrained.¹⁰ This evidence is therefore confirmatory of Sergeant Taylor's account.

CCTV footage from camera 50 is also consistent with Sergeant Taylor's account. The incident was captured on CCTV footage from two angles, namely from camera 49 (tendered as Exhibit 24.1 at the public hearing) and camera 50. Camera 50 is positioned on the inside wall above the entry to the Ballarat Police Station, capturing the view from the entrance looking towards the front reception counter. The footage from camera 50 was not shown to Sergeant Taylor during the public examination, nor was it tendered as an exhibit. It is submitted that the footage from camera 50 confirms that person B was kicking out towards Sergeant Taylor prior to her being restrained.

The Statement of Issues indicates that Counsel Assisting are of the opinion that it would be open to IBAC to make adverse comments or findings with respect to as to 'the manner of the arrest of person B as not being in accordance with the training provided to police as opined by Supt Seiz'. It is submitted that Superintendent Seiz's evidence and Exhibit 86 do not support the making of any such finding for the following reasons.

First, Superintendent Seiz's comments are based only on his viewing of select portions of the CCTV footage (presumably from camera 49) with no audio recording and no further information provided. In particular, Superintendent Seiz was not provided with any information regarding Sergeant Taylor's account of the incident, nor any of the other evidence gathered during previous investigations, regarding what was said by person B and Sergeant Taylor prior to the incident and what transpired immediately prior to the arrest. In these circumstances, it is submitted that Superintendent Seiz's opinion is rendered meaningless.

Secondly, Superintendent Seiz does not provide any evidence as to the specific training that was provided to Sergeant Taylor (or Victoria police members generally) prior to this incident in December 2010. Superintendent Seiz's comments regarding the use of force, the Tactical Options Model and the OSTT program are not reflective of the training that was provided to members prior to December 2010.

Section 3.3 of the report

Referring to certain parts of his written submissions which are set out below, Sergeant Taylor maintains that person B kicked out at him prior to being restrained by police, and that this was the basis upon which she was charged with assault police.

It is noted by IBAC that insofar as the third paragraph of his written submissions reproduced below places reliance on other alleged CCTV footage from a different camera angle, this material was not provided to IBAC.

Sergeant Taylor has consistently maintained that:

- a. he had repeatedly requested that person B leave the station and return the following day if she wished to speak to someone higher in rank (which had been her request)*
- b. person B kicked him prior to person B being restrained by Sergeant Taylor and Senior Constable Simone Greenwood.*

Statements made by other police officers present on the night confirm that person B was thrashing her arms and kicking her legs at Sergeant Taylor prior being restrained.¹¹ This evidence is therefore confirmatory of Sergeant Taylor's account.

CCTV footage from camera 50 is also consistent with Sergeant Taylor's account. The incident was captured on CCTV footage from two angles, namely from camera 49 (tendered as Exhibit 24.1 at the public hearing) and camera 50. Camera 50 is positioned on the inside wall above the entry to the Ballarat Police Station, capturing the view from the entrance looking towards the front reception counter. The footage from camera 50 was not shown to Sergeant Taylor during the public examination, nor was it tendered as an exhibit. It is submitted that the footage from camera 50 confirms that person B was kicking out towards Sergeant Taylor prior to her being restrained.

¹⁰ See statements of Sergeant Travis Barber dated 26 March 2012, Senior Constable Simone Greenwood dated 29 September 2011, Senior Constable Nicole Davies dated 6 October 2011 and Constable Mark Howard dated 3 October 2011.

¹¹ See statements of Sergeant Travis Barber dated 26 March 2012, Senior Constable Simone Greenwood dated 29 September 2011, Senior Constable Nicole Davies dated 6 October 2011 and Constable Mark Howard dated 3 October 2011.

Section 3.4 of the report

Sergeant Taylor relies on his evidence that person B had been asked at least five or six times to leave the station and that she continued to insult and abuse police. He also relied on evidence to the effect that he doubted how a complaint could have been taken from a person who was in that state of mind at the time.

With the benefit of hindsight and recent training (his emphasis), he explains that he agreed in his evidence he could have gone back into the office and hoped that person B would calm down and leave of her own accord.

Case study: Persons C and D (section 4 of the report)

Sergeant Taylor referenced in his response regarding IBAC's findings on this case study certain parts of his written submissions, which are set out below.

He states that his ability to respond to these issues is impaired by his lack of memory of events.¹²

The Statement of Issues indicates that Counsel Assisting are of the opinion that it would be open to IBAC to make adverse comments or findings with respect to as to 'the manner of the hold used to restrain both persons C and D as not being in accordance with the training provided to police as opined by Supt Seiz'. It is submitted that Superintendent Seiz's evidence and Exhibit 86 do not support the making of any such finding for the following reasons.

First, Superintendent Seiz's comments are based only on his viewing of selected CCTV footage with no audio recording and no further information provided.

Secondly, Superintendent Seiz's observations in Exhibit 86 are subject to a number of significant concessions:

- a. Superintendent Seiz is unable to say whether another option such as 'frog marching' was available or practicable in this particular situation*
- b. he opines that whether a 'headlock' will constitute the minimum amount of reasonably necessary force to remove a person will depend on the circumstances*
- c. Superintendent Seiz is unable to comment on whether safety principles were considered*
- d. he is unable to say whether or not the members involved demonstrated communication as between each other as to what the plan was in dealing with the situation, and consider what resources were available to deal with the situation.*

Thirdly, Superintendent Seiz does not provide any evidence as to the specific training that was provided to Sergeant Taylor (or Victoria police members generally) prior to this incident in April 2009. His comments regarding the use of force, the Tactical Options Model and the OSTT program are not reflective of the training that was provided to members prior to April 2009.

¹² To assist in this regard, IBAC obtained a record of his interview in relation to an internal police investigation into a complaint by person C (which was regarded as not substantiated). IBAC's findings are based on the CCTV footage.

Appendix A: Natural justice requirements and responses

Probity around promotions (section 5.1 of the report)

Sergeant Taylor referenced in his response regarding IBAC's findings on this issue certain parts of his written submissions as set out below. It is noted that this was notwithstanding these submissions addressed matters raised in the Statement of Issues.

Paragraph 4.11 of the Statement of Issues refers to 'specific risk mitigation strategies for Sergeant Taylor.'

As Sergeant Taylor stated in evidence during the public examination, he has never been informed that he was being placed on a Risk Management Plan or that there was an appointed Plan Owner and/or Workplace Coach. Prior to being shown Exhibit 25 during the public examination, he had not seen this document, nor any other written document referring to a Risk Management Plan. Nor was he aware that any informal conversations with Senior Sergeants were related to 'counselling' or other 'risk mitigation' measures.

The investigation into the 2010 incident (the Case Study regarding person B) was lengthy and protracted. Sergeant Taylor was interviewed by the Office of Police Integrity with respect to potential criminal charges and was interviewed by the Professional Standards Command Disciplinary Advisory Unit. Sergeant Taylor co-operated with both investigations. He participated in recorded interviews on two occasions in which he provided his account of the incident.

During this time, Sergeant Taylor had an acting sergeant's position taken from him. He understands that this was related to the continuing investigation into the 2010 incident.

Sergeant Taylor was ultimately promoted to sergeant in June 2013 (his promotion having been advertised in the Government Gazette in May 2013).

Sergeant Taylor received a letter dated 11 April 2014 from Inspector Greg Payne notifying him of the outcome of the investigation into the complaint made concerning the 2010 incident. The letter (which made no reference to a Risk Management Plan or any other risk mitigation strategies) relevantly stated as follows:

The evidence gathered in relation to the file was evaluated by the Professional Standards Command Disciplinary Advisory Unit with the findings in relation to the allegations being:

- that Sergeant Taylor used excessive force in relation to the arrest of [person B] is not substantiated*
- that Sergeant Taylor failed in his duty to initiate the Complaint Process as reported to him by [person B] was substantiated with the recommendation for local level workplace guidance that has been undertaken.*

At this stage, no further action is proposed in relation to this complaint.

With respect to the failure to initiate the complaint process, Sergeant Taylor was required to undertake a disciplinary investigation course at the Victoria Police Academy.

In relation to the table concerning his promotion (in section 5.1.1), Sergeant Taylor contends that the publication of these details is unnecessary, undesirable and unfair to him in all the circumstances, particularly having regard to the nature and outcome of these complaints. Also, that none of the nominated complaints resulted in any action being taken against him or any finding that he had behaved inappropriately or contrary to Victoria Police policies and procedures. Also, that the complaints were not in any way analogous to those relating to persons B, C and D.

Renee Hulls

Sergeant Hulls takes issue with the following three segments in the report on the same basis as her submissions in response to counsel assistings' Statement of Issues.

Section 2.13: Sergeant Taylor's evidence — 'Sergeant Taylor said that he conveyed this information to Sergeant Hulls on her return from hospital at around 2.45am, and to Inspector Peter Greaney (duty inspector for the region) when he attended the station at around 4.30am on the 15 January 2015'.

Section 2.14: Inspector Thomas' cell visit — 'Inspector Greaney said in evidence he relied on discussions with other sergeants at the station, including Sergeant Hulls, to satisfy himself that person A's welfare was being attended to.'

Section 5.2: Search procedures regarding person A — 'According to officers' statements, by the time Constable McCarty was present, Sergeant Hulls had washed her face to deal with her secondary exposure to OC spray, suggesting she probably was able to be present during the search.'

IBAC notes that the following submissions relied upon by Sergeant Hulls sought to answer specific adverse comments suggested by counsel assisting as being open to IBAC on the evidence, but which have not been adopted in this report in such terms. Nevertheless the submissions are set out below as required by section 162(3) of the IBAC Act:

Issue is taken with the suggested adverse comment made by Counsel Assisting against Sergeant Hulls:

'Counsel Assisting are of the opinion that the IBAC could make adverse comment generally in relation to the placing of person A into Cell 9 on her return from the hospital without providing her with any clothing to cover the lower half of her body and any dry clothing to replace her wet clothes. In particular Counsel Assisting are of the opinion that such a finding could be open against SGT Taylor as the senior police officer present at the Ballarat police station when person A was placed into Cell 9 and SGT Hulls as the senior police officer on duty after her return from the Ballarat hospital'¹³

The examination of Sergeant Hulls disclosed the following:

- i. *Sergeant Hulls commenced duties at 10:30/11:00pm on the 14th January 2015 with her shift due to conclude at approximately at 7:00 am.*
- ii. *Sergeant Hulls was the Sergeant in charge of custody supervision on 14 January 2015.*
- iii. *There were two sergeants on duty that night, Sergeant Hulls and Sergeant Barber.*
- iv. *Sergeant Taylor and/or Sergeant Barber were in charge when Sergeant Hulls was incapacitated.¹⁴*
- v. *Sergeant Hulls was transported to the hospital by ambulance after the incident with person A. Sergeant Hulls was admitted into hospital and returned to the station at approximately 3:00 am in the morning.*

The examination of Sergeant Hulls did not involve any questioning of her duties and/or resumption of duties (if any) upon her return from hospital. It is submitted, that it still remains unclear as to who was in fact in charge upon her return.¹⁵ This suggested adverse comment could only have been made by the use of the examinations of other police members present, A/Supt Greaney, Sergeant Barber and Sergeant Taylor. Furthermore, the basis of this comment is unsafe considering the evident inconsistencies in the examinations of these three police members.

¹³ Page 24 of the Statement of Issues

¹⁴ Page 35 line 25 **Transcript Sergeant Hulls**

Mr. Rush: Who was in charge of the Police station when you were incapacitated?

Sergeant Hulls: I'm not sure. I'm—not whether it was—I know Sergeant Barber came back at some stage. I can't recall. But he would have taken over the duties once he returned back to the station. But I can't recall.

¹⁵ Page 14 line 4 **Transcript A/Supt Greaney**

Mr. Rush: Who was the, if you like, the officer in charge of the station when you arrived?

A/Supt Greaney: At that time it would be Sergeant Hulls.

Mr. Rush: So from your perspective even though he had been off duty he had taken over responsibility because of the OC foam secondary exposure by Sergeant Hulls?

A/Supt Greaney: Yes.

Page 19 line 12 **Transcript Sergeant Barber**

Mr. Rush: So who was in charge of the Police Station over this period of time?

Sergeant Barber: As in during the night?

Mr. Rush: Yes.

Sergeant Barber: That would have been Sergeant Hulls.

Mr. Rush: So did she remain? Did she come back from hospital and take over supervision?

Sergeant Barber: I was told by the Warrnambool 265 that Chris Taylor was looking after the station while Sergeant Hulls was at the hospital and when Sergeant Hulls came back from hospital that she would take over control of the station.

Mr. Rush: And did you speak to her or see her when – on your various returns to the station?

Sergeant Barber: I would have yes.

Mr. Rush: Do you recall that?

Sergeant Barber: No. I would have seen her yes, yes, definitely but whereabouts in the station, like I said, I wouldn't be able to recall.

Page 25 line 21 **Transcript Sergeant Taylor**

Mr. Rush: I see, so you told Sergeant Hulls about it?

Sergeant Taylor: Well she well upon her return she continued to then take over her previous role that she was already doing.

Appendix A: Natural justice requirements and responses

An adverse comment was made that Sergeant Hulls upon her return from the hospital was on duty and therefore responsible for continuing placement of person A in cell 9 without a change of clothing (appropriate clothing). Any such comment has been made with the knowledge that Sergeant Hulls had not yet returned to the station when person A was placed in cell 9. During the examination of Sergeant Hulls no questions were asked of her knowledge of the placing of person A in cell 9 and knowledge of person A state of dress.¹⁶ It is submitted that it remains in doubt which senior members present had the supervisory and responsibility of the station upon Sergeant Hulls return to the station to the conclusion of her shift at approximately 6:30 am. This is evidenced by both the examination of Sergeant Taylor¹⁷ and the examination of A/Supt Greaney.¹⁸

Sergeant Barber, Sergeant Taylor and A/Supt Greaney were all present at the station during the precise period of time upon which an adverse comment has been made. Additionally, what is clear is that Sergeant Hulls during this relevant time was not involved in the process and assessment of whether person A was to be interviewed and/or charged.

¹⁶ Page 21 line 9 **Transcript Sergeant Taylor**

Mr. Rush: At any rate, person A was returned to Ballarat Police Station.
Sergeant Taylor: Correct.
Mr. Rush: Placed in a different cell to cell 1.
Sergeant Taylor: Correct.
Mr. Rush: And returned whilst Sergeant Hulls was still at the hospital.
Sergeant Taylor: I'm not a hundred per cent what time she returned but I believe it was before Sergeant Hulls.
Mr. Rush: And whilst at the time person A returned to the police station, you had overall supervision or responsibility for the police station at that time.
Sergeant Taylor: until Sergeant Barber returned yes.

¹⁷ Page 23 line 27 **Transcript Sergeant Taylor**

Mr. Rush: So at that stage didn't you think as the person supervising the station that it warranted you inspection of person A to check on her welfare, particularly having regard to her having been on leave for 12 months?
Sergeant Taylor: At that stage I believe Sergeant Barber was back which then gave him control back at the station.

¹⁸ Page 8 line 22 **Transcript A/Supt Greaney**

Mr. Rush: So who did you speak to?
A/Supt Greaney: I spoke to Sergeant Taylor and Sergeant Travis Barber.

¹⁹ Transcript of examination Constable McCarty T23

²⁰ Transcript of examination Constable McCarty T22-23

²¹ Transcript of examination Constable McCarty T p 47

²² Transcript of examination Constable McCarty T p 29-38

Simon McCarty

Leading Senior Constable McCarty's responses to factual matters in this report are set out below.

Some minor criticism is made in connection with Constable McCarty's action in dragging person A over a small steel raised strip at the entrance to cell 1. This action should be considered in light of the following matters raised in the earlier submission on the initial decision to drag:

- a. person A was covered in O/C foam making her slippery and difficult to take hold of¹⁹
- b. person A was being entirely non-compliance to direction²⁰
- c. Constable McCarty and person A had already slipped and fallen over onto the floor of the compactus room
- d. person A had been kicking out at Constable McCarty inside the compactus room
- e. person A was refusing to stand
- f. person A was in an unsecure part of the station
- g. moving person A by the process of dragging her minimised the risk of Constable McCarty himself being incapacitated by any further secondary transfer of OC spray
- h. moving person A in a different fashion to that chosen risked possible injury to person A and to Constable McCarty in all of the circumstances
- i. Constable McCarty's clear priority was to return person A to a secure location as soon as possible²¹
- j. it was not a viable or safe option to carry person A back to cell 1 in light of the above factors
- k. clearly person A would not have returned to cell 1 of her own volition
- l. the situation faced by Constable McCarty was volatile and needed to be contained as quickly as possible
- m. Constable McCarty's action in dragging person A was performed in a non-aggressive fashion
- n. Constable McCarty's decision to do so may have in fact significantly reduced the risk of injury to all concerned.

Constable McCarty's conduct should be viewed in light of his minimal use of force at all times during the incident, for example as evidenced once person A had been returned to cell 1.²²

Section 2.7 of the report

There is no proper evidentiary foundation to be critical of Constable McCarty in relation to the risk of positional asphyxia. In this regard the following matters are relevant:

- a. *the CCTV clearly shows that at all relevant times importantly he was keeping close observations on person A's face and engaging her in conversation*
- b. *person A was only in the prone position for a relatively brief period of time*
- c. *Constable McCarty's evidence before the Commission demonstrates that he was aware of the risk of positional asphyxia and training on this issue*
- d. *his conduct should be assessed in light of the minimal and appropriate level of force that he used in the situation to ensure his safety, that of person A and that of his colleagues. This is in fact demonstrated in the transcript of his evidence and the CCTV footage*
- e. *the following observations of Superintendent Peter Seiz in relation to members restraining person A on the ground:*
 - i. *section 462A (of the Crimes Act) considerations as to use of force are paramount*
 - ii. *the event has turned from a controlled/planned situation into an unplanned situation resulting in person A being sprayed with OC*
 - iii. *as a result, the members have been forced to respond by restraining person A. They chose to do this by restraining person A on her stomach on the ground with her hands cuffed behind her back. Superintendent Seiz noted the members were constantly speaking to person A and that she was on her stomach face down for short periods of time, but mainly on her side*
 - iv. *once members have subdued and exercised control over a violent or non-compliant person in custody, that person should be placed, as soon as practicable, in a position where positional asphyxia will not occur (eg. in a seated position). Consideration of positional asphyxia should be constant. Members are trained to keep a person restrained on their stomach with their hands cuffed behind their back for the shortest amount of time necessary in the circumstances.*

Section 5.2 of the report

Clearly as a matter of sound policy, as indicated in the Victoria Police Manual, where practical, a search should have been conducted by an officer of the same gender as the person being searched. It is very important in this matter however to consider the following factors:

- a. *the search was conducted in the context of an emergency, where regrettably control of the station had been lost, and where a lanyard, security pass and pen were believed to be in the possession of person A*
- b. *the clear operational objective and priority was the recovery of the lanyard, security pass and pen in order to ensure the safety of all concerned*
- c. *it appears all members present, including Constable McCarty, were to varying degrees affected by OC foam*
- d. *the search had been authorised and directed by Sergeant Taylor as the priority*
- e. *Constable McCarty was a junior officer at the time*
- f. *Sergeant Hulls had been severely affected by the OC foam, requiring transfer to hospital. Upon his return to the station Constable McCarty was aware that Sergeant Hulls had been severely adversely affected.²³ That remained his belief at the time*
- g. *at the time of the commencement of the search, it appears that Sergeant Munro had not yet arrived or at least Constable McCarty was not aware of this fact*
- h. *during the search Constable McCarty's attention remained focused on the head and upper body of person A*
- i. *a female officer, First Constable A, conducted the search of the lower part of person A's body.*

Regarding the issue of the search being conducted in view of CCTV, it is of note that the manual refers to searches being conducted away from CCTV 'where practicable' and that 'the possibility of the search being captured on CCTV does not preclude members ... from conducting the search in a police cell...'

²³ Transcript of examination Constable McCarty T19

Appendix A: Natural justice requirements and responses

Bruce Thomas

In response to factual matters in this report, Inspector Thomas relied upon both his and the Chief Commissioner's submissions seeking to answer counsel assistings' Statement of issues.

Insofar as this report has placed reliance on a report published by the former Office of Police Integrity in June 2010 titled 'Update on conditions in Victoria police cells', he says that report is in relation to cell occupancy for various police stations defined as Category A cell complexes. He also says the utility and relevance of this report is limited by the fact that it involves an analysis of data for the year 2009 only. Further, the relevant CompStat Forum took place in November 2012 and referred to complaint data for the previous 12 months. Accordingly, he says the report of the former Office of Police Integrity is of little assistance to the current inquiry.

He otherwise says that other material referred to in footnotes 18, 19, 20, 21, 22 and 23 of this report clearly demonstrate that Ballarat has experienced in recent years an increase in relation to mental health, drug and alcohol use, and family violence.

IBAC notes that Inspector Thomas' submissions were directed at specific possible adverse comments and other issues raised by counsel assisting in their Statement of Issues, not all of which were contained in the draft report extracts provided to Inspector Thomas, and which are not adopted in this report.

Nevertheless section 162(3) requires that Inspector Thomas' submissions be set out immediately below. The Chief Commissioner's said submissions appear in Appendix B to this report.

November 2012 Compstat Forum and subsequent action item

Inspector Thomas stated in his evidence the following in respect of the Compstat Forums²⁴:

- a. *Compstat is a performance management forum*
- b. *At the forum Divisions are examined on multiple sets of data ranging from road policing, WorkCover, crime statistics, complaint data, station management and division management*
- c. *It is a comprehensive process*
- d. *The Western Division 3 forum comprises of the Superintendent, three Inspectors and others as necessary*
- e. *The forum is usually held before a Commander and/or above depending on availability of those personnel*
- f. *There is a comprehensive document produced – anywhere up to 150 pages of data – which the attendees are asked questions on*
- g. *Action items may be generated as a result of the forum*
- h. *A meeting usually lasts for about 2 hours*
- i. *Action items are to be responded to within a set period of time. The response to the action item is then passed onto the Corporate Performance Unit and is brought up again at the next Compstat forum to assess whether it has been addressed or not.*

The timeline relevant to the November 2012 Compstat is as follows:

- a. *1 November 2012 – Compstat Forum held*
- b. *15 November 2012 – Internal memorandum from then Chief Commissioner Ken Lay to Deputy Commissioner Tim Cartwright²⁵*
- c. *20 November 2012 – Internal memorandum from Assistant Commissioner Blayney to Superintendent Andrew Allen²⁶*
- d. *21 November 2012 – Internal memorandum from Superintendent Allen to Inspector Thomas*
- e. *17 December 2012 – Complaint summary received by Inspector Thomas²⁷*
- f. *21 December 2012 – Report on Compstat Action Item.²⁸*

²⁴ Evidence of Bruce Thomas at T18.08 to T19.15

²⁵ Exhibit 31

²⁶ Exhibit 32

²⁷ Exhibit 33

²⁸ Exhibit 24

As a result of the November 2012 Compstat Action Item, Inspector Thomas undertook the following:

- a. he liaised with the Strategic Intelligence Unit at the (then) Ethical Standards Department (ESD) so that he could delve deeper into the complaint statistics for Ballarat Police Service Area (Ballarat PSA). This led to him receiving the Complaint Summary on 17 December 2012 which included not only a comprehensive breakdown of data in relation to Ballarat but a comparison between the Ballarat PSA and the Frankston Police Service Area.
- b. he analysed the data obtained by the (then) Chief Commissioner Ken Lay from the ESD
- c. he nominated two members for ESD Risk Analysis²⁹
- d. he obtained a Risk Mitigation Strategy from the ESD for review and implementation where appropriate.

After receiving the additional information in the form of the Complaint Summary Inspector Thomas finalised his response to the action item and forwarded an Interim Report to the Divisional Commander of Western Region Division 3 on 21 December 2012³⁰. The report set out the following:

- a. the results of his preliminary analysis of data obtained by the (then) Chief Commissioner, Ken Lay
- b. the results of his preliminary analysis of the Complaint Summary produced by ESD
- c. details of particular personnel considered to be 'at risk' of complaints
- d. details of the preliminary strategies that had been canvassed at that stage.

At the May 2013 Compstat Forum it was conveyed to Inspector Thomas that the action item was closed, and that his response to it was satisfactory.³¹

Further it is noted that Western Region, Division 3 has not received any further action items in relation to complaints at any of the Compstat forums that followed the November 2012 Compstat Forum. Since that time there has been Compstat Forums held in May 2013, November 2013, May 2014, November 2014, and November 2015.³²

It is also further noted that the Action Item related to the number of assault complaints against senior members as opposed to the overall number of complaints against senior members.

It is submitted that Inspector Thomas' response to the action item was appropriate, thorough, targeted and well-informed. The action item was marked as 'closed' and no further action was required.

As is also clear from the Complaint Summary the Ballarat PSA was on track to significantly reduce the number of allegations in 2012/13.³³

²⁹ Evidence of Bruce Thomas at T79

³⁰ Exhibit 24

³¹ Evidence of Bruce Thomas at T113.10 to T114.07

³² Evidence of Bruce Thomas at T114.12 to T114.27

³³ Complaint Summary page 19, paragraph 6

Appendix A: Natural justice requirements and responses

Ethical Standards' Department Complaint Summary

Inspector Thomas indicated in his evidence that the Complaint Summary data in respect of the number of allegations was flawed. He explained that the reason why was because the data set included data from three police stations which did not form part of the Ballarat PSA; namely Ballarat CIU, Ballarat Highway Patrol and Ballarat D24.³⁴ Those stations have not been part of the Ballarat PSA since July 2010. The inclusion of their data in the Complaint Summary is an error.

The removal of those police stations which do not form part of the Ballarat PSA – Ballarat CIU; Highway Patrol and D24 – significantly changes the total number of allegations and complaints attributable to the Ballarat PSA:

- a. the total number of allegations over the period is reduced from 157, as asserted by counsel assisting in the opening, to 117 – a vastly different number
- b. the total number of allegations against Sergeant level or above over the period is reduced from 38 to 24 once those additional stations are removed
- c. the total number of complaint files over the period is reduced from 64 to 46.

The comparison between Frankston PSA and Ballarat PSA is similarly affected by the removal of those additional stations. It is asserted in *The Statement of Issues* (at paragraph 4.3) that the figures indicate that Ballarat Sergeants accumulated two times the number of allegations compared with their counterparts at Frankston. This is not correct. There were 22 allegations made in respect of Sergeants at Ballarat between July 2010 and October 2012 compared to 16 at Frankston.

It is asserted at paragraph 4.2 of the *Statement of Issues* that Inspector Thomas, at least historically, in general terms accepted and acted upon the Complaint Summary provided and did not consider the analysis provided was misleading or flawed at the time. It is respectfully submitted that this is not an accurate representation of the evidence. In respect of his reliance on the Complaint Summary Inspector Thomas said in evidence that:

- a. he used the data provided within as a guide and that he took into account that the data was flawed³⁵
- b. the number of allegations are incorrect, the number of complaint files are incorrect as are the work locations attributed to the Ballarat PSA³⁶
- c. he worked on the basis that the figures contained therein were fair and reasonable excluding though the flawed data³⁷
- d. the document was an intelligence document and that if he disregarded the flawed data then it still gave him enough information to form an opinion³⁸
- e. he is a qualified intelligence analyst and that he can separate data.³⁹

It is clear from the evidence given during his examination that Inspector Thomas considered the data contained within the Complaint Summary to be flawed by virtue of it including data for stations that are not part of the Ballarat PSA. It is also clear that he put to one side the erroneous data and that he had no difficulty doing that. The purpose of obtaining the Complaint Summary was to provide additional information in respect of complaints and allegations against members. It is noted that the reason for obtaining the document was because it enabled him to 'drill-down' into the data in order to have a better understanding of the complaints against senior members.

A number of conclusions and comments were included in the Complaint Summary which Inspector Thomas considered as part of his response. The following are relevant (bearing in mind the erroneous inclusion of data from outside stations):

- a. complaints against Leading Senior Constables have declined from 15 complaints in 2010/11 to 11 complaints in 2011/12 and no complaints in the four months of this financial year. The spike in the number of complaints in 2010/11 can partially be attributed to one member, VP 25624 (currently suspended) who during that time received eight complaints, inclusive of two IVOs.⁴⁰
- b. almost 20 per cent of all allegations relate to members off duty conduct.⁴¹
- c. it is evident that during the sample period the majority of allegations (69.4 per cent) have been recorded against members who have six or more years of service. Since 2010/11, there has been a substantial decrease in the number of allegations recorded by members with 11-15

³⁴ Evidence of Bruce Thomas at T98.01

³⁵ Evidence of Bruce Thomas at T30.17

³⁶ Evidence of Bruce Thomas at T31.03

³⁷ Evidence of Bruce Thomas at T36.25

³⁸ Evidence of Bruce Thomas at T36.01

³⁹ Evidence of Bruce Thomas at T42.07

⁴⁰ Complaint Summary, page 19, paragraph 3

⁴¹ Complaint Summary, page 19, paragraph 4

YOS (19 to two) and members with more than 30 YOS (from 13 to four), whilst the number of allegations for members who had 16 – 30 YOS has substantially increased, from four to 13 allegations. **Overall the PSA is on track to significantly reduce the number of allegations in 2012/13.**⁴² [emphasis added]

- d. the number of assault allegations (minor and serious) has substantially decreased from 26 in 2010/11 to eight allegations in 2011/12. Of note, during four months of this financial year two assault allegations have been recorded.⁴³
- e. of note, 85 per cent (12 out of 14) of assault allegations accrued by Leading Senior Constables have been recorded by two members, VPN 30932 (terminated in 2011) and VPN 25624 (currently suspended).⁴⁴
- f. since 2010/11 financial year, the number of assault allegations received by the PSA has substantially decreased.⁴⁵

The in-depth analysis contained in the Complaint Summary is imperative when considering the statistics and possible data trends. Such an analysis enabled Inspector Thomas to 'drill down' into the data and make an informed assessment of the issues relating to assault complaints against members under his command. The analysis (in its un-redacted form as it was received by Inspector Thomas) provided him with specific information in respect of complaint files and allegation numbers, which members were the subject of complaints and what they were for, the number of complaints relating to each rank and years of service, and the complaint/allegation outcomes. This was all essential information which assisted Inspector Thomas to provide an informed response to the Action Item and to develop a strategic plan going forward.

'Comparable stations'

At paragraph 5.1 of the Statement of Issues, counsel assisting has referenced (at footnote 31) 'Intelligent Assessment Operation Ross at 570'. Inspector Thomas and his Counsel have been refused access to the IBAC book which presumably includes this referenced document. Inspector Thomas has not sighted this document and is not aware of its contents. Inspector Thomas is not aware of the source of the data referred to and accordingly cannot comment on its veracity. The figures quoted in paragraph 5.1 (being Ballarat - 11, Bendigo - 2) were not put to Inspector Thomas during examination. He was not given an opportunity to comment on those figures.

During the Opening, Counsel assisting referred to a document which contained a diagram titled 'Depicts the number of members (uniform) with assault complaints for comparable stations for this financial year'. This document forms part of Exhibit 47 'Graphs used in Opening Remarks'. The document title is inaccurate. The diagram depicted does not, as suggested by the title, indicate the number of members with assault complaints. There are no details contained in that document as to the number of assault complaints for Ballarat or any of the 'comparable stations'. In the absence of accurate information relating to the actual number of assault complaints for each of the stations depicted in the diagram, the diagram is meaningless.

Inspector Thomas gave evidence that he did not consider that Ballarat was comparable to other stations identified on the diagram; namely Horsham, Warrnambool, Seymour, Swan Hill, Morwell and Bendigo.⁴⁶ He stated that there are a number of issues which would impact such a comparison citing, for example, population, employee numbers, cell-sizes, and demographics. Counsel assisting indicated that those stations had been selected as a comparison as they all have holding cells, operate 24 hours per day and are regional stations. Such an analysis fails to consider whether the stations are comparable in respect of the region's demographics (including but limited to unemployment rates, socio-economic status, and department of health and human services intervention), crime statistics and population size.

⁴² Complaint Summary, page 19, paragraph 6

⁴³ Complaint Summary, page 20, paragraph 7

⁴⁴ Complaint Summary, page 21, paragraph 11

⁴⁵ Complaint Summary, page 23, Conclusion 4

⁴⁶ Evidence of Bruce Thomas at T71.08 to T71.22

Appendix A: Natural justice requirements and responses

Whilst Inspector Thomas was not able to specifically recall the prisoner capacity of Bendigo he made it clear to the Commissioner that he believed it was definitely smaller than Ballarat's capacity. Inspector Thomas advised the Commissioner that Ballarat has a capacity to hold 24 prisoners in its cells⁴⁷ and even more significantly it is the largest rural cell complex in the State.⁴⁸ It is clear from his evidence that Inspector Thomas was doing his best to address the issues raised, answer the questions and provide information without having relevant and specific material before him.

Inspector Thomas was asked by the Commissioner whether, in his experience, having to deal with prisoners is likely to generate more complaints. He responded in the affirmative, however he qualified that by noting that he did not have the data in front of him.⁴⁹

At no stage during the examination was Inspector Thomas provided with the assault complaint numbers in relation to any of the 'comparable stations'. Further in the absence of any opportunity to properly analyse the data and the details of each of those assault complaints it would be inappropriate to draw any conclusion as to the comparison between Ballarat and the 'comparable stations'. It is noted that the comparison appears to be only in respect of assault complaints and not in respect of other forms of complaints. It is also further noted that the analysis and the documents do not identify the outcomes of the complaints – ie. substantiated, unsubstantiated, withdrawn, no complaint. Such information would be vital to such an analysis.

Given the questioning that took place in respect of the comparison between the Ballarat police station and other 'comparable stations', a number of enquiries have been made to ascertain further information to assist the Commissioner. The stations nominated as 'comparable stations' in the hearing currently have the following prisoner capacity:

- a. Seymour – 8
- b. Morwell – 9
- c. Warrnambool – 10
- d. Swan Hill – 11
- e. Bendigo – 12
- f. Geelong – 18

Note: the IBAC Intelligence Assessment mentioned by counsel for Inspector Thomas has not been relied upon or referred to by IBAC in this report. As a result, there has been no need for this internal document to be provided to any represented persons or parties.

Workcover claims (arrest and restrain) and use of force statistics

Inspector Thomas agreed in his evidence that, based on the figures shown to him during the examination, arrest and restraint is an issue.⁵⁰ He stated that arrest and restraint is an issue across the state and that the data he has been considering shows that arrest and restraint are one of the most dangerous tasks that members undertake.⁵¹

Inspector Thomas accepted that based on the figures shown in Exhibit 45 he would make the assumption that Ballarat personnel are more likely to be in some form of physical confrontation during arrest and restraint than their counterparts in other stations. That is an assumption that is open when one looks at the graph contained in Exhibit 45.

It is noted, however, that the source data for Exhibit 45 is not evident. Further, it is noted that the graph contained in Exhibit 45 provides a comparison of the number of claims at Ballarat as opposed to the 'average' across the state. It is also not clear whether the figure attributed to Ballarat is for the whole of the PSA or whether it is for Ballarat uniform only.

One cannot assume from the limited material presented in Exhibit 45 that Ballarat uniform has the highest number of Workcover claims for arrest and restraint in the State. The only way to reach that conclusion would be to undertake a comparative analysis between Ballarat and actual figures for all other stations, as opposed to a state average.

It is noted that the figures contained in Exhibit 39 ('Number of recorded use of force incidents for Western Region 2010 to 2014') shows that both Division 1 (Geelong) and Division 5 (Bendigo) had a higher number of 'use of force' incidents than Division 3 (Ballarat) over the period 2010 to 2014; those being 997 and 1947 respectively compared to 829 for Division 3. It is further noted that Exhibit 39 was not shown to Inspector Thomas during his examination nor was he asked to comment on it.

⁴⁷ Evidence of Bruce Thomas at T72.18

⁴⁸ Evidence of Bruce Thomas at T72.28

⁴⁹ Evidence of Bruce Thomas at T73.17 to T74.03

⁵⁰ Exhibit 45 and evidence of Bruce Thomas at T74.06

⁵¹ Evidence of Bruce Thomas at T74.04 to T74.15

The promotion of Christopher Taylor to Sergeant

Inspector Thomas advised the Commissioner that he did not recall being consulted in respect of the Taylor promotion and that he may well have been on leave at that time. As a result of that line of questioning, Inspector Thomas has made further enquiries and can now confirm that he was in fact upgraded to Geelong as an acting Superintendent from 17 March 2013 to 20 April 2013.

Whilst he does sit on Selection Panels, Inspector Thomas did not sit on the Selection Panel that considered, *inter alia*, Christopher Taylor's application for promotion to the rank of Sergeant. Nor was Inspector Thomas consulted in respect of that application prior to the decision being made. This was unchallenged evidence before the IBAC.

Given the extensive questioning on this issue during the examination, Inspector Thomas has subsequently obtained the relevant material from the Transfer and Promotion Unit relating to Christopher Taylor's Sergeant promotion.

It is not known whether the IBAC has already obtained copies of the relevant material. The material is available for consideration should the IBAC wish to consider it.

The relevant documents obtained from the Transfer and Promotion Unit indicate the following:

- a. Christopher Taylor submitted an application for position at the rank of Sergeant advertised on 11 March 2013;
- b. the Selection Panel consisted of the following:
 - i. Convener – Laura Farrugia
 - ii. Local Representative – Senior Sergeant Warren Groves and Acting Senior Sergeant Paul Martin
 - iii. Independent – Acting Inspector Jan McNally
- c. the Selection Panel considered Christopher Taylor's application on 28 March 2013
- d. the Selection Panel obtained a Probity Check in relation to Christopher Taylor
- e. the Selection Panel unanimously recommended Christopher Taylor for promotion
- f. the Selection Panel's recommendation was forwarded to Superintendent Mark Porter (Transfer and Promotion Unit) for consideration.
- g. Superintendent Mark Porter recommended that the promotion proceed with Christopher Taylor being advised that the promotion may be reviewed upon the finalisation of the active internal investigation. This recommendation was forwarded to the Human Resources Division for consideration and approval – namely Shane Cole (Acting Commander, HRD) and Andrew Loader (Group Director, HRD).

Appendix A: Natural justice requirements and responses

Response to Paragraph 6 – ‘Matters arising’

The query made by former Chief Commissioner Ken Lay at the November 2012 Compstat meeting was in respect to possible drivers of assault complaints and not to other complaint types. This is confirmed in the memoranda that follow from the former Chief Commissioner and Assistant Commissioner Blayney.⁵² It is noted in paragraph 6.1(a) and (b) the suggestion is the November 2012 Compstat concern was in relation to complaints generally as opposed to assault complaints.

Statement of Issues, paragraph 6.1(a) – alleged failure to implement

‘Allen and Thomas failed to put in place any proper strategy or risk mitigation plan to address the November 2012 Compstat data and the Complaint Summary data produced by Professional Standards in December 2012 that demonstrated more experienced members, including Sergeants, were the main drivers of complaint statistics for Division 3, particularly Ballarat police’

- a. *Inspector Thomas was specifically asked about each of the preliminary strategies outlined in the Interim Report which at that stage had been canvassed in response to the November 2012 Compstat forum and his subsequent enquiries. His evidence on this topic can be summarised as follows:*
 - i. *sergeants are required to be qualified at the Discipline Investigation Course – this has been implemented.⁵³ The rationale behind implementing such a strategy is set out in the transcript of his evidence at page 34, line 17*
 - ii. *sergeants are required to investigate MIM files for personnel who are under their control (correspondence group) – this has been implemented.⁵⁴ The rationale behind implementing such a strategy is set out in the transcript of his evidence at page 50, line seven to line 15*
 - iii. *customer service and duty failure mitigation to be reinforced at every opportunity by managers and supervisors (readouts, training, professional development opportunities, PDA discussions) – this has been implemented⁵⁵*
 - iv. *sergeants to take greater responsibility during supervisory shifts – this has been implemented.⁵⁶ The rationale behind implementing such a strategy is set out in the transcript of his evidence at page 50, line 26*
 - v. *improvement in timely resolution of MIM files – this has been implemented and the rationale behind implementing such a strategy is set out in the transcript of his evidence at page 51, line 10.*

⁵² Exhibits 31 and 32

⁵³ Evidence of Bruce Thomas at T34.09 to T31.24; T47.19; T49.14

⁵⁴ Evidence of Bruce Thomas at T50.04

⁵⁵ Evidence of Bruce Thomas at T50.20

⁵⁶ Evidence of Bruce Thomas at T50.24

- b. In addition to the matters set out in the action plan there were other strategies put in place to address the number of complaints against Sergeants:
- i. conducting sergeants' meetings where issues such as complaints are discussed – these were conducted formally every six months⁵⁷
 - ii. almost daily discussions with the Senior Sergeants about the performance of the Sergeants and complaints⁵⁸
 - iii. he consulted with the Strategic Intelligence Unit and referred two members for Risk Analysis as a result of their complaint numbers⁵⁹
- c. It is submitted that the evidence of Inspector Thomas clearly identified the response taken to the action item. His evidence identifies the strategies which were implemented and the rationale behind a number of them. It is submitted that, on the evidence before the IBAC, it is not open to make an adverse comment or finding in respect of the implementation of strategies to address the issues arising out of the November 2012 Compstat Forum.

Statement of Issues – paragraph 6.1(b) – alleged failure to investigate

'Allen and Thomas failed to properly investigate reasons why experienced members at Ballarat police, including sergeants, were the main drivers for complaint statistics as identified in the November 2012 Compstat and the Complaints Summary produced by Professional Standards in December 2012'

- a. The Commissioner is referred to paragraphs seven and eight above which set out the various actions undertaken by Inspector Thomas following the November 2012 Compstat and the subsequent action item.
- b. Inspector Thomas did not confine his investigation to Sergeant level and above, rather he sought to investigate the drivers of complaints and to develop a strategy to decrease complaints across the board for the Ballarat PSA.
- c. Seeking the Complaint Summary, analysing the initial data obtained by the then Chief Commissioner and the Complaint Summary data, seeking a risk mitigation document from the ESD, seeking an 'At Risk Management Plan', and nominating two members to the ESD risk analyst are part of his investigative process following the action item.
- d. The action item was marked as closed and no further action was required.
- e. It is submitted that Inspector Thomas' response to the action item was appropriate, thorough, targeted and well informed. Accordingly, it is submitted that it is not open to the IBAC to make adverse comment or findings in respect of Inspector Thomas' investigation following the November 2012 Compstat Forum and the action item.

⁵⁷ Evidence of Bruce Thomas at T58.06

⁵⁸ Evidence of Bruce Thomas at T58.14

⁵⁹ Evidence of Bruce Thomas at T19

Appendix A: Natural justice requirements and responses

Statement of Issues – paragraph 6.1(c) – alleged failure to monitor

'Allen and Thomas failed to properly monitor the complaint statistics and performance of Sergeants and experienced members following the November 2012 Compstat and the December 2012 Complaints Summary produced by Professional Standards so as to ascertain if any strategy or risk mitigation plan put in place was effective in reducing complaints against these categories of members'

- a. *Inspector Thomas keeps himself informed in respect of complaints by attending monthly Local Professional Standards Committee meetings. These meetings are normally attended by the Ethical and Professional Standards Officer for the Western Region.⁶⁰ At those meetings complaint trend data is discussed as well as specific complaints.*
- b. *Inspector Thomas is also kept informed of complaint data trends via the Compstat data and forums.⁶¹*
- c. *If there was a particular member that is seen as being at risk given complaint numbers then that would be brought to his attention either through his own knowledge of it or by the EPSO for the region.⁶²*
- d. *There may be occasions where Inspector Thomas is not aware of a complaint against a member. This may occur where the complaint is part of a covert investigation or the investigation is being conducted by Professional Standards Command.⁶³ In that regard he is reliant upon the EPSO for the region informing him of issues which they think need to be looked at.⁶⁴*
- e. *At the May 2013 Compstat Forum it was conveyed to Inspector Thomas that the Action Item was closed, and that his response to it was satisfactory.⁶⁵*
- f. *Further, it is noted that the Western Region, Division 3 has not received any further action items in relation to complaints at any of the Compstat forums that followed the November 2012 Compstat Forum. Since that time there has been Compstat Forums held in May 2013, November 2013, May 2014, November 2014, and November 2015.⁶⁶*
- g. *It is submitted that the evidence of Inspector Thomas clearly establishes that following the November 2012 Compstat forum he monitored (and continues to monitor) complaint levels for the Division through his engagement with the EPSO for the Western Region, his attendance at Compstat Forums, his consideration of Compstat data and his engagement with personnel under his command.*
- h. *Accordingly, it is submitted that it would not be open to the IBAC to make adverse comment or finding in respect of Inspector Thomas' monitoring and consideration of complaint levels following the November 2012 Compstat Forum.*

⁶⁰ Evidence of Bruce Thomas at T24.24

⁶¹ Evidence of Bruce Thomas at T25.02;T25.24 to T26.02

⁶² Evidence of Bruce Thomas at T26.17 to T26.28

⁶³ Evidence of Bruce Thomas at T27.01 to T27.16

⁶⁴ Evidence of Bruce Thomas at T69.21

⁶⁵ Evidence of Bruce Thomas at T113.10 to T114.07

⁶⁶ Evidence of Bruce Thomas at T114.12 to T114.27

Statement of Issues – paragraph 6.1(d) – failed to implement use of force as last resort

‘Allen and Thomas having received in April 2015 the Intelligence Brief from Professional Standards *Ballarat Police Station Use of Force 2010-2014* which identified that “Ballarat members predominately used "hands on" force types which are almost certainly contributing to offender and member injuries” failed to ensure a risk mitigation strategy or other like procedure or protocol was put in place to inform and educate Ballarat members that "hands on" force should be an action of last resort’

- a. *At no stage during his examination was Inspector Thomas questioned about the April 2015 Intelligence Brief. He was not shown this document nor asked to comment on it. There is no evidence before the Commissioner as to Inspector Thomas’ knowledge of the contents of the April 2015 Intelligence Brief, his response to it or his assessment of its contents. Rather, Inspector Thomas was shown Exhibit 45 and asked whether he agreed it supported the assumption that Ballarat personnel are more likely to be in some form of physical confrontation than their counterparts in other stations. Accordingly, it would not be open to the Commission to make a finding in relation to Inspector Thomas’ reaction to the April 2015 Intelligence Brief.*
- b. *In those circumstances the suggested comment or finding identified in paragraph 6.1(d) is not open on the evidence. Furthermore given the lack procedural fairness afforded to Inspector Thomas on this issue, no such conclusion, finding or comment should be made.*
- c. *Inspector Thomas gave un-contradicted evidence that whilst he was aware of the number of Workcover claims for Ballarat members in relation to arrest and restraint he was not aware of the comparison with the average until he was shown Exhibit 45 during the hearing.⁶⁷*
- d. *Inspector Thomas identified in his evidence what strategies have been implemented to address the number of workplace injuries.⁶⁸*
- e. *Inspector Thomas gave evidence that all workplace incidents involving an injury are investigated, reviewed and analysed with a view to identifying factors that contribute to the injury and how the Ballarat PSA can improve or mitigate that risk.⁶⁹*

Statement of Issues – paragraph 6.1(e) – failed to address underreporting

‘Allen and Thomas having received in April 2015 the Intelligence Brief *Ballarat Police Station Use of Force 2010-2014* which identified that “it is almost certain that use of force is being underreported at Ballarat police station” failed to ensure proper directions and procedures were put in place at Ballarat police station to ensure proper compliance with operating procedures concerning the reporting of use of force.’

- a. *At no stage during his examination was Inspector Thomas asked about the April 2015 Intelligence Brief. He was not shown this document or asked to comment on it.*
- b. *There is absolutely no evidence before the Commission about Inspector Thomas’ response, or lack of response, to such a document.*

⁶⁷ Evidence of Bruce Thomas at T76.14

⁶⁸ Evidence of Bruce Thomas at T26.21

⁶⁹ Evidence of Bruce Thomas at T76.21

Appendix A: Natural justice requirements and responses

Andrew Allen

Superintendent Allen's specific responses to factual matters in this report affecting him are set out below. He repeats and relies on his previous submissions and those of the Chief Commissioner (see Appendix B) in relation to what he refers to as the proper interrogation of data, the context of the actions taken by senior management and the improvements identified in various data sets.

He states that a fair and reasonable assessment of his conduct discloses that the issues identified by him, and brought to his attention, were addressed appropriately and in good faith within the procedures applying at that time.

Insofar as this report references in footnote 17 (of section 6.4), the former Office of Police Integrity report title 'Update on conditions in Victoria Police cells', he doubts that due to it containing data for part of 2009, it assists this investigation. He also states that additional material referenced in footnotes 18 to 23 of this report is expositive of the difficult socio-economic, health and crime issues affecting various regions including that served by the Ballarat Police Station.

To the extent that his submissions in answer to counsel assistings' Statement of Issues are also relied on, these are also set out immediately below as required by section 162(3) of the IBAC Act. This is notwithstanding that some of his submissions sought to answer matters raised by counsel assisting that were not adopted in the draft report, extracts he received nor this report.

Promotions procedure

It is suggested (at 5.1.2 of this report) that there may have been a 'general lack of oversight' by senior divisional commanders in relation to the promotion of Sergeant Taylor. It is suggested (at 5.1.5) that Superintendent Allen 'appears to have been happy to rely on limited probity checks conducted by an external unit which gave the green light for the promotion.' The IBAC states it now has a copy of the selection report recommending the promotion of Sergeant Taylor. Superintendent Allen has been able to refresh his memory in relation to the process. That report, and related material should disclose that:

- a. Superintendent Allen had concerns about the promotion
- b. the relevant recruitment consultant raised a probity matter at the time the panel convened and she prepared a report for Superintendent Porter of the Transfer and Promotion Unit. Superintendent Porter then referred the matter to the then Director of the Victoria Police Human Resources Department. The subsequent recommendation by that unit was that the promotion proceed but that it may be reviewed upon the finalisation of the active internal investigation. As a result of apprehensions raised by Superintendent Allen, a number of additional management actions had been previously implemented in relation to Sergeant Taylor. Taking all the above matters into account, Superintendent Allen endorsed the promotion as the applicable delegate.

The above matters demonstrate that care was taken by the Superintendent to address his concerns while working within the transfer and promotions system as it stood at that time.

Senior management response (section 6.3 of this report)

The detailed submissions dated 10 August 2016 are relied upon. The Submissions of the Chief Commissioner regarding the Issues Paper are also relied upon. Combined, those submissions identify errors in figures that remain in tables contained in the Extracts.

Superintendent Allen and others interrogated that data provided and developed responses based upon an intelligent assessment of that data. Those responses include:

- a. risk mitigation plans being discussed and implemented⁷⁰*
- b. investigations and disciplinary and criminal processes being pursued against members who were the subject of multiple complaints⁷¹*
- c. identifying members with multiple complaints.⁷² Superintendent Allen agreed that the process of identification could be improved and stated that the provision of better data had assisted that task.⁷³*

Assaults complaints, injuries and recorded uses of force

Again, the detailed Submissions dated 10 August 2016 are relied upon. The Submissions of the Chief Commissioner regarding the Issues Paper are also relied upon.

The opening paragraph of part 6.4 refers to data identified as 'comparing assault complaints against Ballarat Officers with Bendigo Officers in the nine months to March 2015'. It is not clear, but it might be that this data formed part of a pie chart to put to Superintendent Allen apparently depicting the number of assault complaints at Ballarat compared with 'comparable police stations; ('Pie Chart'). He was not aware of the source of the Pie Chart, it was unknown to him.⁷⁴ Superintendent Allen stated that he would need further data including complaint figures and personnel numbers to come to a position on that data.⁷⁵

The previous submissions regarding the purpose (and limits) of the Intelligence Brief are relied upon.⁷⁶ It is submitted again that the adverse comments concerning any perceived lack of action in relation to the Intelligence Brief do not accurately reflect its purpose, the data contained within it, or its conclusions. It is submitted that the commissioning of the Intelligence Brief indicates the engagement of senior management with issues affecting the Division. Superintendent Allen gave evidence that the Intelligence Brief was prepared in relation to an 'ongoing management review of the use of force and injuries occurring to members as a result of confrontations'.⁷⁷ He was not questioned further in relation to this.

⁷⁰ Superintendent Allen T44.17 – 45.13

⁷¹ Superintendent Allen T44.27, T21.21

⁷² Superintendent Allen T19.22 – 20.20

⁷³ Superintendent Allen T20.15

⁷⁴ Superintendent Allen T29.2 and 35.8 where Superintendent Allen asks about the source of the data being relied upon.

⁷⁵ Superintendent Allen T70.18 – 71.3

⁷⁶ Refer previous submissions dated 10 August 2016

⁷⁷ Superintendent Allen T21.2

Appendix A: Natural justice requirements and responses

Conclusions

Senior management's investigation of the issues raised at the November 2012 Compstat was undertaken openly and carefully. It resulted in the implementation of various strategies. Those strategies were monitored by Superintendent Allen through recognised means including available data, the local PSC and direct reports.

The Intelligence Brief was commissioned by a senior management engaged with issues affecting the Division. It is again submitted that to characterise the Intelligence Brief as requiring the steps identified by IBAC to be taken does not fairly reflect its purpose, the data contained within it, or its conclusions.

Superintendent Allen's evidence that various data should be properly analysed prior to conclusions being drawn should not be misconstrued as defensive. Indeed, counsel assistings' suggestions regarding improvements to be made to probity monitoring and data collection were welcomed in evidence by Superintendent Allen.⁷⁸

Statistical data identified in evidence indicates that there have been improvements in the measurement of ethical health reviewed in the Compstat data. There is, however, always room for improvement and IBAC's foreshadowed further engagement with Victoria Police is welcomed.

From submissions in response to the Statement of Issues

November 2012 CompStat Forum and Matters Arising
Superintendent Allen gave evidence that:

- a. the Divisional CompStat Forum was held every 6 months
- b. it concerned a review over a 'vast number of areas of performance'
- c. the CompStat is a corporate reporting mechanism⁷⁹
- d. the CompStat was one facet of governance along with divisional governance and tasking coordinating model⁸⁰
- e. that model works on day to day operations and performance management, leading to weekly briefing and tasking and then monthly tasking and coordination meetings as well as local professional standards meetings.⁸¹

The relevant action item, or task, that arose from the CompStat Forum on 1 November 2012 was to test a hypothesis whether 'assaults or assaults of police' involved junior or senior members at the Ballarat watch house.⁸² This issue arose in the context of the Forum itself. There is no suggestion that the Forum was convened (not that the Chief Commissioner attended) to address this issue or assault complaints at Ballarat PSA.

⁷⁸ Superintendent Allen T21.2

⁷⁹ Superintendent Allen T8.24–T9.9

⁸⁰ Superintendent Allen T9.21

⁸¹ Superintendent Allen T9.26

⁸² Superintendent Allen T10.25–T12.26

In summary, the following action was taken by various parties in relation to the action item:

- a. 15 November 2012 – Chief Commissioner Ken Lay issued an internal memorandum to Deputy Commissioner Tim Cartwright⁸³
- b. 20 November 2012 – Assistant Commissioner Blayney issued an internal memorandum to Superintendent Allen (“Blayney Memo”) attaching a spreadsheet of complaint records (“Spreadsheet”)⁸⁴
- c. 21 November 2012 – Superintendent Allen issued an internal memorandum with observations on the Blayney Memo and Spreadsheet to Inspector Thomas (“Allen Memo”)⁸⁵
- d. 14 December 2012 – After a request from Inspector Thomas, Ethical Standards Command produced a complaint summary (“Complaint Summary”) and forwarded it to Inspector Thomas on 17 December 2012⁸⁶
- e. 21 December 2012 – Inspector Thomas issued an Interim Report on the Compstat Action Item (“Interim Report”)⁸⁷

The Allen Memo was issued a day after receiving the Blayney Memo and Spreadsheet. The Allen Memo observed that the majority of complaints in the Spreadsheet were made against more senior members although 10 Complaints related to an internal conflict between two police members and a further complaint concerned a member not stationed at the WBA PSA.⁸⁸ Of the remaining complaints, few related to assault. This was relevant as the original action item primarily related to issues of assault allegations. Superintendent Allen also identified these factors again in evidence.⁸⁹

Complaints Summary and Interim Report

The Complaints Summary was produced by Ethical Standards Command at the request of Inspector Thomas.⁹⁰ Inspector Thomas provided his Interim Report in relation to his investigation and the Complaints Summary on 21 December 2012 to Superintendent Allen. This was a part of the reporting back mechanism, through the chain of command.⁹¹

It is plain from a review of the Complaints Summary, Interim Report and the evidence of Superintendent Allen that:

- a. *the data in the Complaints Summary had shortcomings and required further analysis*
- b. *the Complaints Summary and the Interim Report identified these shortcomings*
- c. *nonetheless steps were taken to address the issues arising from the data obtained including risk mitigation strategies in relation to members generally and specifically.*

⁸³ Exhibit 31

⁸⁴ Exhibit 32

⁸⁵ Memo: Superintendent Allen to Thomas dated 21 November 2012

⁸⁶ Exhibit 33

⁸⁷ Exhibit 24

⁸⁸ Memo: Superintendent Allen to Thomas dated 21 November 2012

⁸⁹ Superintendent Allen T43.6

⁹⁰ Exhibit 33

⁹¹ Superintendent Allen T28

Appendix A: Natural justice requirements and responses

Shortcomings in data analysis

The Submissions filed on behalf of Victoria Police are adopted as far as they analyse the shortcomings in the data analysis and the submissions based upon that data analysis.

The 'Preliminary Analysis' and 'ESD Risk Analysis' paragraphs of the Interim Report identify a number of factors that should make one cautious not to rely upon the data in a superficial manner, but which instead required further analysis.

Two critical observations contained in the Interim Report, but not repeated in the Statement of Issues (par 3.5), include:

- a. duty failure, especially a failure to take action was a major driver of complaint numbers⁹²
- b. 94 per cent of duty failure complaints were resolved.

It is not correct to say (Statement of Issues paragraph 4.2) that Inspector Thomas or Superintendent Allen historically (and uncritically) accepted and acted upon the data. If that statement infers that there has been some change in the position of Superintendent Allen and Inspector Thomas, that is not correct and does not reflect the evidence. At the time, both Inspector Thomas and Superintendent Allen, as is prudent, raised proper and considered queries relating to the merits and meaning of the data contained in the Complaints Summary and in previous documents. For example:

- a. the data contained in the Complaint Summary replicated in part data already analysed in the Superintendent Allen Memo in which he identified potentially misleading data⁹³
- b. Inspector Thomas' Interim Report identified potentially misleading data⁹⁴
- c. the author(s) of the Complaint Summary also identified these shortcomings, including matters attributed to suspended members and off duty conduct.⁹⁵

Superintendent Allen described the data as flawed or misleading in response to counsel assistings' invitation that the figures contained in the data support certain conclusions without further analysis.⁹⁶

The Complaints Summary also included data from police units which had not been part of the Ballarat PSA since July 2010 being Ballarat CIU, Ballarat Highway Patrol and Ballarat D24. This affected the data contained in the Complaints Summary and therefore the nominal comparative position between Frankston and Ballarat relied on by Counsel Assisting in the opening and questions based on figure 19 of the Complaints Summary.⁹⁷

The effect of the erroneous inclusion of these units was identified in the evidence of Inspector Thomas. For example, removing the unrelated units reduced the number of allegations against members from 157 to 117.⁹⁸ The ratio of total members receiving allegations at Ballarat is reduced to 0.50 compared with Frankston at 0.70. The ratio is therefore not 'nearly double' as asserted in Exhibit 47 [932].

Further, figure 5 of the Complaints Summary includes 14 allegations against sergeants not forming part of the Ballarat PSA, therefore reducing the number of allegations against sergeants from 36 to 22. As a result, the assertion that sergeants at Ballarat PSA had double the amount of complaints as Frankston PSA is not made out.⁹⁹

Superintendent Allen was taken to Exhibit 47 [at 937]. The Chart states 'Depicts Ballarat uniform members with three or more complaint files in the last five years'. It is not clear whether the Chart is derived from the Complaints Summary. The Chart was anonymised. In re-examination Superintendent Allen was shown the names of the members. He was able to recognise the particular members depicted. He stated that this '...put a number of those levels of complaints in context.'¹⁰⁰ The Chart is of little assistance in determining whether all the complaints relate to the conduct of the relevant members while at the Ballarat Uniform Branch. It is submitted that further investigation may reveal whether complaints were incurred when the relevant member was not assigned to the Ballarat Uniform Branch.

⁹² Complaints in relation to duty failure account for 43 complaints of the 112 complaints attributed to Ballarat Uniform (Figure 4 Exhibit 33).

⁹³ The Complaints Summary contained figures that Superintendent Allen had previously queried in the Allen Memo.

⁹⁴ Exhibit 34, Memo Thomas to Superintendent Allen dated 21 December 2012.

⁹⁵ See para 3 and 4 at p 19 of Complaints Summary and Superintendent Allen T67.14 – 68.16

⁹⁶ Thomas T 28.20 and T 31.15. Proper analysis would include an assessment of whether the issue is the number of allegations or complaints and the number of allegations made against a particular sergeant, (Superintendent Allen T 16 .3, 16, 19 and T 15.22). Numerous allegations may arise under one complaint and may arise because of the mere presence of relevant personnel. This is particularly relevant to the last sentence at par 4.3 of the Statement of Issues that 'Ballarat sergeants accumulated two times the number of allegations compared with their counterparts at Frankston.' See also Superintendent Allen T 23.4 ff for the distinction between complaints and allegations.

⁹⁷ Figure 19 of the Complaint Summary was replicated in Exhibit 47 [at 932].

⁹⁸ Thomas T106.20

⁹⁹ See par 4.3 of Statement of Issues. Figure 8 in the Complaints Summary shows 11 allegations against CIU sergeants, one allegation against a D24 sergeant and two allegations against an HWP sergeant. This is a total of 14 allegations against sergeants not included in the Ballarat PSA.

¹⁰⁰ Superintendent Allen T69.27

Steps taken

Regarding paragraph 4.11 of the Statement of Issues, Superintendent Allen gave unchallenged evidence based upon specific and general questions relating to members with multiple complaint files appearing in the relevant data contained in the Complaint Summary. That evidence was that:

- a. as a consequence of the statistics provided in the Complaints Summary concerning sergeants, risk mitigation plans were discussed and implemented¹⁰¹
- b. investigations and disciplinary and criminal processes were pursued in general against members who were the subject of multiple complaints¹⁰²
- c. as a general practice if an officer has a higher number of complaints against them there were practices in place to identify this¹⁰³
- d. there was a process which identified members who may have multiple complaints against them and steps were then taken in relation to those members.¹⁰⁴ Superintendent Allen stated that the provision of better data had assisted that task.¹⁰⁵

Para 4.5 of the Statement of Issues summarises Superintendent Allen's evidence of some of the improvements in complaint files and numbers of members complained against. Those figures provided by Superintendent Allen disclose a significant reduction in both totals between 2014/15 and 2015/16.¹⁰⁶ Complaint files reduced from 31 to 13 and members complained against reduced from 31 to 19.

The Statement of Issues asserts that these figures do not 'conform' with those provided to IBAC by Ethical Standards (Statement of Issues par 4.7), however Superintendent Allen was cross examined on these figures at some length and there is no suggestion or evidence that they are not accurate.

Regarding Para 4.6 of the Statement of Issues, Superintendent Allen's identification of the evidence of this improvement and the fact that it had resulted from hard work of the management team and himself is uncontradicted. If it is counsel assistings' assertion that such an improvement arises from the announcement of the IBAC inquiry, that assertion has no basis on the evidence and was rejected at the time it was made.¹⁰⁷ It would also appear to have been put as a coincidence and no more at the hearing.¹⁰⁸

Superintendent Allen tendered recent data¹⁰⁹ demonstrating that complaint files for the Ballarat PSA were down 49 per cent for the period 2015/16 as compared with 2014/15.¹¹⁰

Regarding paras 4.9 – 4.12 of the Statement of Issues, while it is true that there was no triggering mechanism in place once complaints had reached an arbitrary figure, it is not correct to suggest that there was no monitoring system in place. Both Inspector Thomas and Superintendent Allen described a number of mechanisms and processes by which complaints against members would be identified by them or brought to their attention.¹¹¹ They included:

- a. direct reports by staff
- b. the Professional Standards Committee
- c. review of relevant data
- d. liaising with the regional Ethical Professional Standards Officer.

Superintendent Allen stated that the improved data in the last 12 months assisted in managing that risk. Superintendent Allen agreed it would be of assistance to have a process by which professional standards would inform him or Inspector Thomas when a certain number of complaints had been received 'subject to what that benchmark might be.'¹¹²

¹⁰¹ Superintendent Allen T44.17 – 45.13

¹⁰² Superintendent Allen T44.27, T21.21

¹⁰³ Superintendent Allen T19.22 – 20.20

¹⁰⁴ Superintendent Allen T19.22 – 20.20

¹⁰⁵ Superintendent Allen T20.15

¹⁰⁶ As at May 2016

¹⁰⁷ At Superintendent Allen T 28.17 the basis for the improvement was provided and at Superintendent Allen T 28.23 the temporal basis for the statistics was questioned.

¹⁰⁸ 'Sure. I'm not saying, but it also coincides with that doesn't it?' [Superintendent Allen T 28.21].

¹⁰⁹ Exhibit 41

¹¹⁰ Superintendent Allen T73.21

¹¹¹ Thomas T 24.26, T 26.12 – 27.27, Superintendent Allen T 19.17 – T20.12

¹¹² Superintendent Allen T21.2

Appendix A: Natural justice requirements and responses

Compstat data and senior command

Comparable police stations and other asserted comparators

Counsel Assisting has placed significant reliance upon 'comparable data' in a number of ways in the opening, evidence and Statement of Issues. It is submitted that the data, to the extent that it can be comprehended, is based on flawed criteria. Again, the submissions of Victoria Police are relied upon and adopted to the extent that they are relevant. Further matters are set out below.

It is submitted that there is insufficient information to determine whether various police stations are comparable. The basis for comparison is flawed and any reliance upon the alleged comparison would be affected by this flaw.

The fact that Superintendent Allen was not allowed access to the basis for the data from which the various charts were derived is concerning. The data was also not presented in a form with which Superintendent Allen was familiar from his regular review of CompStat data (see below). This is particularly concerning in light of counsel assistings' identification in matters arising of potential criticism based on what are said to be comparative statistics.¹¹³

Superintendent Allen was shown a pie graph apparently depicting the number of assault complaints at Ballarat compared with 'comparable police stations' ("Pie Graph").¹¹⁴ He was not aware of the source of the Pie Graph, it was unknown to him.¹¹⁵ Superintendent Allen stated that he would need further data including complaint figures (not included) and personnel numbers to come to a position on that data.¹¹⁶ He was not afforded that opportunity during or after the hearing.

Further, footnote 31 to paragraph 5.1 of the Statement of Issues cites Exhibit 47 'Intelligent Assessment Operation Ross at 570' as the source of the data in the Pie Graph. This document was not tendered at the hearing nor has it been disclosed.

Paragraph 5.1 of the Statement of Issues states that the comparable stations were selected by 'Victoria Police Human Resources' based upon 'regional stations, 24 hour station and each station having watch house cells.' This appears to differ from the description by Counsel Assisting which referred to stations that ...operate regionally, each operates 24 hours, all have similar facilities including holding cells.¹¹⁷ It is not clear what the nature of this difference, if any, is.

Superintendent Allen observed that the criteria identified by Counsel Assisting were not sufficient to determine whether particular stations were comparable:

You would certainly need more analysis to determine number of members, shifts, rank structure, as well as demographic factors pertaining to those particular locations.¹¹⁸

Critically, there appears to be no consistency as to what constitutes a 'comparable police station' across the various data sets relied upon by Counsel Assisting. A striking example of this is that there are a total of nine purportedly 'comparable stations' identified in the Pie Graph and the 'Use of Force 2010-2014 Intelligence Brief'¹¹⁹ ("Intelligence Brief") against which Ballarat PSA is assessed. However only one station, Bendigo, appears in both sets. This would appear to be at least indicative of the use of inconsistent selection criteria or the subjective inclusion of 'comparable stations'. On either view it raises obvious fundamental questions regarding the adequacy and consistency of those criteria, their application and the integrity of the statistical analysis arising from them. None of these matters are able to be assessed on behalf of Superintendent Allen if the criteria are withheld.

Based on the limited description of comparators Superintendent Allen was nevertheless able to identify other significant variations between the stations purported to be comparable. These variations included personnel, demographics and community issues which should inform any attempt to compare data from different police stations.¹²⁰

In addition to the criteria above, the application of a 'per 100 full-time equivalent employee' or '100 FTE' criterion is also relevant to comparisons between police stations. Superintendent Allen gave evidence that he interrogated ROCSID to compare other police stations with Ballarat being Frankston, Dandenong, Bendigo, Warrnambool and Shepparton and applied the '100 FTE' criterion among other criteria.¹²¹ Having interrogated the data on this basis Superintendent Allen tendered that data.¹²² It recorded that complaint files for the Ballarat PSA were down 49 per cent for the period 2015/16 as compared with 2014/15.¹²³ This figure, when applied on a '100 FTE' basis, was the largest percentage reduction of the selection of stations.

¹¹³ See paragraphs 6.1(a), (b) and (c) of the Statement of Issues. The submissions regarding lack of procedural fairness are referred to and repeated.

¹¹⁴ Exhibit 47 [935] identified in the Statement of Issues as a 'Pie Chart depicting the number of members (uniform) with assault complaints for comparable stations for the financial year (2014/15)'.¹¹⁵

¹¹⁵ Superintendent Allen T 29.2

¹¹⁶ Superintendent Allen T 70.18 – 71.3

¹¹⁷ Superintendent Allen T 35.24

¹¹⁸ Superintendent Allen T 71.13

¹¹⁹ Exhibit 46 – Confidential Exhibit

¹²⁰ Superintendent Allen T 36.1

¹²¹ Superintendent Allen T73.9

¹²² Exhibit 41

¹²³ Superintendent Allen T73.21

Workcover data

Superintendent Allen was shown a chart identifying WorkCover claims at Ballarat as against other workplaces.¹²⁴ The chart was used to assert that the 'arrest and restraint' related WorkCover claims are not only significantly high at Ballarat but that there was a correlation between that asserted conclusion and the complaints of assault regarding Ballarat members.¹²⁵

Superintendent Allen stated that he was not aware of the source of that document and that it 'was not a source or document' that he would work from in relation to WorkCover.¹²⁶ No further explanation of the source of the data was provided except that it was PSC derived.¹²⁷ Superintendent Allen was asked to opine about the possible basis for the data without being provided with the data, its source and the circumstances of the recorded incidents. There is also no evidence of the comparative workplaces or rate of injury per arrest included in the table. For these reasons the Chart is of minimal assistance. Superintendent Allen gave uncontradicted evidence that every WorkCover Claim and reported injury was reviewed by management on a daily and weekly basis.¹²⁸

In re-examination, Superintendent Allen gave evidence that he requested the Health and Safety division to obtain data over the last two years and investigated the WorkCover data himself in order to provide accurate evidence. That data recorded nine WorkCover claims (not 15). It is submitted that further evidence of the circumstances of the nine incidents would be required to assist the IBAC in any way. It is still questionable whether such a small number of events could support any thesis regarding a nexus between those incidents and any other alleged practice.¹²⁹

Matters arising

6.1(a) – Failure to implement

'Superintendent Allen and Inspector Thomas failed to put in place any proper strategy or risk mitigation plan to address the November 2012 Compstat data and the Complaint Summary data produced by Professional Standards in December 2012 that demonstrated more experienced members, including Sergeants, were the main drivers of complaint statistics for Division 3, particularly Ballarat police'

Any finding in the terms set out would be contrary to the evidence before the IBAC.

Both Superintendent Allen and Inspector Thomas (who reported to Superintendent Allen) gave evidence of specific and general steps taken in relation to the November 2012 Compstat Forum action item and the Complaint Summary data.

The purpose of the action item arising from the November Compstat was to test a hypothesis that assault allegations were being driven at the Ballarat watch house by inexperienced members.¹³⁰ Counsel assisting put matters relating to numbers of complaints against members in general. Superintendent Allen resisted that characterisation of the original action item or its purpose in evidence.¹³¹

Superintendent Allen was asked if anything was done in relation to sergeants at this time arising from the Complaints Summary. Superintendent Allen stated that there were current investigations and risk mitigation plans discussed and put together.¹³²

The implementation of those plans was reported back to him through the local professional committee as well as direct reports from inspectors and the personnel management assessment system.¹³³

When asked to identify 'what sort of mitigation strategies were put in place', Superintendent Allen provided by way of example, the steps taken in relation to Sergeant Taylor.¹³⁴ He referred to a number of those strategies but referred to one particular sergeant, Taylor.¹³⁵

Superintendent Allen was shown an anonymised graph representing Ballarat Uniform members with three or more complaint files in the last five years.¹³⁶ The last five years includes the period since the CompStat Forum in November 2012. He stated he was familiar with the figures and stated that mitigation strategies had been put in place and was able to provide examples in relation to particular members although they had not been identified by name in the graph.¹³⁷

¹²⁴ Identified as 'Graph 9 at 944' in footnote 34 Statement of Issues.

¹²⁵ Superintendent Allen T 29.17

¹²⁶ Superintendent Allen T 29.3 and 29.10.

¹²⁷ Superintendent Allen T 30.10

¹²⁸ Superintendent Allen T31.16

¹²⁹ This includes any alleged 'propensity' or 'inclination' attributed by counsel assisting to Ballarat officers. Factors such as the increase in particular types of incidents to which Ballarat officers were exposed may also assist in considering the context of any WorkCover claims [Superintendent Allen T 48.19, 49.18, 52.21].

¹³⁰ Superintendent Allen T 12.19,26

¹³¹ Superintendent Allen T 11.21 – 13.18

¹³² Superintendent Allen T 44.11

¹³³ Superintendent Allen T 44.20

¹³⁴ Superintendent Allen T 44.27

¹³⁵ Superintendent Allen T 45.8

¹³⁶ Exhibit 47 at [937]

¹³⁷ Superintendent Allen T 21.19

Appendix A: Natural justice requirements and responses

Inspector Thomas was one of Superintendent Allen's 'direct reports' referred to above. Inspector Thomas identified the following strategies in the Interim Report and their implementation in his evidence:

- a. sergeants are required to be qualified at the Discipline Investigation Course – this has been implemented¹³⁸
- b. sergeants are required to investigate MIM files for personnel who are under their control (correspondence group) – this has been implemented¹³⁹
- c. customer service and duty failure mitigation to be reinforced at every opportunity by managers and supervisors (readouts, training, professional development opportunities, PDA discussions) – It is noted that this is a response to matters other than assault allegations and responds to what was regarded as the 'main driver' of complaints against Ballarat PSA members.¹⁴⁰ This has been implemented¹⁴¹
- d. sergeants to take greater responsibility during supervisory shifts – this has been implemented¹⁴²
- e. improvement in timely resolution of MIM files – this has been implemented¹⁴³

In addition, Inspector Thomas identified other strategies addressing the conduct of sergeants:

- a. holding sergeant's meetings where issues such as complaints are discussed – these were conducted on a daily basis informally and formally every six months¹⁴⁴
- b. discussing performance and complaints against sergeants with his senior sergeants nearly every day¹⁴⁵
- c. he consulted with the Strategic Intelligence Unit and referred two members for Risk Analysis as a result of their complaint numbers.¹⁴⁶

6.1(b) – Failure to investigate

'Superintendent Allen and Inspector Thomas failed to properly investigate reasons why experienced members at Ballarat police, including sergeants, were the main drivers for complaint statistics as identified in the November 2012 Compstat and the Complaints Summary produced by Professional Standards in December 2012'

The matters identified in response to Matters Arising paragraph 6.1(a) are repeated.

Both Superintendent Allen and Inspector Thomas, who reported to him, gave evidence of proper and considered investigation and evaluation of the relationship between senior members and complaint statistics arising from the November 2012 CompStat Forum and Complaints Summary.

There is no evidence that the initial complaint data identified within the November 2012 CompStat Forum identified a relationship between complaints and senior personnel. The Allen Memo reviewed the Spreadsheet¹⁴⁷ regarding the relationship between senior members and complaints in general. Inspector Thomas was also investigating, including liaising with ESD.

The Complaints Summary was requested and obtained as a part of the investigation. The Interim Report provided to Superintendent Allen on 21 December contains an analysis of the Complaints Summary as part of this investigative process.¹⁴⁸ That necessarily included identifying any relationship between seniority and numbers and types of complaints and allegations.

The Interim Report identified issues and strategies to be applied. Those strategies were implemented. The Interim Report also identified two members as 'At Risk Personnel' and articulated strategies for their future management.¹⁴⁹

Inspector Thomas gave evidence that at the May 2013 CompStat Forum he was informed that the response to the November 2012 action item was satisfactory, as assessed at Commissioner or Assistant Commissioner level.¹⁵⁰ Further implementation continued as set out below.

¹³⁸ Thomas T 34.09 to 34.24; T 47.19; T 49.14)

¹³⁹ Thomas T 50.04

¹⁴⁰ Exhibit 33 Figure 4

¹⁴¹ Thomas T 50.20

¹⁴² Thomas T 50.24

¹⁴³ Figures contained at page 25 of the May 2014 CompStat data (presumably available to the IBAC) also record a 40 per cent reduction in MIM files for the period March 2013 – February 2014.

¹⁴⁴ Thomas T 58.06

¹⁴⁵ Thomas T 58.14

¹⁴⁶ Thomas T 79.9

¹⁴⁷ Exhibit 32

¹⁴⁸ Exhibit 24

¹⁴⁹ Exhibit 24

¹⁵⁰ Thomas T 113.10 ff

6.1(c) – Failure to monitor

'Superintendent Allen and Inspector Thomas failed to properly monitor the complaint statistics and performance of Sergeants and experienced members following the November 2012 Compstat and the December 2012 Complaints Summary produced by Professional Standards so as to ascertain if any strategy or risk mitigation plan put in place was effective in reducing complaints against these categories of members'

It is not clear what 'properly monitor' means. Superintendent Allen was not specifically asked about what monitoring he undertook in relation to the strategy or risk mitigation plans and it was not put to him that he failed to properly monitor.

The evidence of Superintendent Allen was that he did monitor complaint statistics and the behavior of individual members through different mechanisms and was familiar with the implementation of mitigation strategies regarding different members as set out below.

Superintendent Allen was shown an anonymised graph representing Ballarat Uniform members with three or more complaint files in the last five years.¹⁵¹ The last five years includes the period since the CompStat Forum in November 2012 and the implementation of strategies arising from it. He stated he was familiar with the figures and stated that mitigation strategies had been put in place and was able to provide examples in relation to particular members although they had not been identified by name in the graph.¹⁵² When shown the names of the individual members depicted in the graph in re-examination, Superintendent Allen confirmed he was both familiar with the members identified in the graph and that they had a number of complaints against them.¹⁵³

Superintendent Allen was able to describe the development of a risk mitigation strategy in late 2013/14 in relation to Sgt Taylor.¹⁵⁴ The CompStat Forum was held in November 2012.

Both Superintendent Allen and Inspector Thomas describe a number of mechanisms and processes by which complaints against members would be identified by them or brought to their attention.¹⁵⁵ They included:

- a. direct reports by staff*
- b. the Professional Standards Committee*
- c. review of relevant data Inspector Thomas is also kept informed of complaint data trends via the Compstat data and forums¹⁵⁶ and*
- d. liaising with the regional Ethical Professional Standards Officer.¹⁵⁷*

¹⁵¹ Exhibit 47 [937]

¹⁵² Superintendent Allen T 21.19

¹⁵³ Superintendent Allen T 69.25

¹⁵⁴ Superintendent Allen T 45.8

¹⁵⁵ Thomas T 24.26, T 26.12 – 27.27, Superintendent Allen T 19.17 – T20.12

¹⁵⁶ Thomas T 25.02, T 25.24 – T 26.02

¹⁵⁷ Thomas T 26.17 – T26.28

Appendix A: Natural justice requirements and responses

6.1(d) – Failed to implement use of force as last resort

'Superintendent Allen and Inspector Thomas having received in April 2015 the Intelligence Brief from Professional Standards Ballarat Police Station Use of Force 2010-2014 which identified that "Ballarat members predominately used hands on force types which are almost certainly contributing to offender and member injuries" failed to ensure a risk mitigation strategy or other like procedure or protocol was put in place to inform and educate Ballarat members that "hands on" force should be an action of last resort'

The context in which the Intelligence Brief was created, its purpose and its content do not support any finding as set out in paragraph 6 (1)(d).

The Intelligence Brief was prepared by the Centre for Operational Safety. Superintendent Allen gave evidence that the Report was prepared in relation to an 'ongoing management review of the use of force and injuries occurring to members as a result of confrontations.'¹⁵⁸ He stated that it was also a 'very handy tool' for him regarding the implementation of the CED and Taser pilot site to Ballarat from approximately 2011/12 to assess whether those devices were assisting in resolving critical incidents, reducing injuries and how the use of force was being applied.'¹⁵⁹ He was not further questioned in relation to that management review or the pilot program or the role of the Intelligence Brief within that context.

Counsel Assisting isolates key finding two:

Ballarat members predominantly use 'hands on' force types which are almost certainly contributing to offender and member injuries.

That statement must be considered in context of the purpose of the Intelligence Brief (as set out above) and also in the context of the other matters addressed in the Intelligence Brief itself as set out below.¹⁶⁰

The Intelligence Brief does not criticise the use of force by Ballarat PSA or suggest in any way that there is a need for use of force training. Further, there is nothing upon a review of the Intelligence Brief that such a strategy is necessarily called for.

Sections 3.4 and 3.6 of the Report consider the use of force by police. The effect of this analysis (as far as it can be understood without calling the author of the Report to give evidence) is:

- a. the types of force used at Ballarat are no different from those at other police stations; and*
- b. Ballarat ranks fourth out of five in the use of force of these types.*

This is clear from Section 3.4 which states:

The predominant type of force used across the five locations was wrestle/grapple, followed by handcuffing, grab/hold/push/swarm and then OC spray and foam use. [emphasis added]

...

Ballarat consistently ranked fourth in each of these Use of Force (UoF) areas when considered on an FTE basis. [emphasis added]

Key finding three states:

It is unlikely that UoF incidents at Ballarat Police Station exceed those at other similar police stations.

Section 3.4 subsequently observes that 'It is almost certain that the high use of "hands on" force types are contributing to UoF injuries.' The term 'high use' is not defined. If it is asserted by Counsel Assisting that this sentence means Ballarat was comparatively high in its use of 'hands on' force, that is directly contradicted by the statement that it is consistently ranked fourth for all types of force. If it is asserted that this means that 'hands on' use of force is more dominant than others within Ballarat, then there is no statistical evidence cited to substantiate that opinion.

The Intelligence Brief identifies circumstances and force types of a serious nature being used against Ballarat members. At 3.1 it states that the UoF data indicates that members at Ballarat 'have experienced an increase in offenders who are displaying irrational/unstable behavior, who use abusive/violent behaviour and who are drug affected.' This supports Superintendent Allen's evidence an increase in difficult demographic issues experienced by Ballarat police officers.¹⁶¹

¹⁵⁸ Superintendent Allen T 50.9

¹⁵⁹ Superintendent Allen T 50.12

¹⁶⁰ Superintendent Allen T 57.18, 57.26

¹⁶¹ Superintendent Allen T 48.12 – 49.12

At 3.4 the Intelligence Brief identifies that 'the majority of incidents resulting in injury to offenders (across all locations) occurred as a result of either a street arrest or in the process of subduing a suspect/offender'. Section 3.6 observes that the most frequent UoF locations involving Ballarat members are residential premises and the street/road/open space and that:

It is highly likely that the persons with mental health issues are a main driver of Ballarat members using force.¹⁶²

These factors are part of the context in which an assessment of the Report should be considered.

Section 3.6 states that it is unlikely that UoF incidents at Ballarat Police Station exceed those at other similar locations. In fact, Ballarat ranks the lowest in UoF incidents at police locations per FTE. Further, Ballarat also experienced a reduction of members involved in UoF incidents over the period of the survey from 100 to 80.

It is submitted that the Intelligence Brief, its purpose and contents and the manner in which it was deployed, do not justify any adverse finding against Superintendent Allen.

6.1(e) – Failed to address underreporting

'Superintendent Allen and Inspector Thomas having received in April 2015 the Intelligence Brief *Ballarat Police Station Use of Force 2010-2014* which identified that "it is almost certain that use of force is being underreported at Ballarat police station" failed to ensure proper directions and procedures were put in place at Ballarat police station to ensure proper compliance with operating procedures concerning the reporting of use of force!'

The context and purpose of the Intelligence Brief as set out above in response to 6.1(d) are repeated. The unchallenged evidence of Superintendent Allen regarding the possibility of underreporting is that he looked into it.¹⁶³

Further, there appears to be no basis upon which Superintendent Allen should be criticised based on the single opinion expressed in the Intelligence Brief. The opinion has not been subject to any analysis and no evidence has been called to determine the basis of the author's opinion.

Paragraph two of 'Part 3 Analysis' in the Intelligence Brief states:

Given this large number of public contacts, it is almost certain UoF is being significantly underreported at Ballarat Police Station, despite being in line with organization submission rates.

The opinion appears to be based upon an assertion that there is a statistical relationship (ratio) between public contacts and UoF incidents. Neither the purported ratio or its basis is disclosed. The last clause of the same sentence expresses the contradictory opinion that the UoF reporting appears to be in line with organization submission rates. There is no evidence regarding the process of reporting, what submission rates are, how they are calculated and how this apparently contradictory information is resolved.

The Intelligence Brief also refers to possible underreporting to explain another variance in data.¹⁶⁴

When questioned, Superintendent Allen identified other reasons why the UoF statistics in Bendigo might have been roughly double that of Ballarat although the populations are roughly similar.¹⁶⁵ It is submitted that if there were any utility in further investigating the untested opinion of the Report's author in relation to possible under reporting then at a minimum the following should be investigated:

- a. *the matters identified at par 78 above; and*
- b. *what PSA(s) constituted each of the five stations identified by the author. That would be relevant to assess comparative populations, station numbers, station types, personnel figures and distribution.*

¹⁶² Superintendent Allen T 49.18

¹⁶³ Superintendent Allen T 52.14

¹⁶⁴ See 3.1 where possible underreporting at Shepparton and Ballarat is posited.

¹⁶⁵ Superintendent Allen T 53.11, T 53.18 – 54.14, T 54.21 – 55.10, T 55.18 – 55.16

Appendix A: Natural justice requirements and responses

Nicole Munro

Insofar as factual findings in this report are concerned, Leading Senior Constable Munro responded by relying on her submissions in response to counsel assistings' Statement of Issues. IBAC notes that a number of the issues raised, and suggested areas of criticism specifically directed at her by counsel assisting in their Statement of Issues, have not been adopted in the findings in this report. Nevertheless as required by section 162(3) of the IBAC Act, the relevant parts of those submissions are set out below.

In the Statement of Issues, a number of events involving Nicole Munro are described. Of these, three form the basis of opinions that it is open to the IBAC to make adverse comment or findings in relation to Ms Munro's conduct in the subject events. These submissions will address these three issues that relate specifically to Ms Munro and which suggest adverse findings may be made in relation to her by the IBAC. These are:

- a. *not properly appreciating or not properly addressing the danger of positional asphyxia when person A was on her stomach and handcuffed¹⁶⁶*
- b. *the conduct of Ms Munro at the point where CCTV shows her foot coming into contact with the body of person A while person A was lying on the floor in cell 1¹⁶⁷*
- c. *not removing handcuffs and not checking the water temperature while person A was in the shower.¹⁶⁸*

¹⁶⁶ 'Statement of Issues' p 20 paragraph 3

¹⁶⁷ 'Statement of Issues' p 21 paragraph 4

¹⁶⁸ 'Statement of Issues' p 23 paragraph 2

¹⁶⁹ Transcript of Examination Leading Senior Constable Munro 8.13

¹⁷⁰ Transcript of Examination Leading Senior Constable Munro 8.18

¹⁷¹ Transcript of Examination Leading Senior Constable Munro 9.1

¹⁷² Transcript of Examination Leading Senior Constable Munro 8.13

¹⁷³ Transcript of Examination Leading Senior Constable Munro 11.17

¹⁷⁴ Transcript of Examination Leading Senior Constable Munro 12.10

¹⁷⁵ See for example Statement of Sergeant Hulls (Exhibit 3) p 1 at paragraph 4

¹⁷⁶ Notes of N Munro Exhibit 12 p 1, Transcript of Examination Leading Senior Constable Munro 16.27

¹⁷⁷ Transcript of Examination Leading Senior Constable Munro 17.8

¹⁷⁸ Transcript of Examination Leading Senior Constable Munro 17.15 – 18.3

¹⁷⁹ Notes of N Munro Exhibit 12 p 4

¹⁸⁰ Transcript of Examination Leading Senior Constable Munro 19.9

¹⁸¹ Transcript of Examination Leading Senior Constable Munro 20.6 – 20.9

¹⁸² Transcript of Examination Leading Senior Constable Munro 22.25

¹⁸³ Transcript of Examination Leading Senior Constable Munro 23.19

¹⁸⁴ Transcript of Examination Leading Senior Constable Munro 23.24

¹⁸⁵ Transcript of Examination Leading Senior Constable Munro 24.2

General

On 14 January 2015 Ms Munro attended an address after police had been called in response to a woman (person A) whose conduct had caused a member of the public to call police. When Ms Munro arrived, person A was behaving violently and aggressively.¹⁶⁹ She then resisted police.¹⁷⁰ She was biting and spitting.¹⁷¹ It took all four of the attending police to subdue person A and put handcuffs on her.¹⁷² Use of force forms were subsequently lodged in relation to this arrest¹⁷³, though it is noted that Ms Munro has not been granted access to them.

Ms Munro then transported person A back to Ballarat police station. Ms Munro gave evidence that while in the back of the van in the 'sallyport' area at the station, person A was kicking and screaming at police.¹⁷⁴ Ms Munro's testimony about person A's behaviour in the back of the divisional van while at the station is supported by the accounts of other police.¹⁷⁵

After seeing person A lodged in cell 1 at approximately midnight,¹⁷⁶ Ms Munro was directed to attend to other police duties: her notes and testimony show she attended a volatile situation¹⁷⁷ where a woman who was displaying psychotic symptoms had threatened to end her life.¹⁷⁸ While at that scene, Ms Munro received a radio call to urgently re-attend at Ballarat police station; she was further advised via radio that police had been exposed to secondary doses of oleoresin spray.¹⁷⁹

On her return to the Ballarat Police Station, Ms Munro was immediately affected by the oleoresin spray that had been used in the building.¹⁸⁰ The situation was chaotic and overwhelming.¹⁸¹ She found her colleagues Sergeant Hulls and 'Constable A' to be affected by the oleoresin spray; she attended to them.¹⁸² She observed 'OC spray' strewn throughout cell 1 and the custody area.¹⁸³ She herself was greatly affected by it.¹⁸⁴ Sergeant Hulls told her of the theft of the police lanyard that had occurred in her absence.¹⁸⁵

It is submitted that Ms Munro's conduct should be assessed in the whole context of her involvement with person A, including the facts, many of which remained unchallenged at the IBAC hearing, of how person A conducted herself at arrest, and later at the police station. Ms Munro's response to the unfolding situation should be analysed not as a series of contained moments captured on CCTV, and which allow a precise analysis of each moment's measure of threat and response, but as a cumulative and dynamic event unfolding over the several hours person A was in police custody.

First Comment: Not properly appreciating or not properly addressing the danger of positional asphyxia when person A was on her stomach and handcuffed

The relevant footage¹⁸⁶ shows Ms Munro in cell 1 after person A is handcuffed, and while she is on her stomach. Ms Munro, consistent with Police Policy, does not touch person A during the approximately 24 seconds she is with her in cell 1 as she is not wearing gloves. Ms Munro then exits to get gloves, so that she is able to then assist person A who is by then covered in oleoresin spray.¹⁸⁷

When Ms Munro leaves the cell at this time, Senior Constable Repac is still with person A. Ms Munro is outside cell 1 for approximately 13 seconds, after which time she returns and is then able to put on gloves.

The Oleoresin Capsicum Aerosol Manual¹⁸⁸ contains the following guideline at 6.7.1:

Due to the possibility of inducing positional asphyxia, (ie asphyxia caused when the position of the body interferes with normal breathing) members must ensure that a person is not restrained in a manner in which the face is covered and/or is left lying face down with hands cuffed behind the back.

Keep any person who is restrained under close observation. Take care to ensure that the person is placed in and maintains a position that allows unrestricted breathing...

After she returns to the cell after an absence of approximately 13 seconds, person A has by then rolled onto her right side, turning her face and body into the centre of the cell. This is clear in the footage. While she is in this position, Ms Munro fits on her gloves and then does two things. First, she puts person A's underwear back on. Then she sits her up to lean against the cell wall. She then exits the cell.

It is submitted that in all these circumstances, including person A's by then well established volatile and unpredictable behaviour, the fact person A is covered in oleoresin spray, the police guidelines about using gloves, and the fact that Ms Munro was also affected by the spray, the actions of Ms Munro show an officer who both (a) appreciates the danger of positional asphyxia and (b) acts in a reasonable time to eliminate this danger.

But for the 13 seconds she is outside the cell while searching for gloves (and to her knowledge another officer is present with person A during this time) Ms Munro is either observing person A closely or assisting her. Criticisms of Ms Munro for not appreciating or not averting the danger of positional asphyxia are unwarranted.

¹⁸⁶ Exhibit 10.7

¹⁸⁷ Transcript of Examination Leading Senior Constable Munro 48.10

¹⁸⁸ Confidential Exhibit 9

Appendix A: Natural justice requirements and responses

Second Comment: the conduct of Ms Munro at the point where CCTV shows her foot coming into contact with the body of person A while person A was lying on the floor in cell 1

Ms Munro gave evidence that her foot came into contact with person A while person A was prostrate on the floor of cell 1. She said that she was trying to get the attention of person A to calm her down. This conduct should be assessed in the light of all the evidence about person A's behaviour as set out above. The fact that Sergeant Hulls was in fact injured as the result of person A's conduct that night¹⁸⁹ settles any dispute about whether person A posed a real threat to police members' safety.

It is neither sufficient nor realistic to assess the conduct of Ms Munro in the light only of person A's conduct at the very moment shown on a portion of the CCTV footage. Although at that moment person A is subdued, her conduct over the whole of the night as observed by Ms Munro had been volatile, marked by periods of compliance which are then interrupted by periods of extreme violence in which police members are both threatened and injured, and which cause other police members to have to leave other volatile situations involving the safety of members of the public.

Further, criticism of Ms Munro's conduct at this moment also apparently ignores the fact that she herself was very affected by oleoresin spray, which, according to the Oleoresin Capsicum Aerosol Manual¹⁹⁰ has the following physical and psychological effects:

'The effects of OC aerosols are both physical and psychological. On unprepared subjects the effects are both rapid and debilitating, enabling members to control subjects with minimal physical contact. The eyes immediately shut due to an involuntary response known as blepharism. Breathing becomes temporarily difficult and there is inflammation and a burning sensation on any exposed skin. The mucous membranes secrete freely and there may be reduced muscle coordination.'

In her sworn testimony, Ms Munro gave evidence that she was cognisant of the danger of positional asphyxia and that she 'was worried about her'.¹⁹¹ Ms Munro's conduct in cell 1 ought to be assessed in the light of all of the circumstances of her contact with person A, from the time of her arrest for 'drunk', and should include serious consideration of how Ms Munro was herself effected by the chaotic scene in the Ballarat police cells that morning, and consider too the serious effects Ms Munro was laboring under due to her secondary exposure to the Oleoresin spray.

¹⁸⁹ Statement Renee Hulls Exhibit 4 p5

¹⁹⁰ Confidential exhibit 9 at p 10

¹⁹¹ Transcript of Examination Leading Senior Constable Munro 52.25

Comment Three: not removing handcuffs and not checking the water temperature while person A was in the shower

During her evidence, Ms Munro said that she only went into the shower area briefly, and that the shower was already going when she did so.¹⁹² No questions were asked of Ms Munro about what she saw of person A's time in the shower. The CCTV shows Ms Munro visit the general area of the shower very briefly, then exit again. It was the (uncontested) evidence of Senior Constable Repac that the shower cell had a door that almost completely covered the person showering from view, and that this door was closed.¹⁹³ There is no evidence before the IBAC that Ms Munro saw inside the shower at any stage. It is clear that other police members had the carriage of the showering arrangements at this time.

At the hearing, it is acknowledged by Counsel Assisting that Ms Munro was not one of those who escorted person A out of the shower.¹⁹⁴

There is no evidence before the IBAC which Ms Munro is aware of about what mechanism is in existence in the police showers for adjusting the temperature of the showers and whether in fact the showers have the capacity to deliver hot water at all.

In the light of the foregoing, it would be both unfair and unreasonable for the IBAC to make adverse findings against Ms Munro in relation to the showering of person A.

Conclusion

In his opening address for Operation Ross, Counsel Assisting the IBAC said:

The tasks faced by our police are often difficult and demanding and can regularly place them in positions that test their resolve, their resilience and their character. The community cannot and does not demand perfection of its police officers though so often their extraordinary devotion to their work is recognised.¹⁹⁵

Ms Munro joined the police force in February 1989, and has served over 27 years as a member of Victoria Police. She began her service at Ballarat in August 2014, just five months before the 'person A' incident.

During her 27 years of being a serving police member, Ms Munro has been the subject of a single allegation of assault in the course of her duty. The incident from which the allegation arose caused Ms Munro to be taken to hospital by ambulance and treated for her injuries. The complaint against her was investigated and found to be 'unfounded'. The complaining party was dealt with in the County Court for intentionally causing injury and resisting police. Media on the subject has been published and is still available.¹⁹⁶

Ms Munro's conduct on the 14 and 15th of January 2015 should be assessed in the light of her long career as a police member, and in the light of the difficult and demanding work that she performed not only on this night but throughout her 27 year career serving the Victorian community.

When proper regard is had to the challenges posed by the entry of person A into police custody on 14 January 2015, the conduct of Ms Munro, may, with the advantages of distance and time, be viewed as imperfect. However, it is submitted that in the light of all of the evidence about the threat that person A posed to police members working at Ballarat station that night, and in the light of the erratic and violent conduct of person A, and the chaotic and demanding nature of her work on 14 January 2015 in the context of a 27 year span of service, nothing that Ms Munro did that night should or could be properly the subject of adverse comment or opinion.

¹⁹² Transcript of Examination Leading Senior Constable Munro 55.19

¹⁹³ Transcript of Examination (Rank) Repac 26.17

¹⁹⁴ Transcript of Examination Leading Senior Constable Munro 56.15

¹⁹⁵ Opening Address, Operation Ross [9]-[10]

¹⁹⁶ <http://www.standard.net.au/story/69790/coleraine-woman-hits-police-officer-in-the-head-with-a-stubby/>

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

IN THE MATTER OF:

THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

-and -

OPERATION ROSS PUBLIC EXAMINATIONS HELD AT BALLARAT FROM 23 TO 27 MAY 2016

-and -

RESPONSE TO STATEMENT OF ISSUES

SUBMISSIONS OF THE CHIEF COMMISSIONER OF VICTORIA POLICE IN RESPONSE TO THE STATEMENT OF ISSUES

1. The purpose of the public examination by the Independent Broad-based Anti-corruption Commission (**IBAC**) at Ballarat between 23 and 27 May 2016 was to examine the conduct of certain members from the Ballarat Police Service Area (**Ballarat PSA**) as case studies concerning Ballarat uniform police.
2. Following the investigation of those three case studies, an examination of data and statistics concerning the Ballarat PSA, so counsel assisting asserted in the opening to the Commission on 23 May 2016, raised concerns as to systemic and cultural issues in the Ballarat PSA and particularly within the uniform branch of the Ballarat Police Station.
3. In the course of the public examination, counsel assisting made a number of assertions based on the data in the Compstat 2012, Western Region, Division 3 (**Compstat 2012 report**), the Complaint Summary prepared by the Strategic Intelligence Unit of the Professional Standards Command (**PSC**) (**Complaint Summary**)¹, Workcover statistics² and an Intelligence Brief relating to Use of Force at the Ballarat Police Station between 2010 and 2014 (**Intelligence Brief**)³.

4. An analysis of the data and statistics, so counsel assisting submitted in opening, identified a number of matters, which supported the conclusion that there were systemic and cultural issues of concern at the Ballarat Police Station, in particular the number of assault complaints made against Ballarat uniform members, coupled with the four matters under investigation in the three case studies and the similarities between those matters and the timeframe in which they occurred.⁴

Conclusions drawn from statistical analysis

5. In opening, counsel assisting submitted that:
 - (a) members at Ballarat Police Station have more than three times the number of complaints than that of comparable stations;⁵
 - (b) senior and experienced members at the Ballarat Police Station have the highest number of complaints of assault;⁶
 - (c) there was no follow up or very little follow up by local area command or the Victoria Police more generally as to the manner in which personnel at the Ballarat Police Station were identified as being at risk of being the subject of complaints and the mitigation strategies that were employed;⁷ and
 - (d) the lack of action or follow up had resulted in the number of complaints either worsening or at best remaining static.⁸
6. As a consequence of this statistical analysis, coupled with the evidence adduced at the public hearings, counsel assisting has indicated they may invite IBAC to make adverse comments against Superintendent Allen, the Divisional Commander of Division 3, Western Region, and Inspector Bruce Thomas, the Ballarat PSA Commander.

¹ Exhibit 33, ESD Complaint Summary, 1 July 2010–31 October 2012, p 546.

² Exhibit 45, Chart titled "Number and Causation of Claims – Past two years" (**Exhibit 45**).

³ Exhibit 46, p 580.

⁴ Counsel Assisting the Commission's Opening Statement (**Opening**) T9.1–6.

⁵ *Ibid*, T5.25–T6.4.

⁶ *Ibid*, T7.12–20.

⁷ *Ibid*, T4.28–5.04.

⁸ *Ibid*, T5.20–24.

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Preliminary observations

7. Aside from the three case studies that were examined in the course of this inquiry, counsel assisting has primarily relied upon statistical information contained in the Compstat 2012 report, the Complaint Summary and the Intelligence Brief to draw these conclusions.
8. Whilst it is agreed the data in the Compstat 2012 report is compiled from valid and reliable corporate data sets and is comprehensive in itself, it is not a document that was prepared to specifically gather data to determine if there were systemic or cultural issues relating to police assault complaints at the Ballarat Police Station. So too with the Complaint Summary. Its purpose was to “identify and develop a strategy to deal with the drivers of complaints within the Ballarat PSA”, as opposed to identify and develop a strategy to deal with complaints of police assaults at the Ballarat Police Station.
9. On a closer examination of the statistics relied upon, and putting those statistics in a proper context, the Chief Commissioner of Victoria Police (**Chief Commissioner**) does not accept that this data demonstrates that more experienced police members, including sergeants, were the main drivers of complaint statistics for the Ballarat PSA, and in particular at the Ballarat Police Station
10. Whilst the raw data is accurate, it is important to consider a number of variables before drawing any conclusions. In the absence of examination of further data or analysis of specific complaints or otherwise looking behind the raw statistics, many of the conclusions sought to be drawn based on the these statistics, and in particular the Complaint Summary are, it is submitted, tainted.

Ballarat Police Station has higher levels of police assaults than comparable police stations

11. It is claimed that police members at the Ballarat Police Station have more than three times the average number of complaints than members at comparable stations. In support of this assertion, a comparison is made with the Frankston PSA. The 32 Leading Senior Constables at Ballarat had 49 allegations (ratio 1.53 allegations per member) whilst at Frankston PSA, 10 Leading Senior Constables had 6 allegations (ratio 0.60). The 24 Sergeants at Ballarat had 36 allegations (ratio 1.5 allegations per Sergeant) whilst at Frankston PSA, 22 Sergeants had 16 allegations (ratio 0.72).⁹
12. Reliance is placed on a pie chart titled “Depicts the number of members (uniform) with assault complaints for comparable stations for this financial year”¹⁰ (**comparison pie chart**), which shows that Ballarat Police Station (uniform) had three times the average number of police assault complaints. A further comparison with complaint distribution across the whole of the Victoria Police sworn workforce, had led to a conclusion that Ballarat Police Station uniform members are responsible for 4.56 per cent of all complaints force-wide but with 158 members, it is just 1.9 per cent of the whole workforce.
13. A reference to Workcover statistics¹¹ shows that in the last two years there were 15 Workcover incidents at the Ballarat Police Station against a statewide Victoria Police average of 5.1; prompting the conclusion that members at the Ballarat Police Station are more likely to engage in physical confrontation.
14. However, a proper examination of all of these statistics in their proper context establishes that these conclusions or assumptions are clearly flawed.

⁹ Ibid, T4.1–13.

¹⁰ Exhibit 47, Chart titled “Depicts the number of members (uniform) with assault complaints for comparable stations for this financial year”, p 935.

¹¹ Exhibit 45.

15. There has been a failure to distinguish between “allegations” and “complaints”. Addressing only the number of allegations and not in the context of the number of complaints that those allegations relate to, the nature of the allegations and the number of respondent members to those various complaints, will lead to misleading conclusions. Here, the 157 allegations are contained in 64 complaints files.¹²
16. There also appears to be confusion between applying statistics applicable to the Ballarat PSA to conclusions about the level of police assault complaints at the Ballarat Police Station. If the Ballarat Police Station is the primary area of concern, care must be given to ensure that data applicable to the Ballarat Police Station does not overlap data applicable to the Ballarat PSA more generally.
17. The Ballarat PSA does not include personnel from D24, the CIU and the Highway Patrol and statistics relating to those units should not be included in the analysis. They should not be considered as part of Inspector Thomas’ supervisory responsibility. Once those units are taken out of the equation, this reduces the number of allegations against members in the Ballarat PSA from 157 to 117¹³ (a reduction of 40 allegations or approximately 25 per cent of the total allegations). The number of allegations falling to the Sergeants within the Ballarat PSA within the 40 excluded allegations totals 14, which represents a reduction of over 38 per cent in allegations against this rank when compared to the total number of 36 allegations attributed to this rank in the original 157 allegations.
18. Some of the original 157 allegations were made against suspended members. This means there are 20 less allegations applicable to on-duty members at the Ballarat PSA; in the case of Leading Senior Constables, 17 allegations and in the case of Senior Constables, three allegations meaning a further 13.3 per cent reduction in the number of complaints against serving Ballarat PSA members.
19. The Complaint Summary¹⁴ also reflects that nine files involve 31 allegations relating to members who were off-duty at the relevant time. If the analysis of the data were confined to allegations against on-duty police officers actually belonging to the Ballarat PSA, this would mean that instead of 157 allegations, there are 66 allegations made against members whilst on duty.
20. It appears that the focus of this inquiry has varied between examining the number of complaints generally in the Ballarat PSA to focusing on the number of police assault complaints in the Ballarat PSA. This is evidenced by reference to a comparison with the four incidents the subject of the three case studies (police assault allegations), the use of Workcover data suggesting that it evidences Ballarat uniform members being more likely to be involved in physical confrontations, and the use of the comparison pie chart which is confined to assault complaints.
21. It is to be noted that the most frequent complaint allegation type referable to the Ballarat PSA was duty failure, meaning that of the original 157 allegations, only 36 related to allegations of police assault.¹⁵
22. Closer examination of the data reveals that the Ballarat PSA had 14 complaint files containing the total of 36 assault allegations. A review of the 14 individual complaint files revealed:
- (a) five of the 14 files accounted for 13 of the allegations which involved members who were off duty and which were family violence related;
 - (b) three of the five files covered four allegations related to members who were suspended at the time of the alleged assaults;

¹² Attachment “A” to this response, Table titled “Explanation of variation in Complaint File numbers”.

¹³ Attachment “B” to this response, Table titled “Percentage decrease in allegations with removal of nominated work units”.

¹⁴ Exhibit 33, Figure 16.

¹⁵ Opening, T3.16.

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

- (c) one complaint¹⁶ related to an incident when the member involved was stationed at the Melbourne West PSA, which means that the Complaint Summary has captured complaints and allegations against members stationed at the Ballarat PSA but was not restricted to only those events that occurred within the Ballarat PSA; and
- (d) one complaint includes an allegation of one officer punching the complainant in the stomach and a second officer threatening the complainant although this file has eight allegations recorded against it apparently due to five officers being on duty or in attendance at the time, but not directly involved in the alleged assault.
23. In respect to the Frankston data in the Complaint Summary, an examination of those complaint files revealed:
- (a) there were 11 files containing 19 assault allegations;
- (b) one file contained one assault allegation and related to an off duty family violence incident;
- (c) the number of files increased to 13 if those relating to Frankston Highway Patrol and Frankston CIU were to be included in the data in order to achieve more accurate comparisons; and
- (d) inclusion of data from the Frankston Highway Patrol and Frankston CIU also changed the number of alleged assaults against members who were off duty to two files.
24. Whilst the Ballarat PSA data includes the CIU, D24 and Highway Patrol, the Frankston PSA data only reflects the uniform branches at the Frankston and Carrum Downs police stations, due to different reporting structures within the Frankston PSA. This means that comparisons have been drawn at different levels.
25. Even if one does not reduce the number of allegations at the Ballarat PSA by reference to off-duty or suspended members (a reduction otherwise of 51 allegations), if a comparison is then drawn between the Ballarat and Frankston PSA's on the basis of like work units being the uniform branches, a different picture is formed with Ballarat PSA uniform units attracting 51 complaint files and the Frankston PSA attracting 57 complaint files.
26. The use of the comparison pie chart in this case is of only marginal assistance. At best the overall statistical picture represented by the comparison pie chart provides an accurate comparison of raw statistics; however it does little to reflect causal factors.
27. Whilst the nominated stations were selected by Victoria Police Human Resources on the basis of regional stations, 24 hour operation and each station having a watch house, these categories are not extensive when seeking to draw comparisons and additional data around issues such as geography, area demographics, police staffing numbers and experience levels and prevalent crime types, which would assist in refining the basis on which comparisons are drawn.
28. In the absence of data that informs the comparison pie chart, it is impossible to comment on any potential inaccuracies or unique cases that might have been captured in the data. Looking behind the data relating to the Ballarat Police Station assault allegations evidences this. It is submitted that before any reliance can be placed on the comparison pie chart, the following information would need to be obtained:
- (a) total number of use of force reports for the same period for all seven police stations named in the pie chart;
- (b) a breakdown of the use of force reports as to what was the nature of the force used;
- (c) the number of police assault complaints for the same period for Ballarat and the other six police stations;
- (d) the number of multiple allegations arising from a single incident for each of the seven police stations; and
- (e) the number of sworn members on the rosters for each of the seven police stations.

¹⁶No. 1792/2011.

29. Similar considerations apply when relying on the Workcover statistics in the chart titled “Number and Causation of Claim – Past 2 years”,¹⁷ and in particular the assumption that members at the Ballarat Police Station were more likely to be in some form of physical confrontation than their counterparts in other stations.¹⁸ The Ballarat Police Station and the “average police workplace”, which it is assumed includes all places where sworn police members work, including those that do not interact with the public or conduct arrests, is not a valid comparison for the cause of injuries.
30. The Ballarat Police Station is one of the largest police stations in Victoria and houses prisoners and other persons in custody. It can reasonably be expected to have a comparatively high number of employee injuries occurring during arrest and restraint activities when compared to all workplaces across Victoria Police. The graph does not indicate the rate of injury per arrest so it cannot be inferred that the approach is predominantly 'hands on' or that there is an above average rate of injury. Before any reliable conclusions from this data can be reached, it is necessary that there is an analysis of the nature of the work done at the Ballarat Police Station such as, for example, examination of crime reports, use of force forms, incident fact sheets, details of arrests conducted under Mental Health legislation.
31. Further support for the conclusion that Workcover statistics cannot support these conclusions is evidenced in a chart titled “ZeroHarm – Arrest and Restraint Injuries”¹⁹. This chart lists the relevant police stations and the number of arrest and restraint injuries sustained by sworn members and which are recorded at the Human Resources Division of Victoria Police. This chart identifies 38 injuries recorded at the Ballarat Police Station for the period 2014/15 and 2015/16. For the same period there were 39 injuries at the Bendigo Police Station and 65 injuries at the Frankston Police Station.

Assertion that high level of assaults committed by more senior officers at Ballarat Police Station

32. It is claimed that senior and experienced members have the highest number of complaints of assault at the Ballarat Police Station.²⁰ Reliance is placed on Figure 5 in the Complaint Summary to demonstrate that ‘the majority of *complaints* were being generated by...more senior membership’ and that ‘there is an overrepresentation of *complaints* against sergeants’ [emphasis added].
33. This broad assertion is overly simplistic and needs to be considered in context. The statement of over representation of complaints against Sergeants has not been referenced to comparative data and therefore the statement appears to be purely a reference to the number of allegations within the Ballarat PSA. Sergeants have been compared to other ranks in the Ballarat PSA but ideally some comparative data should have been provided to demonstrate how those numbers compare more broadly to other PSAs and to the Sergeant rank across the force and within comparative work units. The Complaint Summary fails to provide this information to support comparative commentary.
34. The need to distinguish between the number of allegations and the number of complaints is critical to an accurate interpretation of this data. One complaint file may contain multiple allegations against multiple members in different work units. If one examines the data used to compile the Complaint Summary, i.e. the complaint files against Sergeants, that data can be broken down further as follows:
- (a) 17 complaint files contain 36 allegations;
 - (b) five complaint files containing 14 allegations relate to sergeants from Ballarat D24, Ballarat CIU and Ballarat Highway Patrol. One of these files contains ten allegations against two CIU sergeants (one Sergeant has eight allegations and the other has two allegations);

¹⁷ Exhibit 45.

¹⁸ Inspector Thomas' agreement with this assumption at Transcript of Insp Bruce Thomas's evidence (**Thomas**), T74.19 - T75.2, is also challenged.

¹⁹ Attachment “C” to this response, chart titled “ZeroHarm – Arrest and Restraint Injuries”, 18 July 2016.

²⁰ Opening, T2.17–21.

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

- (c) the complaint file numbers excluding the CIU, D24 and Highway Patrol total 13 complaint files, with 22 allegations;
 - (d) the 13 files relate to ten Sergeants;
 - (e) one of the 13 files has seven allegations against two uniform Sergeants (one Sergeant has three allegations and the other has four allegations); and
 - (f) four of the ten Sergeants had one complaint file each containing one allegation; two Sergeants had one complaint file containing multiple allegations and four Sergeants had two files with multiple allegations.
35. The only comparative data provided relates to the Ballarat and Frankston PSAs. The focus on allegations highlights the difference between Ballarat (157 allegations) and Frankston (89 allegations). However, at the complaint level the comparison sits at Ballarat (64 files when including the CIU, D24 and Highway Patrol units) and Frankston (57 files). An understanding of the ratio of allegations per complaint files between the two PSAs would obviously have benefitted from further research into the complaint files.
36. Due to the lack of comparative data, and in the absence of an examination of the specific allegations and complaints but instead a reliance on the broad information in the Complaint Summary, it cannot be said with a reasonable level of certainty that there is an overrepresentation of complaints against sergeants.
37. To conclude that there is an overrepresentation by Sergeants, one would need to understand what the number is being compared to, as the report does not provide such comparative data at the Sergeant level. 36 allegations against Sergeants appears high in comparison to other ranks within the PSA, however it is uncertain if the statement was simply applied to the Ballarat PSA in isolation. Figure 1 in the Complaint Summary lists the total number of complaint files for the PSA as 64. Figure 2 then depicts the file information per work unit that totals 70. Figure 3 then extrapolates the number of files per rank within the PSA as totalling 88. This variation in the overall numbers quoted is significant and would appear to suggest that some files have been counted twice and therefore misleading as a representation of total complaint files.
38. Even the comparison between the Ballarat PSA and Frankston PSA on the issue of whether there is overrepresentation of complaints against Sergeants is of limited value. A comparison of the number of allegations shows that Ballarat PSA Sergeants accumulated over double the ratio of allegations compared to Frankston PSA sergeants. However, it needs to be factored in that the difference in complaint file numbers between the two PSAs are not as significant and therefore further research of the actual complaint files is needed to identify the driver for the higher ratio of allegations per complaint file. Understanding this variation in allegation numbers per complaint file would assist in drawing reliable conclusions as to ethics and behaviours of a number of ranks across both PSAs.

39. The Frankston PSA data only includes the Frankston and Carrum Downs uniform branches, whereas the Ballarat PSA data includes uniform work units within the whole of the PSA as well as the CIU, D24, and Highway Patrol. Further research would almost certainly increase the number of complaints and allegations in the Frankston PSA when adding data relevant to similar work units included in the Ballarat data.
40. Limitations equally apply to examining complaint distribution across the whole of the Victoria Police's sworn workforce.²¹ Whilst the entirety of the sworn police force is one point of comparison, it is just one layer of data that should form part of a multi-layer data set, otherwise there is potential for a very distorted view. If the comparison was restricted to sworn members only then care would need to be taken to ensure that comparison is with a 'like' work unit.
41. To highlight this point, based purely on Figure 17 in the Complaint Summary, titled "Members who attracted multiple complaints",²² and the chart "Complaint distribution across Victoria Police sworn workforce"²³, it was asserted that "70 per cent are responsible for 33 per cent of complaints while 30 per cent are responsible for 66 per cent of complaints". This could be interpreted to suggest that the 30 per cent of sworn members who attract 66 per cent of complaints are the problem employees. However, Figure 17 in the Complaint Summary summarises the 16 identified members and the number of complaints (between 1 July 2010 and 31 October 2012) in the Ballarat PSA as:
- (a) one member with eight complaints (inclusive of two intervention orders off-duty);
 - (b) five members with three complaints (inclusive of two intervention orders off-duty); and
 - (c) ten members with two complaints.
42. On face value this could be interpreted to suggest that the one member falling into the 30 per cent pool is problematic while the remaining 15 members are of minimal concern as they fall into the 70 per cent pool.
43. It is submitted that before any conclusions should be drawn as to whether there is a systemic or cultural failure in the Ballarat PSA, or more particularly at the Ballarat Police Station, further data needs to be obtained including an examination of each of the complaint files and the nature of those allegations before any determination is made as to whether:
- (a) the Ballarat Police Station has unacceptably high levels of police assaults than comparable police stations; and
 - (b) there is an unacceptably high level of police assaults committed by more senior officers at the Ballarat Police Station.

²¹ Exhibit 47, p 934.

²² Exhibit 33, p 562.

²³ Exhibit 47, p 934.

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Complaint levels to date

44. It is claimed that the number of complaints against uniform members at the Ballarat Police Station has remained static and that senior and experienced members have the highest number of complaints because, as of June 2015, the three members of the Ballarat Police Station (uniform) with the highest number of complaint files were Sergeants. Hence this raises concerns as to systemic and cultural issues at the Ballarat Police Station.
45. Enclosed in this response are further statistics in the forms of tables that identify the nature of the complaint files and allegations against members at the Ballarat PSA.
46. For the period 1 July 2010 to 31 October 2012, excluding the Highway Patrol, CIU and D24:
- (a) Table 1.1 – Total number of complaint files per financial year (1 July 2010 to 31 October 2012);²⁴
 - (b) Table 1.2 – Total number of allegations per financial year (1 July 2010 to 31 October 2012);²⁵
 - (c) Table 1.3 – Allegations by rank per financial year (1 July 2010 to 31 October 2012), excluding Sergeants;²⁶
 - (d) Table 1.4 – Allegations relating to Sergeants by financial year (1 July 2010 to 31 October 2012), with determinations.²⁷
47. Therefore, in this period (1 July 2010 to 31 October 2012) there were 116 allegations in 51 complaints files against all ranks (to Senior Sergeant level) for the Ballarat PSA. The total number of allegations against Sergeants for this period is 22 allegations, out of a total of 116. Of particular note that of the allegations levelled against Sergeants, there were four allegations of assault (minor) with two allegations being the subject of no complaint, one being unable to be determined and one as unfounded.
48. A closer examination of the assault allegations levelled against police is set out in Table 1.5, titled "Assault allegations by rank and financial year (1 July 2010 to 31 October 2012)",²⁸ shows that there were a total of 34 police assault allegations; with four allegations levelled against Sergeants and one against a Senior Sergeant. No serious assault allegations were levelled against Sergeants.
49. By way of comparison, for the Frankston PSA (which is Frankston and Carrum Downs uniform branches only) for the period 1 July 2010 to 31 October 2012:
- (a) Table 2.1 – Total number of complaint files per financial year (1 July 2010 to 31 October 2012);²⁹
 - (b) Table 2.2 – Total number of allegations per financial year (1 July 2010 to 31 October 2012);³⁰
 - (c) Table 2.3 – Allegations by rank per financial year (1 July 2010 to 31 October 2012), excluding Sergeants;³¹
 - (d) Table 2.4 – Allegations relating to Sergeants by financial year (1 July 2010 to 31 October 2012).³²

²⁴ Table 1.1, Attachment "D" to this response (Attachment D), titled "Total number of complaint files per financial year (1 Jul 2010 to 31 Oct 2012)".

²⁵ Table 1.2, Attachment D, titled "Total number of allegations per financial year (1 Jul 2010 to 31 Oct 2012)".

²⁶ Table 1.3, Attachment D, titled "Allegations by rank per financial year (1 Jul 2010 to 31 Oct 2012) excluding Sergeants".

²⁷ Table 1.4, Attachment D, titled "Allegations relating to Sergeants by financial year (1 Jul 2010 to 31 Oct 2012) with determinations".

²⁸ Table 1.5, Attachment D, titled "Assault allegations by rank and financial year (1 Jul 2010 to 31 Oct 2012)".

²⁹ Table 2.1, Attachment D, titled "Total number of complaint files per financial year (1 Jul 2010 to 31 Oct 2012)".

³⁰ Table 2.2, Attachment D, titled "Total number of allegations per financial year (1 Jul 2010 to 31 Oct 2012)".

³¹ Table 2.3, Attachment D, titled "Allegations by rank per financial year (1 Jul 2010 to 31 Oct 2012) excluding Sergeants".

³² Table 2.4, Attachment D, titled "Allegations relating to Sergeants per financial year (1 Jul 2010 to 31 Oct 2012)".

50. Therefore, in this period (1 July 2010 to 31 October 2012) there were 92 allegations in 56 complaints files against all ranks (to Sergeant level) for the Frankston PSA. The total number of allegations against Sergeants for this period is 16 allegations, out of a total of 92. Of particular note is that of the allegations levelled against Sergeants, there were six allegations of assault (five minor and one serious) with five allegations not substantiated and the complaint of serious assault being the subject of no complaint.
51. A closer examination of the assault allegations levelled against police is set out in Table 2.5, titled "Assault allegations by rank and financial year",³³ shows that there were a total of 19 police assault complaints at the Frankston PSA, with six assault allegations levelled against Sergeants.
52. Statistics for the Ballarat PSA need to be compared to statistics for the period 1 November 2012 to 30 June 2016. Enclosed in this response are a further number of tables that identify the nature of the complaint files and allegations against members at the Ballarat PSA for the period 1 November 2012 to 30 June 2016, excluding the Highway Patrol, CIU and D24:
- (a) Table 3.1 – Total number of complaint files per financial year (1 November 2012 to 30 June 2016);³⁴
 - (b) Table 3.2 – Total number of allegations per financial year (1 November 2012 to 30 June 2016);³⁵
 - (c) Table 3.3 – Allegations by rank per financial year (1 November 2012 to 30 June 2016), excluding Sergeants;³⁶
 - (d) Table 3.4 – Allegations relating to Sergeants by financial year (1 November 2012 to 30 June 2016), with determinations.³⁷
53. Therefore, in this period (1 November 2012 to 30 June 2016) there were 156 allegations in 81 complaints files against all ranks (to Senior Sergeant level) for the Ballarat PSA. The total number of allegations against Sergeants for this period is 37 allegations, out of a total of 156. Of particular note is that of the allegations levelled against Sergeants, there were seven allegations of assault (minor) with three allegations being the subject of no complaint, one not being proceeded with, one not substantiated, one withdrawn and the result of one complaint from 2012/13 not having been able to be ascertained at this stage.
54. A closer examination of the assault allegations levelled against police is set out in Table 3.5, titled "Assault allegations by rank and financial year (1 November 2012 to 30 June 2016)",³⁸ shows that there were a total of 33 police assault complaints with seven allegations of minor assault levelled against Sergeants. No serious assault allegations were levelled against Sergeants.
55. An amalgamation of all of these statistics is attached to this response:
- (a) Table 4.1 – Total number of complaint files per financial year (1 July 2010 to 30 June 2016);³⁹
 - (b) Table 4.2 – Total number of allegations per financial year (1 July 2010 to 30 June 2016);⁴⁰
 - (c) Table 4.3 – Allegations by rank per financial year (1 July 2010 to 30 June 2016), excluding Sergeants;⁴¹
 - (d) Table 4.4 – Allegations relating to Sergeants by financial year (1 July 2010 to 30 June 2016), with determinations.⁴²

³³ Table 2.5, Attachment D, titled "Assault allegations by rank per financial year".

³⁴ Table 3.1, Attachment D, titled "Total number of complaint files per financial year (1 Nov 2012 to 30 Jun 2016)".

³⁵ Table 3.2, Attachment D, titled "Total number of allegations per financial year (1 Nov 2012 to 30 Jun 2016)".

³⁶ Table 3.3, Attachment D, titled "Allegations by rank per financial year (1 Nov 2012 to 30 Jun 2016) excluding Sergeants".

³⁷ Table 3.4, Attachment D, titled "Allegations relating to Sergeants by financial year (1 Nov 2012 to 30 Jun 2016) with determinations".

³⁸ Table 3.5, Attachment D, titled "Assault allegations by rank and financial year (1 Nov 2012 to 30 Jun 2016)".

³⁹ Table 4.1, Attachment D, titled "Total number of complaint files per financial year (1 Jul 2010 to 30 Jun 2016)".

⁴⁰ Table 4.2, Attachment D, titled "Total number of allegations per financial year (1 Jul 2010 to 30 Jun 2016)".

⁴¹ Table 4.3, Attachment D, titled "Allegations by rank per financial year (1 Jul 2010 to 30 Jun 2016) excluding Sergeants".

⁴² Table 4.4, Attachment D, titled "Allegations relating to Sergeants per financial year (1 Jul 2010 to 30 Jun 2016) with determinations".

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

56. Therefore, in this period (1 July 2010 to 30 June 2016) there were 272 allegations in 132 complaints files against all ranks (to Senior Sergeant level) for the Ballarat PSA. The total number of allegations against Sergeants for this period is 59 allegations, out of a total of 272. Of particular note is that of the allegations levelled against Sergeants, there were 11 allegations of assault (minor) with five allegations being the subject of no complaint, one not being proceeded with, one not substantiated, one unable to be determined, one unfounded, one withdrawn and one complaint not having been able to be ascertained.
57. A closer examination of the assault allegations levelled against police is set out in Table 4.5, titled "Assault allegations by rank and financial year (1 July 2010 to 30 June 2016)",⁴³ shows that there were a total of 67 police assault complaints, 11 allegations of minor assault were levelled against Sergeants and no allegations of serious assault.
58. Another comparison that can be made is that for the uniform members at the Horsham PSA, complaints for the period 1 July 2014 to 30 June 2015 totalled 15 complaint files,⁴⁴ involving 26 allegations.⁴⁵ Of those 26 allegations, nine were levelled against Sergeants⁴⁶ with two relating to police assaults complaints against Sergeants.⁴⁷
59. An examination of the total number of complaint files and allegations relating to Sergeants for the period 1 July 2010 to 20 June 2016 (excluding CIU, Highway Patrol and D24)⁴⁸, does not support the assertion that complaints against Sergeants have remained static and worsened. For the Ballarat PSA uniform Sergeants in this period, there were 39 complaint files consisting of 59 allegations:⁴⁹
- 2010/11 – six complaint files with eight allegations;
 - 2011/12 – six complaint files with 13 allegations;
 - 2012/13 – six complaint files with seven allegations;
 - 2013/14 – seven complaint files with 12 allegations;
 - 2014/15 – 14 complaint files with 19 allegations;
 - 2015/16 – zero complaint files with zero allegations.
60. On these statistics there is no evidence to support the view that more experienced members, especially Sergeants were liable to be subject to complaints, particularly police assault complaints. Nor is there evidence to support the conclusion that Ballarat Police Station Sergeants accumulate complaints, particularly assault complaints, at twice the rate of their Frankston PSA counterparts. Those complaints against Sergeants in the Ballarat PSA remained static between 2010 and 2013, spiked in the 2014/15 financial year, but then reduced to zero in the following financial year does not evidence a systemic and cultural problem in the Ballarat PSA. Until there is a close analysis of the relevant 14 complaint files, and in particular the complaints of police assault, no reliable conclusions can be reached.

⁴³ Table 4.5, Attachment D, titled "Assault allegations by rank per financial year (1 Jul 2010 to 30 Jun 2016)".

⁴⁴ Table 5.1, Attachment D, titled "Total number of complaint files per financial year (1 Jul 2010 to 30 Jun 2015)".

⁴⁵ Table 5.2, Attachment D, titled "Total number of allegations per financial year (1 Jul 2010 to 30 Jun 2015)".

⁴⁶ Table 5.3, Attachment D, titled "Allegations relating to Sergeants by financial year 2014/15", and Table 5.4, Attachment D, titled "Allegations by rank per financial year 2014/15 (excluding Sergeants)".

⁴⁷ Table 5.5, Attachment D, titled "Allegations relating to assaults by rank for financial year 2014/15".

⁴⁸ All complaints and not confined to police assault complaints.

⁴⁹ Table 6, Attachment D, titled "Ballarat PSA (1 Jul 2010 to 30 Jun 2016) Sergeant Files and Allegations".

Conclusion on complaint statistics

61. It is submitted that the investigation into these issues is incomplete. On the information it has to date and the limited analysis of that data, it is unable to draw any reliable conclusions as to the ethics and behaviours of Sergeants at the Ballarat PSA, and in particular the Ballarat Police Station, based on the data contained in the Complaint Summary. The conduct of Sergeant Taylor in relation to person B on 8 December 2010 and persons C and D on 25 April 2009, which have been dealt with as disciplinary matters, should not be permitted to skew the perception of the overall conduct of Sergeants in the Ballarat PSA. Indeed it is putting it too highly to say that the four incidents in the three case studies looked at by the Commission “highlight”⁵⁰ systemic and cultural concerns at Ballarat. It is impossible to draw reliable conclusions without an analysis of individual complaint files to ensure that any conclusions are supported by facts or informed judgments. Further information such as population demographics, structure of watch houses and cells, PSA employee demographics, public employment demographics and rates and prevalent crime types, should also be considered.
62. Further, counsel assisting asserts that it is open to the Commissioner to make adverse comments regarding Superintendent Allen and Inspector Thomas. Such adverse comments would be predicated upon counsel assisting's conclusions with respect to the statistical analysis that has been conducted, which are inadequate for the reasons outlined above. The Chief Commissioner submits that without obtaining further information and undertaking further statistical analysis, no such adverse comments regarding Superintendent Allen and Inspector Thomas should be made.

⁵⁰ Opening, T8.21–27.

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Attachment A

Explanation of variation in complaint file numbers:

	2010/11	2011/12	July - Oct 2012	Total
Total complaint files	27	30 (29)	7 (8)	64
Total complaint files per station/ work unit	28*	35**	7	70
Total complaint files per rank***	37	43	8	88
Allegations	80	69	8	157

Brackets are recount of the numbers in the data extraction

* Increase of 1 from 27 reflects that file 1755/2010 has been counted twice due to two work units being referenced in the one file.

** Increase to 35 from 29 is due to:

- File 552/2011 counted twice to reflect that members came from two different work units
- File 1433/2011 counted twice to reflect that members came from different work units
- File 2374/2011 counted twice to reflect that members came from different work units
- File 3621/2011 counted twice to reflect that members came from different work units
- File 3764/2011 counted twice to reflect that members came from different work units

*** Total number of files against rank reflect higher numbers than total files due to numerous individual files being counted multiple times where more than one rank involved.

Attachment B

Percentage decreases in allegations with removal of nominated work units

MI Station	CONST	CONST 1ST	LSC	S. CONS	SGT	S. SGT	INSP	Total
CIU-Ballarat total			16	5	11			32
D24 Ballarat total					1			1
Highway Patrol-Ballarat total			1	4	2			7
PSA Ballarat-WD3 total							1	1
UNI-Avoca total			1		1			2
UNI-Ballarat total	27	13	31	20	20	1		112
UNI-Beaufort total				1				1
UNI-Buninyong total					1			1
Total 1 = PSA	27	13	49	30	36	1	1	157
Total 2 = Excluding CIU, D24 and HWP			32	21	22	1	1	117
% decrease between the Totals 1 and 2	0	0	34.7%	30%	38.9%	0	0	25.5%

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Attachment C

ZeroHarm – Arrest and restraint injuries

The following table lists the relevant police stations and the number of arrest and restraint injuries sustained by employees and reported on HR Assist

Location	2014/15	2015/16	Total
UNI-Bairnsdale	5	9	14
UNI-Ballarat	21	17	38
UNI-Bendigo	17	22	39
UNI-Broadmeadows	15	13	28
UNI-Dandenong	17	14	31
UNI-Frankston	24	41	65
UNI-Geelong	18	15	33
UNI-Heidelberg	6	6	12
UNI-Horsham	12	13	25
UNI-Mildura	17	14	31
UNI-Mill Park	6	16	22
UNI-Moorabbin	9	17	26
UNI-Morwell	11	5	16
UNI-Ringwood	15	12	27
UNI-Shepparton	13	14	27
UNI-Sunshine	13	20	33
UNI-Swan Hill	6	8	14
UNI-Wangaratta	14	13	27
UNI-Warrnambool	11	7	18
UNI-Wodonga	6	4	10
Total	256	280	536

Attachment D

Ballarat PSA (excluding HWP, CIU, D24) – 1 Jul 2010 to 31 Oct 2012

Table 1.1 – Total number of complaint files per financial year (1 Jul 2010 to 31 Oct 2012)

Financial year	2010/11	2011/12	2012/13	Total
Number of files	19	25	7	51

Data extracted from original ROCSID data used for Ballarat PSA Complaint Summary (1 Jul 2010 to 31 Oct 2012) excluding HWP, CIU, D24

Table 1.2 – Total number of allegations per financial year (1 Jul 2010 to 31 Oct 2012)

Financial year	2010/11	2011/12	2012/13	Total
Number of allegations	57	50	9	116

Data extracted from original ROCSID data used for Ballarat PSA Complaint Summary (1 Jul 2010 to 31 Oct 2012) excluding HWP, CIU, D24

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Table 1.3 – Allegations by rank per financial year (1 Jul 2010 to 31 Oct 2012) excluding sergeants

Financial year	2010/11	2011/12	2012/13	Grand total
CONST	15	10	2	27
Arrest	1			1
Assault (minor)	7	2		9
Behaviour	3			3
Custody		1		1
Duty failure	3	6	2	11
Malfeasance	1			1
Property		1		1
CONST1ST	2	10	1	13
Arrest	1			1
Assault (minor)		1		1
Assault (serious)		1		1
Behaviour		3		3
Duty failure		5	1	6
Equipment	1			1

LS.CONNS	24	8		32
Assault (minor)	7	1		8
Assault (serious)	5	1		6
Behaviour		1		1
Civil process	2			2
Duty failure	7	3		10
Information	1			1
Malfeasance	2	2		4
S.CONNS	8	9	4	21
Arrest	2			2
Assault (minor)	3			3
Assault (serious)			1	1
Behaviour		2		2
Civil process			1	1
Duty failure	1	6	2	9
Equipment	2			2
Property		1		1
S.SGT			1	1
Assault (minor)			1	1
Grand Total	49	37	8	94

Data extracted from original ROCSID data used for Ballarat PSA Complaint Summary (1 Jul 2010 to 31 Oct 2012) excluding HWP, CIU, D24

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Table 1.4 – Allegations relating to sergeants by financial year (1 Jul 2010 to 31 Oct 2012) with determinations

Financial year	2010/11	2011/12	2012/13	Grand total
SGT	8	13	1	22
Assault (minor)	3	1		4
No complaint	2			2
Unable to determine	1			1
Unfounded		1		1
Behaviour	1	3	1	5
Resolved	1		1	2
Substantiated		2		2
Unfounded		1		1
Civil process		1		1
No complaint		1		1
Duty failure	4	4		8
Not resolved	1			1
Not substantiated	1			1
Resolved		1		1
Substantiated		3		3
Unfounded	2			2
Information		2		2
Not substantiated		2		2
Malfeasance		1		1
Unable to determine		1		1
Property		1		1
Not resolved		1		1
Grand total	8	13	1	22

Data extracted from original ROCSID data used for Ballarat PSA Complaint Summary (1 Jul 2010 to 31 Oct 2012) excluding HWP, CIU, D24

Table 1.5 – Assault allegations by rank and financial year (1 Jul 2010 to 31 Oct 2012)

Financial year	2010/11	2011/12	2012/13	Grand total
Assault (minor)	20	5	1	26
CONST	7	2		9
CONST1ST		1		1
LS.CONNS	7	1		8
S.CONNS	3			3
S.SGT			1	1
SGT	3	1		4
Assault (serious)	5	2	1	8
CONST1ST		1		1
LS.CONNS	5	1		6
S.CONNS			1	1
Total	25	7	2	34

Data extracted from original ROCSID data used for Ballarat PSA Complaint Summary (1 Jul 2010 to 31 Oct 2012) excluding HWP, CIU, D24

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Frankston PSA (Frankston and Carrum Downs Uniform ONLY) – 1 Jul 2010 to 31 Oct 2012

Table 2.1 – Total number of complaint files per financial year (1 Jul 2010 to 31 Oct 2012)

Financial year	2010/11	2011/12	2012/13	Total
Files	23	31	2	56

Data extracted from ROCSID - Frankston PSA (1 Jul 2010 to 31 Oct 2012)

Table 2.2 – Total number of allegations per financial year (1 Jul 2010 to 31 Oct 2012)

Financial year	2010/11	2011/12	2012/13	Total
Allegations	33	54	5	92

Data extracted from ROCSID - Frankston PSA (1 Jul 2010 to 31 Oct 2012)

Table 2.3 – Allegations by rank per financial year (1 Jul 2010 to 31 Oct 2012) excluding sergeants

Allegations by rank	2010/11	2011/12	2012/13	Grand total
CONST	13	30	2	45
Assault (minor)		7	1	8
Behaviour	3	6	1	10
Civil process		1		1
Duty failure	7	13		20
Information		1		1
Malfeasance	2			2
Property		2		2
Use firearm (Police)	1			1
CONST1ST		2	2	4
Assault (minor)		1	1	2
Behaviour		1	1	2
LS.CON	6			6
Behaviour	3			3
Duty failure	3			3
S.CON	10	10	1	21
Assault (minor)		3		3
Behaviour	1	1		2
Civil process	1	1		2
Duty failure	4	2		6
Malfeasance	4	2	1	7
Property		1		1
Grand total	29	42	5	76

Data extracted from ROCSID - Frankston PSA (1 Jul 2010 to 31 Oct 2012)

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Table 2.4 – Allegations relating to sergeants per financial year (1 Jul 2010 to 31 Oct 2012)

Sergeant Allegations	2010/11	2011/12	2012/13	Grand total
SGT	4	12	0	16
Arrest		1		1
Not substantiated		1		1
Assault (minor)		5		5
Not substantiated		5		5
Assault (serious)		1		1
No complaint		1		1
Behaviour	1	1		2
Not resolved	1			1
Resolved		1		1
Duty failure	3	3		6
Not substantiated		2		2
Resolved	3			3
Unfounded		1		1
Property		1		1
Unable to determine		1		1
Grand total	4	12	0	16

Data extracted from ROCSID - Frankston PSA (1 Jul 2010 to 31 Oct 2012)

Table 2.5 – Assault allegations by rank per financial year

Row labels	2010/11	2011/12	2012/13	Grand total
Assault (minor)	0	16	2	18
CONST		7	1	8
CONST1ST		1	1	2
S.CON		3		3
SGT		5		5
Assault (serious)		1		1
SGT	0	1	0	1
Grand total	0	17	2	19

Data extracted from ROCSID - Frankston PSA (1 Jul 2010 to 31 Oct 2012)

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Ballarat PSA (excluding HWP, CIU, D24) - 1 Nov 2012 to 30 Jun 2016

Table 3.1 – Total number of complaint files per financial year (1 Nov 2012 to 30 Jun 2016)

Financial year	2012/13	2013/14	2014/15	2015/16	Total
Number of files	13	25	30	13	81

Data extracted from ROCSID – Ballarat PSA (1 Nov 2012 to 30 Jun 2016) with HWP, CIU, D24 removed

Table 3.2 – Total number of allegations per financial year (1 Nov 2012 to 30 Jun 2016)

Financial year	2012/13	2013/14	2014/15	2015/16	Total
Number of allegations	26	51	58	21	156

Data extracted from ROCSID – Ballarat PSA (1 Nov 2012 to 30 Jun 2016) with HWP, CIU, D24 removed

Table 3.3 – Allegations by rank per financial year (1 Nov 2012 to 30 Jun 2016) excluding sergeants

Rank	2012/13	2013/14	2014/15	2015/16	Total
2VR1		1	1		2
Civil process			1		1
Property		1			1
CONST	8		2		10
Arrest	2				2
Assault (minor)	1		2		3
Behaviour	1				1
Duty failure	3				3
Equipment	1				1
CONST1ST	9	7	18	6	40
Arrest	2		1		3
Assault (minor)	1		5		6
Assault (serious)			1		1
Behaviour		4	1	1	6
Correspondence file		1			1
Duty failure	2	2	6	2	12
Equipment	1				1
Information	1				1
Malfeasance	1			3	4
Property	1				1
Search and seizure			4		4

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Rank	2012/13	2013/14	2014/15	2015/16	Total
LS.CON	3	15	2	4	24
Arrest		1			1
Assault (minor)			1	1	2
Assault (serious)				1	1
Behaviour	1	3			4
Duty failure	1	8		1	10
Equipment		1			1
Malfeasance	1	2	1	1	5
S.CON		15	16	11	42
Assault (minor)		2	4	5	11
Assault (serious)			1	1	2
Behaviour		2	2		4
Civil process		1	2		3
Duty failure		5	3	5	13
Malfeasance		4	4		8
Preliminary check		1			1
S.SGT		1			1
Behaviour		1			1
Grand total	20	39	39	21	119

Data extracted from ROCSID – Ballarat PSA (1 Nov 2012 to 30 Jun 2016) with HWP, CIU, D24 removed

Table 3.4 – Allegations relating to sergeants by financial year (1 Nov 2012 to 30 Jun 2015) with determinations

Rank	2012/13	2013/14	2014/15	Grand total
SGT	6	12	19	37
Arrest	1	1		2
Not substantiated	1			1
Resolved		1		1
Assault (minor)	2	3	2	7
No complaint		3		3
Not proceeded with	1			1
Not substantiated			1	1
Withdrawn			1	1
(blank)	1			1
Behaviour	1	3	1	5
No complaint		1		1
Not substantiated		2		2
Resolved	1			1
Withdrawn			1	1
Civil process			2	2
No complaint			2	2

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Rank	2012/13	2013/14	2014/15	Grand total
Duty failure	2	4	7	13
Not resolved			1	1
Resolved		3	2	5
Substantiated		1	2	3
Unfounded	2		1	3
(blank)			1	1
Equipment			1	1
Unfounded			1	1
Information			1	1
(blank)			1	1
Malfeasance			3	3
Substantiated			2	2
(blank)			1	1
Property		1		1
Substantiated		1		1
Search and seizure			2	2
Withdrawn			2	2
Grand total	6	12	19	37

Data extracted from ROCSID – Ballarat PSA (1 Nov 2012 to 30 Jun 2015) with HWP, CIU, D24 removed

Table 3.5 – Assault allegations by rank and financial year (1 Nov 2012 to 30 Jun 2016)

Assault allegations	2012/13	2013/14	2014/15	2015/16	Grand total
Assault (minor)	4	5	14	6	29
CONST	1		2		3
CONST1ST	1		5		6
LS.CONST			1	1	2
S.CONST		2	4	5	11
SGT	2	3	2		7
Assault (serious)			2	2	4
CONST1ST			1		1
LS.CONST				1	1
S.CONST			1	1	2
Grand total	4	5	16	8	33

Data extracted from ROCSID – Ballarat PSA (1 Nov 2012 to 30 Jun 2016) with HWP, CIU, D24 removed

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Ballarat PSA – 1 Jul 2010 to 30 Jun 2016 (excluding HWP, CIU, D24)

Table 4.1 – Total number of complaint files per financial year (1 Jul 2010 to 30 Jun 2016)

Financial year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Files	19	25	20	25	30	13	132

Table 4.2 - Total number of allegations per financial year (1 Jul 2010 to 30 Jun 2016)

Financial year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Allegations	57	50	35	51	58	21	272

Table 4.3 - Allegations by rank per financial year (1 Jul 2010 to 30 Jun 2016) excluding Sergeants

Rank	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
2VR1				1	1		2
CONST	15	10	10		2		37
CONST1ST	2	10	10	7	18	6	53
LS.CONST	24	8	3	15	2	4	56
S.CONST	8	9	4	15	16	11	63
S.SGT			1	1			2
SGT	8	13	7	12	19		59
Grand total	57	50	35	51	58	21	272

Table 4.4 – Allegations relating to sergeants per financial year (1 Jul 2010 to 30 Jun 2016) with determinations

Sergeant allegations	2010/11	2011/12	2012/13	2013/14	2014/15	Grand total
SGT	8	13	7	12	19	59
Arrest			1	1		2
Not substantiated			1			1
Resolved				1		1
Assault (minor)	3	1	2	3	2	11
No complaint	2			3		5
Not proceeded with			1			1
Not substantiated					1	1
Unable to determine	1					1
Unfounded		1				1
Withdrawn					1	1
(blank)			1			1
Behaviour	1	3	2	3	1	10
No complaint				1		1
Not substantiated				2		2
Resolved	1		2			3
Substantiated		2				2
Unfounded		1				1
Withdrawn					1	1

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Civil process		1		2	3
No complaint		1		2	3
Duty failure	4	4	2	4	7
Not resolved	1			1	2
Not substantiated	1				1
Resolved		1		3	2
Substantiated		3		1	2
Unfounded	2		2		1
(blank)				1	1
Equipment				1	1
Unfounded				1	1
Information		2		1	3
Not substantiated		2			2
(blank)				1	1
Malfeasance		1		3	4
Substantiated				2	2
Unable to determine		1			1
(blank)				1	1
Property		1		1	2
Not resolved		1			1
Substantiated				1	1
Search and seizure				2	2
Withdrawn				2	2
Grand total	8	13	7	12	19

Table 4.5 – Assault allegations by rank per financial year (1 Jul 2010 to 30 Jun 2016)

Assault allegations	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Grand total
Assault (minor)	20	5	5	5	14	6	55
CONST	7	2	1		2		12
CONST1ST		1	1		5		7
LS.CONNS	7	1			1	1	10
S.CONNS	3			2	4	5	14
S.SGT			1				1
SGT	3	1	2	3	2		11
Assault (serious)	5	2	1		2	2	12
CONST1ST		1			1		2
LS.CONNS	5	1				1	7
S.CONNS			1		1	1	3
Grand total	25	7	6	5	16	8	67

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Horsham PSA 1 Jul 2014 to 30 Jun 2015 (Uniform units only)

Table 5.1 – Total number of complaint files (1 Jul 2014 to 30 Jun 2015)

Financial year	2014/15	Total
Number of files	15	15

Data extracted from ROCSID – Horsham PSA (1 Jul 2014 to 30 Jun 2015)

Table 5.2 – Total number of allegations (1 Jul 2014 to 30 Jun 2015)

Financial year	2014/15	Total
Number of allegations	26	26

Data extracted from ROCSID – Horsham PSA (1 Jul 2014 to 30 Jun 2015)

Table 5.3 – Allegations relating to sergeants for financial year 2014/15

Rank	Complaint	Determination	Financial year		
			2014/15	Grand total	
SGT	Assault (minor)	Substantiated	1	1	
		Unfounded	1	1	
	Assault (minor) total		2	2	
	Behaviour	Not substantiated	1	1	
	Behaviour total		1	1	
	Civil process	No complaint	1	1	
	Civil process total		1	1	
	Duty failure	Not substantiated	2	2	
	Duty failure total		2	2	
	Equipment	(blank)	1	1	
	Equipment total		1	1	
	Malfeasance	Member			
			Exonerated	1	1
			Substantiated	1	1
	Malfeasance total		2	2	
	SGT total			9	9
Grand total			9	9	

Data extracted from ROCSID – Horsham PSA (1 Jul 2014 to 30 Jun 2015)

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Table 5.4 – Allegations by rank for financial year 2014/15 (excluding sergeants)

Rank	Complaint	Financial year	
		2014/15	Grand total
CONST1ST	Arrest	1	1
	Assault (minor)	1	1
	Behaviour	2	2
	Duty failure	2	2
	Information	1	1
CONST1ST total		7	7
INSP	Duty failure	1	1
INSP total		1	1
LS.CONST	Arrest	1	1
	Assault (minor)	2	2
	Civil process	1	1
	Duty failure	2	2
LS.CONST total		6	6
S.CONST	Assault (minor)	1	1
	Duty failure	2	2
S.CONST total		3	3
Grand total		17	17

Data extracted from ROCSID – Horsham PSA (1 Jul 2014 to 30 Jun 2015)

Table 5.5 – Allegations relating to assaults by rank for financial year 2014/15

Complaint	Rank	Financial year	
		2014/15	Grand total
Assault (minor)	CONST1ST	1	1
	LS.CONNS	2	2
	S.CONNS	1	1
	SGT	2	2
Assault (minor) total		6	6
Grand total		6	6

Appendix B: Submission of the Chief Commissioner of Victoria Police on data and statistics in response to the Statement of Issues

Ballarat PSA (1 Jul 2010 to 30 Jun 2016) sergeant files and allegations

Table 6 – Total number of complaint files and allegations relating to sergeants per financial year

Financial year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Files	6	6	6	7	14	0	39
Allegations	8	13	7	12	19	0	59

*All ROCSID complaint files involving sergeants have been included in the count.

**ROCSID Complaint files relating to sergeants have been counted once, even where two sergeants have been involved in the file.

The following files involved two sergeants:

- C2-1/3770/2010
- C3-3/1433/2011
- C3-2/1631/2013
- C3-2/2275/2014

The following files involved a Sergeant and other ranks

- C2-1/2333/2010 (Const/S.Cons/Sgt)
- C2-1/3046/2010 (S.Cons/Const1st/ Sgt)
- C2-1/3770/2010 (LS.Cons/Sgt)
- C2-1/1849/2011 (Const1st/Sgt)
- C2-1/3340/2012 (Const/Const1st/Sgt)
- C3-3/1529/2013 (S.Cons/Sgt)
- C2-5/3526/2013 (LS.Cons/Sgt)
- C2-1/4001/2013 (2VR1/Sgt)
- C2-5/1281/2014 (Const1st/Sgt)
- C2-5/1951/2014 (S.Cons/Sgt)
- C3-2/2467/2014 (Const1st/Sgt)

Appendix C: Scope and purpose of public examinations in Operation Ross

The scope and purpose of the public examinations in Operation Ross concerned investigation into the following:

1. Allegations of serious police personnel misconduct (within the meaning of the *Independent Broad-based Anti-corruption Commission Act 2011*) on account of alleged unnecessary and/or excessive use of force towards certain vulnerable persons at Ballarat Police Station.
2. Whether any human rights have been violated by any such alleged conduct.
3. The sufficiency and appropriateness of internal reporting by Victoria Police members involved in or associated with such alleged conduct.
4. The handling by Victoria Police of complaints made by such persons concerning such alleged conduct.

Appendix D: Previous IBAC special reports

Publications date	Report title
September 2013	Annual report 2012/13
November 2013	Special report concerning certain operations in 2013
February 2014	Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information
April 2014	Special report following IBAC's first year of being fully operational
October 2014	Operation Fitzroy: An investigation into the conduct of former employees of the Department of Transport/Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and others
October 2014	Annual report 2013/14
August 2015	Special report concerning Police Oversight
September 2015	Annual report 2014/15
April 2016	Operation Ord: An investigation into the conduct of officers at the Department of Education and Early Childhood Development
May 2016	Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police
September 2016	Annual report 2015/16
October 2016	Operation Exmouth: An investigation into the conduct of former Victorian public servant, Carmine Petrone

